

Laws Without Closure: Recent Reform Legislation and Challenges to the Rule of Law in Malaysia

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Abstract

This paper examines the emergence of “laws without closure” in Malaysia, referring to reform legislation that continues to attract sustained criticism and calls for amendment even after enactment. Through an analysis of recent Bills, particularly the Government Procurement Bill and the Online Safety Bill, the paper demonstrates how shortcomings in drafting, consultation and parliamentary deliberation may contribute to legislation that remains contested and may hinder the attainment of certainty, finality and public confidence ordinarily expected of legal reform. While legal indeterminacy is an inevitable feature of law-making, these reform Bills illustrate how shortcomings in legislative design may pose challenges to the rule of law, particularly the principles of legality and legal certainty.

Keywords: Legislative Design, Rule of Law, Legality, Legal Certainty, Legislative Drafting, Public Consultation; Parliamentary Deliberation, Malaysia

1. Introduction

Closure, within the criminal justice system, is a feeling of relief from loss and harmed experience.¹ Parallel to this, is the need for ordinary individuals to feel a sense of relief from legal problems in their daily life, from as small as online protection, to as big as preventing procurement scandals, like the multibillion-dollar 1MDB scandal, from reoccurring. Individuals are in a constant need for clear, settled, and determinate new laws to feel closure.

However, certain recent reform Bills have continued to attract sustained criticism even after enactment, with Members of Parliament (‘MPs’), civil society organisations (‘CSOs’) and affected stakeholders voicing concerns over what appears to be unfinished law. Such persistent contestation suggests that enactment alone does not necessarily bring legal and political closure where significant concerns surrounding legislation remain unresolved. This article examines two principal examples: the *Government Procurement Bill 2025* and the *Online Safety Bill 2024*.

¹ The John Howard Society of Canada, 'What is "closure" in criminal justice' (*JohnHoward.ca*, 8 January 2020) <<https://johnhoward.ca/blog/what-is-closure/>> accessed 28 February 2026.

The passage of the *Government Procurement Bill 2025* has been described as a historic milestone in Malaysia's efforts to standardise and regulate public procurement.² The Bill was introduced with the stated aim of addressing entrenched problems such as rent-seeking, subcontracting abuses, and political interference in procurement processes. However, despite these reformist aims, the Bill attracted sustained criticism from CSOs and MPs. The CSO Platform for Reform, a coalition of over 70 CSOs, raised concerns over the concentration of ministerial control in procurement decision-making.³ Similar concerns were articulated during parliamentary debate. For example, Tuan Hassan bin Abdul Karim, MP for Pasir Gudang, questioned clauses 10(1)(a) and 12(8) of the *Government Procurement Bill 2025*, arguing that they conferred excessive ministerial influence over procurement decision-making.⁴ ⁵ Nevertheless, these concerns did not result in further review, consultation or substantive amendments during the legislative process during the Second Reading.⁶

Similar issues also arose in relation to the *Online Safety Bill 2024*, enacted to enhance and promote online safety in Malaysia. The Bill was criticised by the Online Safety Advocacy Group (OSAG), a coalition of 19 CSOs, for employing broad and vague definitions of "harmful" content under the First Schedule, potentially impeding lawful expression.⁷ These criticisms were also echoed in parliamentary debates, where Dr. Mohammed Taufiq bin Johari, MP for Sungai Petani, expressed reservations regarding the wording of *section 13(3)*, noting that it had generated ambiguity and differing interpretations among members of the public and CSOs.⁸ ⁹

Taken together, these reform Bills therefore raise broader questions concerning how legislation is drafted, how consultations are conducted and how parliamentary deliberation is structured. This paper argues that the shortcomings observed in these Bills may contribute to legislation that remains contested and continues to attract criticism, calling for amendment even after enactment. The result is the emergence of what this article terms "laws without closure": laws that formally enter into force but may hinder the attainment of certainty, finality and public confidence ordinarily expected of legal reform.

² 'Overview of the Government Procurement Bill 2025' (NZ Chambers, 2025)

<<https://nzchambers.com/overview-of-the-government-procurement-bill-2025/>> accessed 28 February 2026.

