Taḥqīq al-Manāṭ as a Judicial Review Method: Comparison Between Constitutional and Islamic Law

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Abstract

Taḥqīq al-Manāṭ is a method of applying general legal rules to specific contextual cases. The Taḥqīq al-Manāṭ process involves determining the law based on its sharīʿah sources, then examining the case or reality to be faced before applying the law. Thus, Taḥqīq al-Manāṭ is the process of describing cases based on reality. This is because the main key in realizing the law lies in a deep understanding of reality. Therefore, this paper aims to study and introduce Taḥqīq al-Manāṭ as a method of Judicial Review in Islamic law and its potential contribution to constitutional law science. Based on the findings of this study, the Taḥqīq al-Manāṭ method can be adopted by constitutional judges to test laws against the 1945 Constitution. This research recommends applying Taḥqīq al-Manāṭ in constitutional judges' deliberation meetings to prevent decisions that undermine the public interest, and it can be implemented through constitutional conventions. This article uses a normative research methodology that focuses on document studies.

Keywords: *Taḥqīq al-Manāṭ, Judicial Review; The 1945 Constitution, Constitutional Law, Islamic Law.*

Introduction

Islamic law intersects with positive or conventional law.[1] One similarity is the review process (*murājaʿah*) of Islamic legal products. Legal review (*murājaʿah al-ḥukm*) is important in order to create Islamic law that is progressive and dynamic

[1] Taufiqurrahman Taufiqurrahman, "Kompilasi Hukum Islam: Suatu Formalisasi Syariat Islam Di Indonesia," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 1, no. 2 (September 2019): 145–54, https://doi.org/10.19105/al-lhkam.v1i2.2559.

and avoids stagnation (*jumūd*), which is unhealthy for people's lives, so that its comprehensive and contextual side is manifested in solving the problems of a dynamic society. Ismail Kouksal stated that Islamic law is plenary and comprehensive (*khāṣṣah kāmiliyyah*), touching every line of human life.[2] Ahmad al Khimlisi emphasized the need to *continuously review legal products produced by ulama (Islamic murājaʿah fiqh) to perpetuate Islamic values* and align them with the dynamics of life.[3]

Several studies have discussed the *taḥqīq al-manāṭ* methodology to review legal products and make Islamic law realistic, whether through a study of a specific topic or a conceptual discussion. *First*, the book entitled *Taḥqīq al-Manāṭ fi an Nawazil al Fiqhiyah al Mu'ashirah* (The Establishment of the Effective Cause in Contemporary Islamic Law) by Salimah Thalhawi and Musthafa Baju.[4] This article presents an academic review of how *taḥqīq al-manāṭ* is applied to contemporary issues, especially modern animal slaughter. This article discusses *taḥqīq al-manāṭ* in an applied manner by explaining *classical fiqh views* alongside modern technical and industrial realities.

Second, the book entitled *"Ma'alim Manhaj al Wasathiyah fi Fiqh at Tanzil"* (Features of the moderate methodology in applied Islamic jurisprudence) by Mustapha Liarboui.[5] This article discusses the principle of moderation (*wasaṭiyyah*) in the realization of Islamic law (*fiqh al-tanzīl*). This article uses a qualitative approach with descriptive analysis of the concepts of *wasaṭiyyah* and *fiqh al-tanzīl*. However, in this article, *taḥqīq al-manāṭ* is not applied to a specific topic; methodologically, it is formulated as a means to avoid forming *fatwa*, rulings, or other Islamic legal products that are neither extreme nor liberal.

