



## Judicial Review as an Instrument for Protecting *Ḥifẓ Al-Dīn* and *Ḥifẓ Al-Nafs* in a Pancasila-Based Constitutional State

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### ABSTRACT

Judicial review constitutes a fundamental legal mechanism within the Pancasila-based rule of law, particularly in safeguarding constitutional supremacy and protecting the fundamental rights of citizens. Through judicial review, the state ensures that legislative and regulatory frameworks remain consistent with the 1945 Constitution of the Republic of Indonesia as well as the foundational values of Pancasila. In this regard, judicial review functions not merely as a formal process of legal norm assessment, but also as a substantive instrument for preserving humanitarian and moral values aligned with the concept of *maqāṣid al-sharī'ah*, especially *ḥifẓ al-dīn* (protection of religious freedom) and *ḥifẓ al-nafs* (protection of human life). This article aims to examine the role of judicial review as a mechanism for safeguarding freedom of religion and the right to life within the framework of Indonesia's Pancasila-based legal system. The analysis focuses on how the Constitutional Court, through its authority to review legislation, contributes to maintaining a balance between state interests, constitutional principles, and human rights protection. The research employs a normative juridical approach by analyzing statutory regulations, Constitutional Court decisions, and relevant legal literature from both positive law perspectives and *maqāṣid al-sharī'ah* theory. The findings indicate that judicial review holds significant relevance in advancing the protection of *ḥifẓ al-dīn* and *ḥifẓ al-nafs*, as it enables the correction of legal norms that potentially threaten religious freedom and the preservation of human life. Therefore, judicial review serves not only as a formal constitutional instrument but also as a substantive means of upholding justice, human dignity, and Pancasila values within the national legal system.

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### INTRODUCTION

Indonesia is constitutionally affirmed as a state governed by law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. However, the Indonesian conception of the rule of law does not merely reflect a neutral-formal understanding akin to the Western notions of *rechtsstaat* or rule of law. Instead, it is deeply rooted in the values of Pancasila, which function as the philosophical and ideological foundation of the state. The Pancasila-based rule of law perceives law not only as an instrument for restraining power, but also as a means of realizing substantive justice, humanity, and a balanced relationship between individual rights and collective interests (Sunarjo, 2014). Within this framework, law is inseparable from the moral, social, and religious values that shape Indonesian society.

Pancasila occupies a central position within the national legal system. Beyond serving as the state ideology, Pancasila is widely understood as a *grundnorm* that animates and guides all legislation. Consequently, every legal norm enacted by the legislature must align with Pancasila values in terms of substance, objectives, and social impact. In this sense, Pancasila functions as both an ethical and constitutional benchmark for lawmaking, as well as a standard for assessing the validity of statutory regulations (Putra et al., 2025).

In the realm of human rights protection, Pancasila provides a robust normative foundation, particularly through the principles of Belief in the One and Only God and Just and Civilized Humanity. These

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principles affirm state recognition of religion and the inherent dignity of human beings as creations of God. Accordingly, religious freedom and the protection of the right to life constitute essential characteristics of the Pancasila-based legal order. The state is therefore obliged not only to acknowledge these rights formally, but also to ensure their effective realization through fair and reliable legal mechanisms (Mahardika, 2023).

One of the most significant constitutional mechanisms for maintaining constitutional supremacy and protecting citizens' rights is judicial review. In Indonesia, the authority to conduct judicial review of statutes has been vested in the Constitutional Court since the constitutional amendments enacted in the post-reform era. The establishment of the Constitutional Court responded to the need for stronger oversight of legislative products to ensure their conformity with the Constitution and the fundamental values of the state (Mujiburohman, 2017). Judicial review thus serves as a form of constitutional control that preserves the balance of power while safeguarding citizens' constitutional rights against potential legislative excesses.

Through judicial review, the Constitutional Court is empowered to assess the constitutionality of statutes, both in formal and substantive terms. This function positions the Court not merely as a negative legislator that annuls unconstitutional norms, but also as an institutional guardian of constitutional values embedded in society. In practice, judicial review frequently intersects with human rights issues, including religious freedom, personal security, and the right to live with dignity (Hasibuan & Rumesten, 2023). As such, judicial review occupies a strategic role in advancing a just constitutional order.

From the perspective of national law, judicial review is generally viewed as a mechanism for ensuring consistency between positive law and constitutional norms. Nevertheless, within Indonesia's religiously diverse and pluralistic society, judicial review also carries a broader value-based dimension. Legal norms are not examined solely on the basis of written law, but also in relation to principles of social justice and humanity. This approach reflects the understanding that law should remain responsive to living law the values that actively shape social life, including religious norms (Widianti & Tajuddin, 2024).