³ Reuters, 'Malaysia's parliament approves law to regulate government procurement' (Reuters, 28 August 2025) <<https://www.reuters.com/world/asia-pacific/malaysias-parliament-approves-law-regulate-government-procurement-2025-08-28/>> accessed 28 February 2026.

⁴ Government Procurement Bill 2025, cls 10(1)(a) and 12(8) (permitting ministerial approval of government procurements and requiring matters on which a procurement board cannot reach a unanimous decision to be referred to the Minister or equivalent State authority for determination).

⁵ DR Deb 27 August 2025, 15th Parl, 4th Sess, 2nd Mtg, pp 102. (Malaysia).

⁶ L. Amin, C. N. Yiau, 'Govt procurement bill under fire from MPs over finance minister's wide discretion' (*The Edge Malaysia*, 27 February 2026) <<https://theedgemalaysia.com/node/768447>> accessed 28 February 2026.

⁷ Amnesty International Malaysia, 'Passage of the Online Safety Bill a grave blow to freedom' (*Amnesty.my*, 12 December 2024) <<https://www.amnesty.my/2024/12/12/online-safety-bill/>> accessed 28 February 2026.

⁸ DR Deb 11 December 2024, 15th Parl, 3rd Sess, 3rd Mtg, pp 51. (Malaysia).

⁹ Online Safety Bill 2024, cl 13(3) (requiring measures implemented by licensed applications service providers and licensed content applications service providers to not unreasonably or disproportionately limit a user's expression).

This paper does not suggest that Malaysian legislative practice generally suffers from these shortcomings, nor that the majority of legislation enacted in Malaysia fails to satisfy established principles of legislative drafting. Rather, the *Government Procurement Bill 2025* and the *Online Safety Bill 2024* are utilised as case studies to examine how deficiencies in drafting, consultation, and parliamentary deliberation may, in certain circumstances, contribute to the emergence of "laws without closure".

2. Structural Limitations

The legislative process has two main stages in the drafting and passage of a Bill. The first is the pre-parliamentary stage, during which ministries submit draft Bills to the Attorney General's Chambers ('AGC') Drafting Division before a Bill is introduced in Parliament. This is followed by the parliamentary stage, in which the Bill is presented before the House of Representatives (Dewan Rakyat) and the Senate (Dewan Negara) for its First, Second, and Third Readings. Following the Second Reading, the Bill may, at the discretion of Parliament, be referred to a Select Committee before proceeding to Royal Assent by the Yang di-Pertuan Agong.¹⁰

This section focuses on how Bills are drafted by Parliamentary Draftsmen in the AGC, how consultation informs the legislative process, and how Bills are debated in Parliament. Where deficiencies arise at these stages, through indeterminate drafting aims, limited consultation, or constrained deliberation, they contribute to the production of laws without closure, in which individuals are left uncertain about the rationale and boundaries of the laws governing them.

2.1 Drafting

In Malaysia, the drafting of legislation is undertaken by Parliamentary Draftsmen within the AGC, pursuant to the constitutional authority conferred under *Article 145(2) of the Federal Constitution*, which assigns the Attorney General responsibility for legal advisory functions and other duties of a legal character.¹¹ In practice, the drafting process is initiated through drafting instructions prepared by ministry instructing officers, which are then submitted to the Parliamentary Draftsmen for examination, consultation, and refinement before a Bill is finalised for tabling in Parliament.¹² However, these instructions are often derived from draft Bills rather than presented in narrative form. The use of draft Bills as drafting instructions gives rise to several structural limitations in legislative drafting.

First, drafters encounter significant difficulties in ascertaining the substance and policy rationale of a proposed Bill.¹³ Based on Rozmizan's questionnaire administered to 20 drafters from the Drafting Division within the AGC, all respondents reported attempting to

¹⁰ ASEAN Parliamentarians for Human Rights (APHR), *A Toolkit on Advancing Human Rights through the Malaysian Legislative Process* (2023) 6-8.

¹¹ Federal Constitution, art 145(2).

¹² R. Muhamad, 'Instructions to Draft Legislation: A Study on the Legislative Drafting Process in Malaysia' (2011)

13 *European Journal of Law Reform* 236, 241.

¹³ *ibid* 254-255.

understand the substance of draft Bills upon receipt, while 75% sought further clarification from instructing officers. Despite these efforts, 60% of respondents were unable to obtain satisfactory explanations regarding the policy rationale. This suggests a structural limitation in which legislative intent may be insufficiently articulated at the point of drafting.