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[2] Ismail Kouksal, *Taghayyur Ahkam Fi Syari'atil Islamiyah* (Beirut: Muassasah Risalah, 2000).
[3] Ahmad al Khimlisi, *Jumud Ad Dirasah Al Fiqhiyyah: Asbabuhu at Tarikhiyah, Wa Al Fikriyah Wa Muhawalatul 'Ilaj* (Egypt: Dar Kalimah, 2010).
[4] Thalhawi Salimah and Musthafa Baju, "Tahqiq Al Manath Fi an Nawazil Al Fiqhiyah Al Mu'ashirah," *Majallah 'ulum Islamiyah Wa Al Hadharah* 7, no. 1 (2022), https://doi.org/10.55781/rsic.v7i1.217.
[5] Mustapha Liarboui, "Ma'alim Manhaj Al Wasathiyah Fi Fiqh at Tanzil," *Dauriyah Nama' Li 'Ulum Wahyi Wa Dirasat Insaniyah*, no. 18 (2022), https://doi.org/10.59151/.vi18.199.

Third, "Atsar Dirasah Al Haalah Al Ijtima'iyyah Fi Taḥqīq al-Manāṭ Al Ahkam Wa Tanziliha 'Ala Al Mukallafin: Dirasah Ushuliyyah Tathbiqiyyah" (The Impact of the Study of the Social Situation in the Realization of al-Sharīʿah Provisions' Matters And Connecting Them with Mukalafin: An Applied Fundamentalist Study) by Ahmad Al Shroosh.[6] This article discusses, qualitatively, how the social conditions of society (ḥālah ijtimāʿiyyah) are important when examining legal products before they are applied to society. *Fourth, "Taḥqīq al-Manāṭ bi al-Haqaiq al 'Ilmiyah: Dirasah Ta'siliyah Tathbiqiyah" (Investigation Of Scientific Facts: An Applied Fundamental Study)* by Farah bint Fahd bin Hussein Al Khuraisi.[7] This article is a qualitative study that discusses scientific clarification as an important element in the *taḥqīq al-manāṭ* methodology. This article uses inductive reasoning to examine several classical legal products through scientific research. Scientific clarification is formulated as a material element in *taḥqīq al-manāṭ*, either in the process of pre-manifesting law or reviewing classical legal findings so that they can be applied in the present.

Fifth, Askari Razak et al.; [8]*Sixth*, Emy Hajar Abra and Rofi Wahanisa;[9] *Seventh,* David Bernstein;[10] *Eighth*, Christoph Bezemek;[11] *Ninth*, Monica Claes;[12] *Tenth*,

[6] Ahmad Al Shroosh, "Atsar Dirasah Al Haalah Al Ijtima'iyyah Fi Tahqiq Manath Al Ahkam Wa Tanziliha 'Ala Al Mukallafin: Dirasah Ushuliyyah Tathbiqiyyah," *Dirasat* 50, no. 2 (2023), https://doi.org/10.35516/law.v50i2.1154.

[7] Fahd bin Hussein Al Khuraisi, "Tahqiq Al Manath Bi Al Haqaiq Al 'Ilmiyah: Dirasah Ta'Siliyah Tathbiqiyah," *Majallah Kulliyah Syar'iyah Wa Qanun Tafhuna Asyraf* 28, no. 4 (2024), https://doi.org/10.21608/jfslt.2024.369559.

[8] Askari Razak et al., "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria," *Journal of Indonesian Legal Studies* 8, no. 2 (November 2023): 365–421, https://doi.org/10.15294/jils.v8i2.70717.

[9] Emy Hajar Abra and Rofi Wahanisa, "The Constitutional Court Ultra Petita As a Protection Form of Economic Rights in Pancasila Justice," *Journal Of Indonesian Legal Studies* 5, no. 1 (2020): 187–224, https://doi.org/10.15294/jils.v5i1.35965.

[10] David Bernstein, "The Supreme Court and 'Civil Rights,' 1886-1908," *The Yale Law Journal* 100, no. 3 (December 1990): 725, https://doi.org/10.2307/796668.

[11] Christoph Bezemek, "A Kelsenian Model of Constitutional Adjudication - The Austrian Constitutional Court," *SSRN Electronic Journal*, 2011, https://doi.org/10.2139/ssrn.1937575.

[12] Monica Claes, "Luxembourg, Here We Come? Constitutional Courts and the Preliminary Reference Procedure," *German Law Journal* 16, no. 6 (December 2015): 1331–42, https://doi.org/10.1017/S2071832200021167.