In Islamic legal thought, the protection of fundamental human values is articulated through the concept of *maqāṣid al-sharī'ah*. This concept refers to the overarching objectives of Islamic law, which aim to promote public welfare (*maṣlaḥah*) and prevent harm. Classical and contemporary scholars generally agree that *maqāṣid al-sharī'ah* encompass five core protections: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect, lineage, and property. Among these, *ḥifẓ al-dīn* and *ḥifẓ al-nafs* hold particular significance, as they directly relate to human existence as both religious and living beings (Hasanah & Kharisma, 2022).

The principle of *ḥifẓ al-dīn* emphasizes the protection of religious freedom, encompassing belief, worship, and religious expression. In the context of a modern state, this principle requires the government to act impartially and to refrain from discriminatory treatment toward any religious group. Meanwhile, *ḥifẓ al-nafs* underscores the state's obligation to safeguard the right to life, personal safety, and human dignity. This principle categorically rejects legal norms or policies that may threaten human life, security, or fundamental humanity (Maula, 2018).

When situated within the Indonesian legal system, the values of *maqāṣid al-sharī'ah* demonstrate a strong convergence with the principles of the Pancasila-based rule of law. Pancasila recognizes the significance of religion in public life while simultaneously upholding the ideal of just and civilized humanity. Accordingly, integrating *ḥifẓ al-dīn* and *ḥifẓ al-nafs* into law enforcement practices particularly through judicial review does not contradict the Constitution. Instead, such integration enriches constitutional interpretation by reinforcing its substantive moral dimension (Malida, 2025).

In practice, numerous statutory and regulatory instruments have raised constitutional concerns related to religious freedom and the protection of life. Certain national and regional regulations have been criticized for discriminating against specific religious groups or for neglecting individual safety and security. In such circumstances, judicial review provides a constitutional avenue for citizens to challenge legal norms that allegedly infringe upon their constitutional rights (Maula, 2018).

The role of the Constitutional Court in adjudicating judicial review cases involving religion and the right to life illustrates that the Court operates not only within a normative legal framework, but also within a broader ethical and moral domain. Its decisions often incorporate philosophical and sociological considerations, reflecting an effort to maintain harmony between positive law, Pancasila values, and the realities of Indonesia's plural society (Ali, 2025). This reinforces the view that judicial review constitutes a relevant and effective instrument for protecting *ḥifẓ al-dīn* and *ḥifẓ al-nafs* within the Pancasila-based legal order.

Nevertheless, the application of judicial review as a means of protecting these values is not without challenges. Such challenges include divergent interpretations of constitutional values, the potential politicization of law, and limitations in the implementation of Constitutional Court decisions. Moreover, academic debates persist regarding the extent to which the Constitutional Court may engage in progressive constitutional interpretation without exceeding its mandate as the guardian of the Constitution (Huda, 2019). These debates highlight the dynamic and evolving nature of judicial review within Indonesia's constitutional system.

Based on the foregoing discussion, a study of judicial review as an instrument for protecting *ḥifẓ al-dīn* and *ḥifẓ al-nafs* within the Pancasila-based rule of law is both timely and necessary. Such an inquiry is not only theoretically significant, but also practically relevant in strengthening the protection of human rights and religious values within the national legal system. By integrating perspectives from positive law and *maqāṣid al-sharīʿah*, this study seeks to contribute to the development of constitutional law discourse oriented toward substantive justice and humanity.

## RESEARCH METHOD

This study employs a normative juridical research method, which focuses on the examination of legal norms, principles, and doctrines governing the legal system. This approach is considered appropriate because the object of analysis concerns judicial review as a constitutional mechanism and its relevance in safeguarding the values of *ḥifẓ al-dīn* and *ḥifẓ al-nafs* within the framework of the Pancasila-based rule of law. Normative legal research conceptualizes law as a prescriptive system of norms; accordingly, the analysis emphasizes the coherence between statutory regulations, judicial decisions, and the underlying philosophical values that inform the legal order (Saebani, 2021).

The research adopts several complementary approaches, namely the statute approach, the conceptual approach, and the philosophical approach. The statute approach involves a systematic examination of the 1945 Constitution of the Republic of Indonesia, the Law on the Constitutional Court, and other relevant legislation concerning judicial review and the protection of human rights. The conceptual approach is applied to analyze key legal concepts such as the Pancasila-based rule of law, judicial review, and *maqāṣid al-sharīʿah*, particularly *ḥifẓ al-dīn* and *ḥifẓ al-nafs*, as developed in legal literature and scholarly discourse. Meanwhile, the philosophical approach is used to explore the foundational values underlying the relationship between law, justice, and humanity within the contexts of Pancasila philosophy and Islamic legal thought.