Second, drafters are oriented towards correcting existing draft Bills rather than engaging in comprehensive legislative design.¹⁴ Rozmizan's findings indicate that 50% of respondents reported dedicating substantial effort to correcting minor textual or transactional matters, which in turn detracted from broader considerations of coherence and comprehensiveness. This suggests a structural limitation whereby the drafter's role is narrowed to that of a textual editor rather than that of a legislative architect.

According to classical accounts of a drafter's role, Thornton characterises the drafter as one who must understand the legislative problem, formulate an appropriate legislative response, and communicate that response with clarity and precision,¹⁵ while Stephen J emphasises that drafters should frame statutory language with sufficient clarity and precision to prevent even a bad-faith reader from misunderstanding its meaning.¹⁶

The structural limitations identified above may, in certain circumstances, undermine the realisation of Thornton's and Stephen J's ideals, insofar as inadequate drafting instructions and preconfigured statutes may leave significant questions of meaning unresolved. In such circumstances, the scope and rationale of legislation may remain unsettled at the moment of enactment, producing what may be described as "laws without closure", whereby fundamental questions of meaning are deferred rather than resolved through the law-making process itself.

2.2 Consultation

As observed in the *Report of the Controller and Auditor-General of New Zealand*, consultation is 'essentially a tool or mechanism for citizens' participation, which can inform and assist the decision-making process of public authorities'.¹⁷ Building on the drafting process examined in the preceding section, consultation within the legislative process operates at two critical junctures: first, during the early stages of policy formulation and development among ministerial officials, and second, during the drafting stage through interactions between instructing officers and legislative drafters.¹⁸

In Malaysia, consultation at both junctures is often conducted within the confines of government, namely within government ministries and departments, to ensure alignment of government interests.¹⁹ Although consultation with non-state actors, such as CSOs and affected stakeholders, does occur in certain legislative processes, its scope and extent

¹⁴ *ibid* 256.

¹⁵ GC Thornton, *Legislative Drafting* (4th edn, Butterworths 1996) 54–55.

¹⁶ *In re Castioni* [1891] 1 QB 149 (Div Ct) 167–168 (Stephen J).

¹⁷ Office of the Controller and Auditor-General (New Zealand), *Public Consultation and Decision-Making in Local Government* (December 1998) 15.

¹⁸ Noor Azlina Hashim, 'Consultation: A Contribution to Efficiency of Drafting Process in Malaysia' (2012) 14 *Eur JL Reform* 161.

¹⁹ *ibid* 157.

remains largely dependent upon executive discretion rather than being institutionalised. As a result, in circumstances where stakeholder participation is limited or omitted, consultation risks functioning less as a genuine mechanism for citizens' participation and more as a 'box-ticking exercise' contingent on executive discretion.²⁰

Concerns regarding the discretionary nature of consultation may be illustrated by the enactment of the *Government Procurement Bill 2025*, which attracted criticism for being rushed through all three parliamentary readings within a single week and for the absence of prior consultation with certain CSOs.²¹ Commenting on the Bill, Raymon Ram, President of Transparency International Malaysia (TI-M), cautioned that:

“A law rushed through without consultation, and riddled with discretionary loopholes, will not clean up procurement. It will only create a hollow reform, one that looks good on paper but fails in practice. The government must delay, amend, and get this law right. Anything less is a betrayal of public trust.”²²

The discretionary character of consultation in Malaysia is further entrenched at the legal level. As observed by Syahmi, community consultation is not explicitly mandated by statute but only implied in select legislative frameworks.²³ For instance, the *Environmental Quality Act 1974* incorporates public participation within the Environmental Impact Assessment (EIA) process through s 34A.²⁴ However, judicial interpretation has limited the practical accessibility of these participatory mechanisms. In *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals*, the Court of Appeal held that EIA reports were available to members of the public upon request and payment of the prescribed fee, and that there was no accrued right to automatic public distribution of such reports.²⁵ Thus, participation places the burden on affected communities to seek access to information before meaningful engagement can occur.