Ronald Faber;[13] and *Eleventh*, Pan Mohamad Faiz.[14] The gap between this research and the eleven previous studies is that none of the previous studies stated that *Taḥqīq al-Manāṭ* is a Judicial Review in Islamic Law and that the *Taḥqīq al-Manāṭ* method can be used by constitutional judges to test laws against the 1945 Constitution.

From eleven previous studies, the author concludes that this study's originality lies in the *Taḥqīq al-Manāṭ* method, which Ulama commonly use to determine Islamic Law (both *fatwa* and *non-fatwa*) and which constitutional judges can also use to test laws against the 1945 Constitution. *Taḥqīq al-Manāṭ* can be applied in deliberation meetings of constitutional judges to prevent decisions that are counterproductive to the value of public interest, and this can be implemented through constitutional conventions.

Methods

This analysis uses a normative legal research method with a qualitative orientation.[15] Normative legal research involves analyzing deductive conclusions derived from statements found in data sources such as library materials (e.g., laws and court decisions) or secondary data (e.g., journals, books, expert opinions, documents, and legal theories) relevant to the topics discussed in this paper.[16] The approaches used include statutory, case, and conceptual approaches.[17] This study

[13] Ronald Faber, "The Austrian Constitutional Court – An Overview," *ICL Journal* 2, no. 1 (March 2008): 49–53, https://doi.org/10.1515/icl-2008-0105.
[14] Pan Mohamad Faiz, "The Protection of Civil and Political Rights by the Constitutional Court of Indonesia," *Indonesia Law Review* 6, no. 2 (August 2016): 158, https://doi.org/10.15742/ilrev.v6n2.230.
[15] Abd Wachid Habibullah et.al, "Actualization of Public Service Principles by the Ombudsman of the Republic of Indonesia," *Journal of Indonesian Constitutional Law* 1, no. 2 (2024): 126–39, https://doi.org/10.71239/jicl.v1i2.30.
[16] Ousu Mendy, "Constitutional Amendments in Indonesia: An Analytical Perspective of the Reformation Agenda," *Journal of Indonesian Constitutional Law* 2, no. 3 (2025): 406–25, https://doi.org/10.71239/jicl.v2i3.201.
[17] Putra Perdana Ahmad Saifulloh et.al, "Political Dynasties in General Elections According to Human Rights and A Comparison in Four ASEAN Countries," *Trunojoyo Law Review (TLR)* 7, no. 1 (2025): 123–60, https://doi.org/10.21107/tlr.v7i1.28492.

uses a prescriptive-analytical approach, using qualitative research methods to synthesize data and draw conclusions.[18]

Discussion

Taḥqīq al-Manāṭ as a Review Instrument: Essence, Understanding and Basics

Abdullah bin Bayyah identified *taḥqīq al-manāṭ* as *murājaʿah* or review:[19]

إنَّ هذه الأمة بحاجة ماسة بل في ضرورة حاقة لمراجعة مضامين شريعتها في كليها وجزئيها؛ لتعيش زمانها في إنَّ المراجعة يسر من أمرها وسلاسة في سيرها، في مزاوجة بين مراعاة المصالح الحقة ونصوص الوحي الأزلية. ليست مرادفة للتراجع

Means: "*In fact, this ummah needs, even in an emergency, a review (murājaʿah) of the contents of the Sharīʿah, whether in a universal or partial order, so that this ummah can live in their time easily while being able to collaborate in maintaining real benefits with the original revealed texts. Muroja'ah is not the same as taraju' (merely turning over the pages of an old manuscript).*

Legal review is termed "*murājaʿah*" in authentic Islamic legal literature. The application can be in the form of legal reviews in academic settings, legal reviews, and judicial reviews. The authoritative application of judicial review is reflected in Umar bin Khattab's message to Abu Musa Asy'ari—the governor and judge in Basrah during Umar bin Khattab's caliphate—in the Amir's Decree, which is the basis for judicial review of Islamic law decisions. In the early days, before Islamic law was constitutional, the Islamic government adhered to a common law system within the framework of a sect, even now, so that every product of the legal findings of previous