The sources of legal materials in this research are categorized into primary, secondary, and tertiary materials. Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 on the Constitutional Court as subsequently amended, as well as relevant Constitutional Court decisions addressing issues of religious freedom and the protection of the right to life. Secondary legal materials include legal textbooks, national and international scholarly journals, academic articles, and previous studies related to judicial review, the Pancasila legal system, and *maqāṣid al-sharīʿah*. Tertiary legal materials serve as supporting references, such as legal dictionaries and encyclopedias, which are used to clarify terminology and conceptual definitions.

The collection of legal materials is conducted through library research by systematically identifying, classifying, and reviewing relevant sources. The collected materials are then analyzed using qualitative normative analysis, which entails a systematic and logical interpretation of legal norms and judicial decisions. The findings of the analysis are subsequently presented in a descriptive-analytical manner to elucidate the role of judicial review as an instrument for protecting *ḥifẓ al-dīn* and *ḥifẓ al-nafs* within the Pancasila-based constitutional order.

## DISCUSSION

### Judicial Review as a Pillar of the Pancasila-Based Rule of Law

In Indonesia, judicial review constitutes a constitutional authority vested in the Constitutional Court to examine statutes against the 1945 Constitution of the Republic of Indonesia. This authority positions the Court as the guardian of the Constitution, entrusted with preserving constitutional integrity against potential deviations by the legislature. Within the framework of the Pancasila-based rule of law, judicial review is not merely understood as a formal legal procedure, but rather as a substantive constitutional instrument aimed at enforcing the foundational values embodied in Pancasila as the state ideology (Malida, 2025).

Pancasila occupies a central role as the *grundnorm* that animates the entire national legal system. All legislative norms are required to conform to the values of Belief in God, Humanity, Unity, Democracy, and Social Justice. Accordingly, judicial review functions as a corrective mechanism for legal norms that substantively contradict these values. When the Constitutional Court annuls a statute or specific legal provision, such a decision represents not only a juridical invalidation but also a constitutional effort to restore the legal order to its Pancasila-oriented moral foundation (Sunarjo, 2017).

As a Pancasila-based state governed by law, Indonesia does not adhere to a purely liberal-positivist conception of the rule of law. Instead, the Pancasila legal order emphasizes a balanced integration of legal certainty, justice, and social utility, while recognizing moral and humanitarian values as integral components of law enforcement. In this context, judicial review serves as a crucial pillar by enabling the assessment of legislation not only on procedural grounds but also in terms of substantive justice and the protection of citizens' constitutional rights (Lailam, 2025).

One of the fundamental guarantees within the Pancasila-based rule of law is the protection of religious freedom. This guarantee is explicitly articulated in Articles 28E and 29 of the 1945 Constitution, which affirm every citizen's right to embrace a religion and to worship according to personal belief. Nevertheless, legislative

processes may produce statutory provisions that directly or indirectly restrict such freedoms. In these circumstances, judicial review operates as a constitutional safeguard to ensure that legal policies do not infringe upon citizens' fundamental rights (Maula, 2025).

Judicial review also reinforces the principle of balance between citizens' rights and obligations. Pancasila does not conceptualize human rights in a strictly individualistic manner, but rather within a framework of social harmony and collective responsibility. Consequently, the Constitutional Court's review of legislation frequently involves weighing individual interests against broader societal and state interests. This approach demonstrates that judicial review within the Pancasila legal order is contextual in nature and oriented toward social justice, rather than toward the absolute protection of individual rights in isolation (Ali, 2025).

Furthermore, judicial review as a pillar of the Pancasila-based rule of law serves a vital function in preventing the emergence of the tyranny of the majority. In democratic systems, legislative expressions of majority will may marginalize or overlook the rights of minority groups. Through judicial review, the Constitutional Court plays a strategic role in safeguarding vulnerable and minority communities from discriminatory or exclusionary legal policies, particularly in matters related to religion and belief (Maula, 2025).

### **Protection of Ḥifẓ al-Dīn through Judicial Review**

The protection of ḥifẓ al-dīn within the framework of the Pancasila-based rule of law implies a constitutional obligation on the part of the state to guarantee religious freedom while simultaneously preventing all forms of discrimination based on belief. This principle extends beyond the formal recognition of religious diversity and requires the state to ensure that legal policies and legislative instruments remain neutral, equitable, and non-partisan toward any particular faith. Within this context, judicial review functions as a constitutional mechanism that enables the examination of legal norms that may restrict or undermine citizens' freedom of religion (Maula, 2025).