These features suggest that, in certain legislative processes, structural limitations may arise from the absence of legally binding obligations or normative expectations requiring meaningful consultation with affected stakeholders. In contrast to jurisdictions such as New Zealand, where public consultation is statutorily required under the *Local Government Act 2002*,²⁶ and the United Kingdom, where government departments are guided by formal

²⁰ Transparency International Malaysia, 'Transparency International Malaysia Decries Rushed Procurement Bill 2025'

<<https://www.transparency.org.my/pages/news-and-events/press-releases/transparency-international-malaysia-decries-rushed-procurement-bill-2025>> accessed 28 February 2026.

²¹ *ibid.*

²² *ibid.*

²³ M.S. Jaafar, 'Public Consultation in Malaysia: A Practical Approach of Multi-Mind Engagement' (unpublished manuscript) 3.

²⁴ Environmental Quality Act 1974, s 34A.

²⁵ *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23 (CA) 25, 56-57.

²⁶ Local Government Act 2002 (NZ), ss 82–83 (setting out principles of consultation, including reasonable opportunities for affected or interested persons to present their views, and establishing a special consultative procedure for specified decisions).

Consultation Principles encouraging stakeholder engagement,²⁷ consultation practices in Malaysia remain comparatively dependent upon executive discretion and administrative practice. To the extent that consultation remains discretionary, there exists a risk that affected stakeholders may be excluded from formative stages of legislative design, producing what may be described as "laws without closure", whereby fundamental questions concerning scope, meaning and legislative purpose remain unsettled notwithstanding formal enactment.

2.3 Legislature

As Zander observes, public consultation is often understood as being sufficiently accommodated within the policy-formulation process on the basis that views and objections can be channelled through Parliament.²⁸ In theory, this assumption is supported by the formal structure of the Malaysian legislative process: Bills are subjected to three readings in each of the two Houses, discussed by a Special Select Committee, and debated by members of the House.²⁹ On paper, this structure appears to be sufficient for public concerns to translate into parliamentary scrutiny through representatives, interest groups, and CSOs. However, in certain legislative processes, structural features may constrain parliamentary deliberation, limiting Parliament's capacity to compensate for deficiencies in pre-legislative drafting and consultation at the point of enactment.

Abdul Aziz Bari, a former Constitutional Law professor, observes that Parliament's role in examining policies in depth is insufficient.³⁰ However, the House of Lords Constitution Committee has observed that it is difficult to determine what constitutes effective parliamentary scrutiny.³¹ In light of this difficulty, this subsection adopts the degree of textual amendment to a Bill as a proxy indicator of parliamentary examination. While no official consolidated statistics are publicly available on the number of Bills amended prior to enactment, parliamentary records suggest that Bills are frequently approved at the later stages of the legislative process without textual amendment. For instance, a message from the Dewan Negara during the Fifteenth Parliament recorded that nine government Bills were passed by the *Senate tanpa pindaan (without amendments)*.³² According to a newspaper report of remarks made by Shad Saleem Faruqi, a constitutional law expert, approximately 80 per cent of draft Bills introduced between 1991 and 1995 were passed without amendment, while a further 15 per cent were altered following pressure from non-governmental organisations and other external actors. Only 5 per cent were amended

²⁷ Cabinet Office, Consultation Principles (2018) Principles A and C (encouraging consultation where appropriate and requiring consultees to be provided with sufficient information to submit informed responses) <<https://www.gov.uk/government/publications/consultation-principles-guidance>> accessed 28 February 2026.

²⁸ M. Zander, *The Law-Making Process* (6th edn, Cambridge University Press 2004) 8.

²⁹ APHR (n 10) 6–8.

³⁰ A. A. Bari, *Perlembagaan Malaysia: Asas-Asas dan Masalah* (Dewan Bahasa dan Pustaka 2001) 208-209.

³¹ House of Lords Constitution Committee, *The Legislative Process: The Passage of Bills Through Parliament* (24th Report of Session 2017–19, HL Paper 393, 2019) para 12.5

³² Malaysia, *Penyata Rasmi Parlimen Dewan Rakyat, Parlimen Kelima Belas, Penggal Ketiga, Mesyuarat Pertama*, 27 February 2024, 3 (Perutusan Daripada Dewan Negara, 14 December 2023).

within Parliament itself.³³ These patterns lend support to Aziz's contention that Parliament's role in the detailed examination of policy may, in certain circumstances, be limited.