[18] Antony et.al, "Legal Reform in Indonesia's Response to the Digital Manipulation Era: A Responsive Legal Theory Approach," *Trunojoyo Law Review (TLR)* 8, no. 1 (2026): 1–26, https://doi.org/10.21107/tlr.v8i1.30732.
[19] Haidar Masyhur Fadhil, "Reshaping Minority Fiqh: The Ideas of 'Abd Allah Ibn Bayyah," *Australian Journal of Islamic Studies* 9, no. 2 (August 2024): 37–65, https://doi.org/10.55831/ajis.v9i2.629.

scholars and judges becomes a reference and is always corrected.[20] It is written in Umar bin Khattab's letter as follows:[21]

وَلَا يَمْنَعَنَّكَ قَضَاءٌ قَضَيْت بِهِ الْيَوْمَ فَرَاجَعْت فِيهِ رَأْيَك وَهُدِيت فِيهِ لِرُشْدِك أَنْ تُرَاجِعَ فِيهِ الْحَقَّ، فَإِنَّ الْحَقَّ قَدِيمٌ، وَلَا يُبْطِلُهُ شَيْءٌ، وَمُرَاجَعَةُ الْحَقِّ خَيْرٌ مِنْ التَّمَادِي فِي الْبَاطِلِ

Means: "*And don't ever be held back by the decisions you take today, so that you don't review (murājaʿah) your opinion and be guided by your intelligence to review it towards the truth. Truth is absolute; nothing can cancel it, and reviewing the truth is much better than persisting in error*".

Taḥqīq al-Manāṭ is a systematic contemporary development method (*tawsiʿ*) for reviewing Islamic law in order to produce innovative Islamic law. The concept of *taḥqīq al-manāṭ*was not originally developed for legal review, but to strive for pragmatic and effective implementation of the law. Etymologically, *taḥqīq al-manāṭ* is formed from two word elements, namely *tahqīq* (تحقيق) and *al-manāṭ* (المنـاط).[22] *Tahqīq is a derivation of the word haqq* (حق), which means decree and determine. Meanwhile, manāṭ is a derivative of the word nauth (نوط), which means hanger or backrest.[23] *In terms of terminology, Bin Bayyah explained that taḥqīq al-manāṭ is an instrument for realizing law (tanzīl* hukm) into reality. The term "*tanzīl*" or "*taṭbīq*" (in some literary uses) refers to a dialogue between the world of ideas and the world of reality. Balqam quoted Ash Syathibi in Al Muwafaqat, saying that law is an empty idea that remains general and lacks a specific scope.[24] Thus, Bin Bayyah emphasized

[20] Muhamad Amin, Murdiono Murdiono, and Renat Sarimov, "Evolution of the Islamic Judicial System: Justice and Principles in the Governance of Caliph Umar Bin Khattab," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 8, no. 2 (December 2023): 138–50, https://doi.org/10.22515/alahkam.v8i2.8061.
[21] Zulhamdi Adnan et al., "Existence of Risalatul Qadha Umar Bin Khattab in the Islamic Judicial System Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 2 (August 2024), https://doi.org/10.22373/petita.v9i2.247.
[22] Ahmad Faizul Albab, "Epistemologi Tahqīq Al-Manāṭ Sebagai Wacana Integrasi Keilmuan Lain Dalam Fiqh Sosial; Studi Batasan Integrasi Keilmuan Lain Dalam Fikih Sosial," *Syariah: Journal of Fiqh Studies* 3, no. 2 (December 2025): 21–44, https://doi.org/10.61570/syariah.v3i2.226.
[23] Ali Ahmad Syaifuddin, "Menilik Teori Tahqiqul Manath Di Dalam Fiqh Sosial Kiai Sahal," *Nagari Perdikan: Journal of Law and Policy Studies* 1, no. 1 (January 2024): 23–34, https://doi.org/10.71155/kcpq8182.
[24] Kholishuddin Kholishuddin and Moh. Hudal Hafid Ilmi, "Implementation of Manhaj Maqāṣidī Bin Bayah in Understanding Hadith (Fiqh Ḥadīṡ)," *Nabawi: Journal of Hadith Studies* 4, no. 1 (April 2023), https://doi.org/10.55987/njhs.v4i1.63.