In legislative practice, laws governing religious matters often occupy a sensitive position due to their close connection with social values, moral considerations, and deeply held beliefs. When such regulations give rise to potential discrimination against specific religious communities, judicial review provides a constitutional avenue through which citizens may raise objections. Through this process, the Constitutional Court is empowered to assess whether a given legal norm is consistent with the constitutional guarantees of religious freedom enshrined in Articles 28E and 29 of the 1945 Constitution (Maula, 2025).

A growing body of scholarship indicates that judicial review plays a significant role in protecting the rights of religious minorities from discriminatory legal policies. By serving as a corrective mechanism against majority dominance in the legislative process, judicial review helps prevent the marginalization of minority interests. In this way, it not only strengthens the protection of human rights but also upholds the principles of pluralism and tolerance that are central to Indonesia's social fabric (Maula, 2025).

Constitutional Court decisions in cases involving religious issues further illustrate the Court's effort to maintain a balanced relationship between state authority and individual freedom of belief. The Court tends to position the state as a facilitator that guarantees religious freedom rather than as an actor that excessively intervenes in the religious lives of citizens. This approach reflects a symbiotic relationship between state and religion, whereby legal protection is provided without encroaching upon the substantive teachings of any faith tradition (Ali, 2025).

From the perspective of maqāṣid al-sharī'ah, the protection of ḥifẓ al-dīn should not be understood as the imposition of a particular religious doctrine, but rather as the preservation of human freedom to believe and to practice religion. This understanding resonates with Pancasila values, which affirm belief in the One and Only God while simultaneously upholding just and civilized humanity. Accordingly, judicial review may be conceptualized as a normative bridge that connects the objectives of maqāṣid al-sharī'ah with constitutional principles within the Pancasila-based legal order (Ali, 2025).

### **Protection of Ḥifẓ al-Nafs through Judicial Review**

The protection of ḥifẓ al-nafs within the framework of maqāṣid al-sharī'ah emphasizes the fundamental importance of safeguarding human life, personal security, and human dignity as core values that must be guaranteed by the state. This principle places human life as the highest legal interest, which cannot be diminished or compromised by any form of legal policy. Within the context of the Pancasila-based rule of law, the value of ḥifẓ al-nafs closely aligns with the principle of just and civilized humanity, as well as the constitutional guarantee of the right to life enshrined in Article 28A of the 1945 Constitution of the Republic of Indonesia.

Judicial review serves as a constitutional mechanism that enables citizens to challenge legislation that may threaten personal safety or undermine human dignity. Through constitutional review before the Constitutional Court, individuals are afforded the opportunity to contest legal norms deemed inconsistent with the right to life, the right to security, and the principle of equality before the law. In this regard, judicial review

functions both as a preventive and corrective instrument to address potential human rights violations originating from legislative products (Lailam, 2025).

In practice, the Constitutional Court has adjudicated various cases related to the protection of life and human dignity, including matters concerning discrimination, unequal legal treatment, and restrictions on the right to security. These decisions demonstrate that the Court does not merely assess legal norms from a textual perspective, but also takes into account their broader social and humanitarian implications. Such an approach reflects the Court's commitment to substantive justice, which is consistent with the character of the Pancasila-based legal system (Ali, 2025).

From the perspective of *maqāṣid al-sharī'ah*, the protection of *ḥifẓ al-naḥs* entails a state obligation to prevent policies that may cause physical or psychological harm to individuals. This principle also rejects discriminatory legal practices, as discrimination inherently degrades human dignity and may adversely affect personal security and the survival of certain individuals or groups. Accordingly, when the Constitutional Court declares a legal norm unconstitutional, the decision can be understood as a constitutional effort to preserve public welfare (*maṣlahah*) and uphold the value of *ḥifẓ al-naḥs* (Huda, 2019).

Furthermore, judicial review plays a crucial role in reinforcing the principle of equality before the law. This principle is inseparable from the protection of life and human dignity, as legal inequality can give rise to structural injustice that threatens individual safety and well-being. Through judicial review, the Constitutional Court ensures that all citizens receive equal legal protection without discrimination based on social background, religion, or other forms of identity (Ali, 2025).