This limited degree of parliamentary refinement is not accidental but structural in nature. First, the executive exercises substantial control over parliamentary time through the *Standing Orders of the Dewan Rakyat*.³⁴ *Standing Orders 11(2) and 12(1)* empower the Leader of the House and Ministers to determine the dates on which the House sits and to vary its sitting hours.³⁵ As neither the Federal Constitution nor the Standing Orders prescribe a minimum number of annual sitting days, the parliamentary time available for legislative business remains dependent upon executive discretion.³⁶ This has, at times, produced significant variation in the annual number of sitting days across different administrations, ranging from 80.4 days to 48.7 days.³⁷ As Balakrishnan observes, such fluctuations demonstrate inconsistency in the scheduling of the parliamentary calendar. As a result, opportunities for MPs to perform their legislative, deliberative, and scrutiny functions are contingent upon the amount of parliamentary time allocated by the executive.

Second, the executive exercises significant control over the parliamentary agenda.³⁸ *Standing Orders 14(2) and 15* permit Ministers to reorder parliamentary business without notice and accord precedence to government business over private members' business.³⁹ Thus, the executive exercises substantial influence over the allocation and sequencing of parliamentary business.⁴⁰ As Balakrishnan notes, the prioritisation of government business means that matters raised by government backbenchers and members of the parliamentary opposition may be delayed or not proceeded with when parliamentary time is limited.⁴¹ Opportunities for private members to initiate debates on issues of public administration or to raise matters of public importance that the government fails or refuses to address are therefore constrained. This restricts the ability of MPs to influence the matters debated in the House and limits Parliament's capacity to shape its deliberative priorities.

Third, committee scrutiny in legislative processes remains discretionary rather than mandatory. *Standing Order 83(4)* provides that committees may deliberate only upon matters referred to them by the House.⁴² Thus, committee examination depends upon a prior decision of the House rather than arising automatically as part of the legislative process. This is reflected in the limited use of parliamentary committees in Malaysia to

³³ Z. Ahmad and L. Phang, 'The All-Powerful Executive' The Sun (1 October 2005) <<https://web.archive.org/web/20070310224459/http://www.sun2surf.com/article.cfm?id=11381>> accessed 2 June 2026.

³⁴ M. Balakrishnan, 'Who Controls Time Controls Parliament: The Case for Shared Control of Parliamentary Time in the Dewan Rakyat' (2025) 5 Journal of the Malaysian Parliament 56.

³⁵ Parliament of Malaysia, *Standing Orders of the Dewan Rakyat* (14th edn, Percetakan Nasional Malaysia Berhad 2018) SOs 11, 12.

³⁶ Balakrishnan (n 34) 56.

³⁷ *ibid* 58.

³⁸ *ibid* 56.

³⁹ *Standing Orders of the Dewan Rakyat* (n 35) SOs 14(2), 15.

⁴⁰ Balakrishnan (n 34) 56.

⁴¹ *ibid* 54.

⁴² *Standing Orders of the Dewan Rakyat* (n 35) SOs 83(4).

facilitate MPs in the discharge of their legislative and oversight functions.⁴³ The absence of a mandatory committee scrutiny stage creates the possibility that some Bills may proceed through Parliament without the benefit of detailed examination, expert evidence and public participation.⁴⁴ As a result, opportunities for legislative refinement remain limited.

Taken together, these structural features suggest that, in certain legislative processes, Parliament may face institutional constraints in fully performing its function as the final forum for resolving contestation over legislative content. Where Bills proceed with minimal amendment, limited scrutiny and constrained debate, there exists a risk that legislation may emerge without a fully settled and reasoned account of its scope and purpose. In such circumstances, parliamentary procedures may prove insufficient to remedy deficiencies arising at earlier stages of the legislative process, potentially contributing to what may be described as "laws without closure", whereby significant questions concerning legislative meaning and implications remain unresolved notwithstanding formal enactment.

3. Rule of Law

Structural limitations in legislative design, drafting, consultation and enactment are not aberrations but inherent features of law. As H L A Hart observes, lawmakers are inevitably constrained by two structural handicaps: relative ignorance of fact and relative indeterminacy of aim.⁴⁵ Legislators cannot foresee all future circumstances in which legal rules may operate, nor can legislative objectives always be specified exhaustively in advance. The rule of law concern, however, is not the existence of such limitations per se, but whether, notwithstanding them, the law can retain sufficient clarity, foreseeability, and stability to guide conduct, and whether legislative processes can meaningfully mitigate the risks such limitations generate.