that *taḥqīq al-manāṭ lies* in contextualizing *sharīʿah law to real cases by paying attention to external existence before the law was revealed. Ali Al Abyari stated that taḥqīq al-manāṭ* lies not only in contextualizing the law but also in ensuring the truth and validity of the law itself as an idea.[25] However, *given the common law tradition entrenched in Islam, as well as the increasingly sophisticated and complex dynamics of contemporary issues, it is inevitable that taḥqīq al-manāṭ is used to review previous Islamic legal products, as well as the latest legal products,* before they are implemented in reality.

Scope of *Taḥqīq al-Manāṭ*

Islamic law in the methodological study of discovering contemporary Islamic law (*uṣūl al-fiqh*) has expanded significantly. Contemporary *Sharīʿah* law issues can be assessed from 3 perspectives: First, the issue is explicitly stated in the texts of the Qur'an and Sunnah. Second, this issue does not conflict with the universal principles presented by the Qur'an and *Sunnah*. Third, this issue has values that align with those conveyed by the *Qur'a*n and *Sunnah*.[26] Ali al-Jumu'ah stated that all activities and products in this world cannot be separated from the Sharīʿah in substance, even though they may not emerge from the Sharīʿah in nomenclature.[27] On this basis, *taḥqīq al-manāṭ* applies not only to laws extracted directly from the Al-Qur'an and Sunnah, but also to conventional legal products. This is because conventional law has *sharīʿah* legal propriety to be studied in substance. Balqam az-Zabidi stated the following:[28]

الاجتهاد في المناط يشمل جميع الأحكام الشرعية

[25] Muhammad Faeshol and Akhmad Khisni, "Taḥqiqul Manāth in Madzhab-Contextualization of Non-Muslim Status in Indonesia," *Law Development Journal* 2, no. 4 (March 2021): 599, https://doi.org/10.30659/ldj.2.4.599-609.
[26] Firdaus Firdaus et al., "Various Methods of Establishing Contemporary Islamic Law," *Ulumuddin : Jurnal Ilmu-Ilmu Keislaman* 10, no. 1 (June 2020): 39–58, https://doi.org/10.47200/ulumuddin.v10i1.340.
[27] Ahmad Ghozali Ihsan, "Pengembangan Ilmu Ushul Al Fiqh," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 2, no. 2 (February 2018): 105–21, https://doi.org/10.22515/alahkam.v2i2.1069.
[28] Balqam bin Dzakir az Zabidi, *Al Ijtihad Fi Manath Hukm Syar'i: Dirasah Ta'siliyah Tathbiqiyah* (Riyadh: Markaz Takwin li Dirasatw a Abhats, 2014).

Meaning: *"ijtihad using taḥqīq al-manāṭ touches all forms of sharīʿah law".*

Islamic law in an empirical order has developed in stages over time.[29] Firstly, Islamic law is only an academic result of unidirectional interpretation of the text of the *Sharīʿah*, which is taught in *halaqahs* and written in books; then this idea is pragmaticized into a *fatwā*, which is non-legally binding, as Ibn Nujaim defines *fatwā* as a dialogical process between the text of the *Sharīʿah* and reality.[30] Islamic law can be legally binding if it takes the form of a judge's decision (*qaḍāʾ*). The most recent is Islamic law, which is codified and legislated (*taqnin*) into a binding law (*qanun*), such as the *Majallah al-Ahkam al-Adaliyyah*, which was implemented in Turkey (Ottoman) and its ruling countries from the 13th century to the 20th century.[31] From this dynamic, we can see that the review of Islamic law applies to every legal product, so *taḥqīq al-manāṭ* can reach all forms of Islamic law, including judges' decisions and the constitution. Likewise, Islamic law review actually does not have a special authoritative institution other than integrity in carrying out *ijtihad*. It is well known that Al-Syafi'i once carried out his own judicial review of several Islamic legal products he encountered when he moved from Baghdad to Egypt, so the terms *qoul qadim* (Baghdad legal products) and *qoul jadid* (Egyptian legal products) emerged.[32]