By declaring unconstitutional norms to be legally non-binding, judicial review provides effective protection for the right to life and personal security. This mechanism affirms that the Pancasila-based rule of law is not solely oriented toward legal certainty, but also toward the protection of humanity and human dignity. Consequently, judicial review may be understood as a constitutional bridge that connects the values of *maqāṣid al-sharī'ah*, particularly *ḥifẓ al-naḥs*, with the foundational principles of Indonesia's constitutional legal order.

#### 4. Challenges and Implications in the Practice of Judicial Review

Although judicial review plays a strategic role in upholding constitutional supremacy and safeguarding the constitutional rights of citizens, its implementation within Indonesia's constitutional system continues to face several significant challenges. One of the most prominent issues concerns the dual authority over the review of legislation exercised by the Constitutional Court and the Supreme Court. The Constitutional Court is vested with the power to review statutes against the 1945 Constitution, whereas the Supreme Court is authorized to examine regulations below the level of statutes. In practice, this division of authority frequently generates legal uncertainty and the potential for inconsistent rulings, particularly when the contested norms are hierarchically interconnected (Tanto, 2025).

This dualism of authority has direct implications for the effectiveness of constitutional rights protection. Divergent interpretations between the Constitutional Court and the Supreme Court may lead to public confusion regarding the applicable legal standards. Such circumstances risk weakening judicial review as a mechanism for protecting human rights and realizing substantive justice within the framework of the Pancasila-based rule of law (Qarnain, 2024).

Another critical challenge lies in maintaining judicial independence in the exercise of judicial review powers. Given its authority to invalidate legislative products, the Constitutional Court is inherently susceptible to political pressure and competing power interests. Consequently, the independence of constitutional judges constitutes a fundamental prerequisite for ensuring that judicial review is conducted objectively, impartially, and with primary allegiance to constitutional principles and the protection of citizens' rights.

Beyond institutional independence, challenges also arise from inconsistencies in the interpretation of Pancasila values within judicial review decisions. As the philosophical foundation of the state, Pancasila encompasses broad and open-ended principles that are susceptible to varying interpretations. Divergent readings of Pancasila may result in inconsistent judicial outcomes, particularly in cases involving freedom of religion and the protection of the right to life. Such inconsistency undermines legal certainty, which is essential for the effective protection of *ḥifẓ al-dīn* and *ḥifẓ al-naḥs* as fundamental human interests.

From the perspective of *maqāṣid al-sharī'ah*, these challenges highlight the necessity of an interpretative approach oriented toward public welfare (*maṣlahah*) and substantive justice. Judicial review should not be perceived merely as a formal legal procedure, but rather as a constitutional instrument designed to ensure that law serves its essential function of protecting the core values of human life. Accordingly, the practical implications of judicial review demand the strengthening of judicial integrity, the refinement of institutional design, and the development of a constitutional interpretative paradigm that is responsive to both Pancasila values and the objectives of *maqāṣid al-sharī'ah*.

## CONCLUSION

Judicial review constitutes a constitutional mechanism with a strategic function within the Pancasila-based rule of law, particularly in upholding constitutional supremacy and ensuring the protection of citizens' fundamental rights. Through its authority to review statutes against the 1945 Constitution of the Republic of

Indonesia, the Constitutional Court operates not only as the guardian of the constitution but also as an institutional protector of the foundational values of Pancasila that underpin the national legal system. In this regard, judicial review serves as a crucial instrument for ensuring that legislative products remain aligned with the principles of justice, humanity, and belief in God, which form the normative foundation of Indonesia's constitutional order.

From the perspective of *maqāṣid al-sharī'ah*, judicial review demonstrates strong relevance in realizing the protection of *ḥifẓ al-dīn* and *ḥifẓ al-nafs*. The protection of *ḥifẓ al-dīn* is reflected in the role of the Constitutional Court in safeguarding freedom of religion and preventing the enactment of legal norms that discriminate against particular beliefs. Meanwhile, the protection of *ḥifẓ al-nafs* is manifested through the review and annulment of legal provisions that potentially endanger the right to life, personal security, and human dignity. These two objectives are consistent with the principles of the Pancasila rule of law, which place human beings at the center of legal protection.

Nevertheless, the effectiveness of judicial review in safeguarding these values continues to face several challenges, including the dualism of authority in reviewing legislation, the risk of inconsistent judicial decisions, and the necessity of maintaining judicial independence and institutional integrity. Accordingly, strengthening institutional design, ensuring consistent interpretation of Pancasila values, and prioritizing substantive justice are essential prerequisites for optimizing the function of judicial review. In this sense, judicial review should be understood not merely as a formal legal mechanism, but as a substantive constitutional instrument for realizing justice, humanity, and public welfare within the framework of the Pancasila-based rule of law.

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