The rule of law, as articulated by Lord Bingham, requires that all persons and authorities within the state be bound by and entitled to the benefit of the law.⁴⁶ While Bingham's account is influential, it is not exhaustive, and no single definition commands universal acceptance.⁴⁷ For the purposes of analysing structural limitations in legislative design, two rule of law principles recur across leading accounts: legality and legal certainty. These principles are emphasised in the work of Bingham and are reflected in institutional frameworks such as those advanced by the Venice Commission and the World Justice Project.⁴⁸ It is these principles that are vulnerable to erosion where legislative design and institutional practices systematically constrain clarity, accountability, and participatory law-making. It is through this lens that the effects of structural limitation on the rule of law in Malaysia are examined.

⁴³ Malaysian Economic Association, MEA Proposal: Enhancing Parliamentary Committees in Malaysia (Malaysian Economic Association 2017) 11.

⁴⁴ *ibid* 12-13.

⁴⁵ H L A Hart, 'Discretion' (2013) 127(2) Harvard Law Review 652, 661.

⁴⁶ T. Bingham, *The Rule of Law* (Penguin Books 2011) 7-8.

⁴⁷ M. Ryan, Written Evidence (ROL0003) to the House of Lords Constitution Committee Rule of Law Inquiry (2025) para 1.

⁴⁸ Bingham (n 46) 40, 53; European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist (Council of Europe 2016) 10; World Justice Project, 'What is the Rule of Law?' (*World Justice Project*)

3.1 Legality

Legality requires that the exercise of public power be authorised by and conducted in accordance with the law.⁴⁹ As a core component of the rule of law, it ensures that lawmakers exercise power within the bounds of pre-existing legal rules. The Venice Commission introduces nine sub-indicators to assess a country's compliance with the principle of legality. While these indicators encompass multiple aspects of the legal order, this subsection focuses on those most relevant to the law-making process: first, whether the role of the legislature as lawmaker is ensured, and second, whether the law-making process is efficient, transparent, inclusive, and democratic.

First, on whether the role of the legislature as a lawmaker is ensured. *Article 44 of the Federal Constitution* states that “the legislative authority of the Federation shall be vested in a Parliament,” a provision that establishes the Parliament as the body with constitutional authority to enact laws.⁵⁰ In addition, *Standing Orders 48–61* regulate the procedure by which Bills are introduced, debated, committed, and passed.⁵¹ These constitutional and procedural arrangements, however, do not introduce substantive limits on “objectives, contents, scope, and, where necessary, time limits of the delegation of power,” as articulated by the Venice Commission.⁵² As a result, Parliament may delegate broad law-making authority to the executive without retaining meaningful control over how such power is exercised.

Second, on whether law-making procedures are efficient, transparent, inclusive, and democratic, similar structural limitations arise. While the framework facilitates the efficient passage of legislation through *Article 66 of the Federal Constitution*, which sets out the stages of passing a Bill,⁵³ and *Standing Orders 48–61*, which regulate parliamentary procedures,⁵⁴ there are no binding constitutional or procedural requirements mandating public consultation, minimum deliberation periods, opposition participation, impact assessments, or meaningful restrictions on expedited procedures.⁵⁵ Consequently, in certain legislative processes, the degree of openness and public participation may remain substantially dependent upon executive discretion.

The Government Procurement Bill 2025 provides an illustration of these concerns. The executive dismissal of government backbenchers' and opposition criticisms of the Bill, coupled with the decision to proceed without examination by a Select Committee, may be regarded as an erosion of Parliament's legislative role.⁵⁶ Moreover, the sidelining of CSOs during the drafting and consultation process exposes the Bill to excessive executive control

⁴⁹ European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist (CDL-AD(2016)007, Council of Europe 2016) paras 44–56.

⁵⁰ Federal Constitution, art 44.

⁵¹ Standing Orders of the Dewan Rakyat (n 35) SOs 48–61.

⁵² Venice Commission, (n 49) 20.