Qaul qadim and *qaul jadid* are collections of *fatwa*, not one or two *fatwa*. It is true that the term "aqwal," which is plural, should be used, but for some reason this term has stuck, so it has become commonplace to simply call it "qaul qadim" and

[29] Hariyanto et al., "The Communal Democracy of Yogyakarta Special Region's Government on the Islamic Law Eclecticism Perspective," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 2023): 200–221, https://doi.org/10.19105/al-lhkam.v18i1.7403.
[30] Fachrurozi and Mohammad Subhi, "The Early Development of Islamic Law: Examining the Rational and Flexible Nature of Compilation and Standardization," *Jurnal Fuaduna : Jurnal Kajian Keagamaan Dan Kemasyarakatan* 8, no. 1 (June 2024): 57–69, https://doi.org/10.30983/fuaduna.v8i1.8400.
[31] Md. Habibur Rahman and Noor Mohammad Osmani, "An Appraisal of Majallat Al-Ahkam Al-Adliyyah: A Legal Code of Islamic Civil Transactions by the Ottoman," *International Journal of Academic Research in Business and Social Sciences* 8, no. 9 (October 2018), https://doi.org/10.6007/IJARBSS/v8-i9/4703.
[32] Imam Mustofa et al., "The Authority of Texts in the Dynamics of Ijtihad on Fiqh Mu'amalah Among Santri in Indonesia," *El-Mashlahah* 14, no. 2 (December 2024): 381–408, https://doi.org/10.23971/el-mashlahah.v14i2.8074.

"qaul Jadid." *Qaul qadim* is the opinion of Imam al-Syafi'i, who first issued a *fatwā* when he lived in Baghdad, Iraq (195 AH), after he was given the authority to give a *fatwā* by his teacher, namely Muslim bin Kholid (a great scholar who became mufti in Mecca) and Imam Malik (the founder of the Malikiyah Mazhab, who first had the initiative to collect hadith in the book of *Sunnah*).[33] Meanwhile, *qaul Jadid* is the opinion of Al-Syafi'i when he lived in Egypt, where he observed the social phenomena of the time and updated and revised his earlier opinion from when he was in Iraq.[34]

Tahqīq al-Manāṭ Methodology and Its Application as a Judicial Review

Al Abyari revealed that *taḥqīq al-manāṭ* is not only a process of legal contextualization but also validation of the truth of legal ideas. This is confirmed by Asy-Syathibi's statement in the book Al-Muwafaqat, as quoted by Balqam:[35]

عرَّفه الشاطبي بقوله: أن يثبت الحُكْم بمُدْرَكِه الشرعي لكن يبقى النظر في تعيين محلِّه

Meaning*: "Asy Syathibi defines Taḥqīq al-Manāṭ as a process of ascertaining the law from its Sharīʿah sources, but it still requires reflection in determining the case."*

Balqam stated that, based on this definition, there are two aspects to the technical *taḥqīq al-manāṭ*: first, it relates to the process of *istinbāṭ*, or legal extraction from *sharʿī* propositions. Second, it relates to understanding the cases and issues faced. This is more appropriate because, etymologically, *taḥqīq al-manāṭ* means ensuring legal support for both the formation and contextualization of ideas. The first can be done through the methodology of examining Islamic law (uṣūl al-fiqh). This part can be called a formal test in *taḥqīq al-manāṭ.* The second concerns the spirit of the *Sharīʿah*, the maqāṣid al-*sharīʿah* (the aims of the *Sharīʿah), legal philosophy, and benefits. This part can be called a material test in taḥqīq al-manāṭ.* However, formal tests in *taḥqīq al-manāṭ* are rarely carried out in many practices.