⁵³ Federal Constitution, art 66.

⁵⁴ Standing Orders of the Dewan Rakyat (n 35) SOs 48–61.

⁵⁵ Venice Commission (n 49) 21.

⁵⁶ Amin (n 6).

over public procurement, thus undermining transparency, inclusivity, and democratic participation in regulatory areas intended to safeguard the public interest.⁵⁷

The quality of the law depends largely on the quality of the law-making process. Practically, these structural limitations may, in certain legislative processes, contribute to an expansion of executive discretion in determining the substance of the law. To the extent that the executive determines not only the scope of parliamentary deliberation, but also the extent of public participation in the formation of the law, there exists a risk that transparency, accountability and inclusivity may be compromised.⁵⁸ Principally, such developments may affect the protection of rights and freedoms by increasing the possibility that laws are enacted without adequate parliamentary deliberation or public consultation. In such circumstances, legislation may exhibit characteristics of "laws without closure", as enactments produced without adequate deliberation risk being perceived as exercises of power rather than expressions of law, thus undermining the principle that public authority must act in accordance with the supremacy of law.

3.2 Legal Certainty

Legal certainty is a significant guiding principle of the rule of law. This subsection argues that structural limitations in Malaysia's legislative design undermine legal certainty and, in turn, weaken the rule of law's function of guiding conduct and protecting rights.⁵⁹

The principle of legal certainty requires the law to be clear in what it prohibits and allows, enabling members of the public to decide, in advance, their course of action or omission.⁶⁰ At its core, legal certainty demands that "the law must be accessible ... intelligible, clear and predictable."⁶¹ Legal certainty does not, however, require absolute precision or the complete elimination of judicial discretion, as some degree of interpretive flexibility is necessary to accommodate novel circumstances and changing social conditions. Rather, legal norms must remain sufficiently accessible and foreseeable such that individuals may reasonably regulate their conduct and anticipate its legal consequences.

The significance of legal certainty is reflected in its incorporation within international institutional frameworks. The Venice Commission, for example, identifies legal certainty as a core component of the rule of law and operationalises it through a series of sub-indicators, including the accessibility and foreseeability of the law, as well as the stability and consistency of the law.⁶² This demonstrates that legal certainty is not merely an abstract normative aspiration, but a concrete evaluative standard against which legislative processes and outputs may be assessed.

In comparison, the Malaysian Federal Constitution does not expressly articulate the principle of legal certainty. However, it implicitly embeds this value within its constitutional structure.

⁵⁷ Reuters (n 3).

⁵⁸ JUSTICE, 'The State We're In: Addressing Threats & Challenges to the Rule of Law' (September 2023) 10.

⁵⁹ B. Z. Tamanaha, 'Functions of the Rule of Law' (2021) 8.

⁶⁰ JUSTICE (n 58) 43.

⁶¹ Bingham (n 46) 40.

⁶² Venice Commission (n 49) 25–26.

For instance, *Article 4(1)*, which proclaims that “the Constitution is the supreme law of the Federation”, necessitates a clear and predictable hierarchy of legal norms. Similarly, *Article 8(1)*, which guarantees equality before the law, implicitly requires legal norms to be applied in a consistent and predictable manner. These provisions reflect an implicit appreciation of legal certainty as a foundational element of the rule of law.

Despite this implicit recognition, structural limitations in legislative design may, in certain legislative processes, undermine legal certainty in practice. Where legislative aims are indeterminate at the point of drafting, laws become less foreseeable to the public.⁶³ Where public consultations are limited or curtailed, laws become less accessible and legal knowledge is concentrated within the executive branch. Where parliamentary deliberation by elected representatives is constrained, laws may become less consistent with public interests and more aligned with the priorities of the ruling government. Taken together, these structural limitations may reduce the clarity and predictability of legislation and, in certain circumstances, undermine its perceived legitimacy.

The Online Safety Bill 2025 provides a clear illustration of these concerns. *First Schedule [Section 4] Paragraph 4* refers to “generally accepted behaviour or culture” as a regulatory standard.⁶⁴ Whilst some degree of interpretive flexibility is inevitable in legislative drafting, the phrase “generally accepted behaviour or culture” arguably confers broad discretion by failing to indicate whose standards are decisive, how such standards are to be identified, and which forms of expression fall within its scope. Furthermore, the divergence between the initial promise of a systems-based regulatory approach and the eventual focus on content moderation reflects executive influence over the consultative process.⁶⁵ In addition, the dismissal of the need for a Select Committee further illustrates the marginalisation of deliberative examination. Taken together, these features of the Online Safety Bill 2025 illustrate how deficiencies arising in certain legislative processes may undermine legal certainty by producing legal norms whose scope, rationale and application remain insufficiently defined.

The consequences of disregarding legal certainty are twofold. First, it diminishes the law’s role in guiding human conduct. Individuals must be able to understand what the law prohibits and allows before pursuing a course of action.⁶⁶ This guidance function extends beyond daily life to economic pursuits such as “trade, investment, and business”, where individuals and enterprises must be certain of the rights and duties imposed upon them in order to participate with confidence in the marketplace. Second, the erosion of legal certainty undermines the effective exercise of rights and freedoms. As Tamanaha observes, legal certainty enhances freedom and rights because individuals understand their permissible range of actions.⁶⁷ Furthermore, legal certainty also protects the constitutional fundamentals of law: upholding the Federal Constitution as the supreme law safeguards

⁶³ *ibid.*

⁶⁴ Online Safety Act 2024 (Act 854) First Schedule para 4.

⁶⁵ Amnesty International Malaysia (n 7).

⁶⁶ JUSTICE (n 58) 43.

⁶⁷ Tamanaha (n 59) 8.

fundamental liberties such as freedom of expression and freedom of assembly.⁶⁸ These protections are weakened when legal boundaries are vague or unstable.

In this sense, structural limitations in legislative design may, in certain circumstances, contribute to the production of "laws without closure". In such circumstances, individuals may be unable to determine with confidence and finality the legal consequences of their conduct. Such uncertainty may chill lawful behaviour and undermine the practical enjoyment of civil liberties guaranteed by the Federal Constitution. If left unaddressed, these conditions may undermine important aspects of the rule of law in Malaysia.

4. Conclusion

In conclusion, this paper has argued that the problem of "laws without closure" in Malaysia is not merely a problem of the merits of individual statutes, but arises from structural limitations embedded within legislative design, drafting, consultation, and parliamentary deliberation. Through the examination of three elements of the law-making process, namely drafting, consultation, and parliamentary deliberation, this paper has demonstrated how limitations arising in certain legislative processes may collectively undermine the capacity of the law-making process to produce clear, settled, and determinate laws. In doing so, these structural constraints may weaken important aspects of the rule of law by eroding the principles of legality and legal certainty.

At the drafting stage, insufficient articulation of legislative aims and the reliance on draft Bills as drafting instructions constrain the capacity of drafters to engage in legislative design. This may result in statutes whose scope and rationale remain insufficiently settled at the point of enactment. Such indeterminacy may reflect an absence of closure, as fundamental questions of meaning are deferred rather than resolved through the legislative process itself.

To compound this problem, the discretionary nature of consultation further worsens deficiencies in drafting. Where consultation with civil society organisations or affected stakeholders is neither institutionalised nor legally mandated, there exists a risk that legislation may proceed without the benefit of meaningful public participation capable of clarifying contested interests and policy boundaries prior to enactment.

Furthermore, parliamentary deliberation, which ought to function as the last line of defence in resolving legislative shortcomings, is structurally constrained by limitations such as executive control over parliamentary time, limited advisory and technical support for MPs, and the discretionary use of Select Committees. This, in turn, may restrict Parliament's ability to scrutinise and refine legislation, thereby limiting its capacity to provide closure where earlier stages have fallen short.

The cumulative effect of these structural limitations is that, in certain legislative processes, legislation may struggle to fully realise the principles of legality and legal certainty. For individuals, this may manifest as uncertainty over what is prohibited and what is permitted. For institutions, it may encourage greater reliance upon administrative and judicial discretion to complete laws that remain without closure.

⁶⁸ Federal Constitution, art 10(1).

Addressing “laws without closure”, therefore, requires more than interpretative or enforcement reform. It demands structural changes in legislative design itself, ensuring that drafting, consultation, and parliamentary deliberation operate together to produce law that is not merely enacted, but also sufficiently settled in its meaning, rationale, and purpose.

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