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[33] Yulia Rahmi et.al, "Qaul Qadim and Qaul Jadid: A Sociological Review On The Evolution Of Islamic Law," *Al-Hurriyah : Jurnal Hukum Islam* 9, no. 2 (2024): 143–58, https://doi.org/10.30983/al-hurriyah.v9i2.8637.

[34] Nawirman et.al, "Sociological Factors Of Imam Syafi'is Qaul Qadim And Qaul Jadid," *Al-Afkar, Journal For Islamic Studies* 6, no. 4 (2023): 321–33, https://doi.org/10.31943/afkarjournal.v6i4.739.

[35] Balqam bin Dzakir az Zabidi, *Al Ijtihad Fi Manath Hukm Syar'i: Dirasah Ta'siliyah Tathbiqiyah*.

Generally, legal products are trusted through procedural stages shaped by a tradition of *khasyyah* (fear) in the souls of every cleric in the Islamic world, unless the cleric's credibility and integrity are in doubt. However, in general, the two parts of the formal test component are the main elements of the science of *uṣūl al-fiqh*, namely *qawāʿid uṣūliyyah lughawiyyah (textual uṣūl rules) and qawāʿid uṣūliyyah tashrīʿiyyah (legislative uṣūl rules).*[36] Therefore, both the concept and application of *taḥqīq al-manāṭ* also have similarities with the concept of material testing and legal contextualization in Judicial Review, as stated by Abdullah Bin Bayyah, namely:[37]

فعملية تحقيق المناط عبارة عن البحث عن الواقع وملاحظة هذا الواقع حتى نطبّق عليه حكم الاصل

Meaning: "*Then the application of taḥqīq al-manāṭ (becomes) a term for studying reality and paying attention to this reality so that we can implement the law from the source (Islam)."*

Because of the emphasis on *taḥqīq al-manāṭ* put forward by Bin Bayyah, as well as the breadth of the formal test methodology, the author focuses on the important points in *taḥqīq al-manāṭ* , namely the subject of material testing. Samirah Ghali, in her dissertation, fully formulated the methodology for material testing within the concept of taḥqīq al-manāṭ. In the results of his research, *taḥqīq al-manāṭ* has three main points (*uṣūl ʿāmmah*), namely complete identification (*taṣawwur) of the real cases faced, configuration of fiqh (takyīf fiqhī*), and legal realization (*tanzīl aḥkām*):[38]

1. *Taṣawwur*. Complete identification of the case at hand is termed "*taṣawwur*." *Taṣawwur* means producing a picture of a case in reason and finding its essence (*māhiyyah*) without giving laws. Imam al-Baqillani stated that most legal errors start from errors in identifying the problem correctly. *Taṣawwur* has two stages; first, *taṣawwur fī dhātihā*, namely describing the essence of the problem clearly. This can be achieved by capturing all information

[36] Libasul Jannah and Tris Utomo, "Analisis Pandangan Ulama Tentang Taqnīn Al-Ahkām Perspektif Al-Qawāʿid Al-Uṣūlīyah Al-Lughawīyah Wa Al-Tashrīʿīyah," *Wasathiyyah* 7, no. 02 (August 2025): 58–84, https://doi.org/10.58470/wasathiyyah.v7i02.101.

[37] Rezart Beka, "Maqāṣid and the Renewal of Islamic Legal Theory in ʿAbdullah Bin Bayyah's Discourse," *American Journal of Islam and Society* 38, no. 3–4 (April 2022): 103–45, https://doi.org/10.35632/ajis.v38i3-4.2987.

[38] Thalhawi Salimah and Musthafa Baju, "Tahqiq Al Manath Fi an Nawazil Al Fiqhiyah Al Mu'ashirah."

regarding the case, analyzing it in specific elements, and consulting experts. Second, *taṣawwur mā yuḥīṭu bihā*, namely looking at the external factors of the case at hand. This can be achieved in several ways, namely going into the field (*muʿāyasah*) with observation tools (*mulāḥaẓāt*), interviews (*muqābalah*), questionnaires (*istibyān*), or statistics (*iḥṣāʾ*).

2. *Takyīf fiqhī*. According to Uthman Syabir—quoted by Samirah Ghali—*takyīf fiqhī* is an adjustment to a case that has been identified on the basis of its fiqh, which has been specified by Islamic jurisprudence with the provisions of *fiqh* as well. This is intended to apply these provisions to the phenomenon being studied, provided that there is homogeneity between the basis of jurisprudence and the essence of the phenomenon. This section emphasizes inventorying the basis of Islamic law and its enabling provisions and aligning them with case law findings. This section is closely related to formal tests but does not discuss legal discovery procedures. The case law found will be ensured in accordance with the text of the *Sharīʿah*, *ijmāʾ*, *uṣūl fiqh*, and *maqāṣid al-shari'a*, in accordance with them.
3. *Tanzīl aḥkām*. This section pays attention to how the law looks when it has been converted from an idea (*ʿulū*) to a reality (*nuzūl*). There is a process of "lowering" in this section, so it is called *tanzīl* (lowering). Two steps must be studied during the *tanzīl aḥkām* process: *First*, ensuring the reach of maqāṣid *sharīʿah* law when it is implemented. *Second*, predicting the impact of the law in the long term (*maʾālāt al-afʿāl*). The first step involves comparing the benefits and *mafsadah* that the legal object will produce, while the *maʾālāt al-afʿāl* stage compares the current impact with the long-term impact. The process of predicting legal impacts must not be based on conjecture (*wahm*) or guesswork (*iftirāḍiyyāt*). In fact, this prediction is not the same as anticipation (*istibāq*). Predictions must consider the elements, events, and empirical changes that become future risk variables (probability theory).

Salim Sarar, in his dissertation, stated that predicting the impact of the law is the final stage of testing the law, whether the law is suitable to be implemented or not.[39] From here, we can see the difference with conventional legal judicial review: the judicial review of conventional legal review lies in the *takyīf fiqhī* section, as well as the basis of *fiqh,* which is not only in the sources of *sharīʿah* but also in the *maqāṣid al-sharīʿah* and legal philosophy. In addition, Islamic law requires a specific study of the case at hand and consideration of benefits in the short and long term.

In legal science doctrine, judicial review has two models, namely judicial review in the field of courts and judicial review in the field of the constitution. These two models of judicial review have been carried out in the history of Islamic law. Islamic history records that, during the time of the Prophet Muhammad and Abu Bakar as Siddiq, the state leader made all legal policies. The Caliph served as an executive, legislative, and judicial authority.[40] One policy of the Islamic caliphate, which became the caliph's ruling and the law at the time, concerned war booty land, which had to be distributed equally among the army as ghanimah. This policy was based on the Al-Qur'an, Surah Al-Anfal, verse 41. During the time of Umar bin Khattab, this policy was reviewed and changed. Umar bin Khattab did not question the formal aspects of previous policies because the founder was Rasulullah. However, regarding the material aspects, namely geopolitical dynamics and public benefit, Umar revised the policy. This happened right after the Battle of Khaibar. The Khaibar land, which based on the previous policy, had to be distributed to the soldiers, was not implemented by Umar bin Khattab based on material test considerations; first, the geopolitical situation of Islam, which is increasingly widespread due to invasion, means that every new land must be guarded, while the number of Muslim communities is not balanced with the size of the country's land.

[39] Salim Sarar, *Nazhariyah Ruh Tasyri' Wa Atsaruha Fi Istinbath Wa Tathbiq Ahkam* (Algeria: University Haj Lakhdhar of Bathna, 2019).
[40] Tasya Aryati Sakinah, Wafiq Zahira Mardatilah, and Sania Junila, "Peradaban Islam Pada Masa Khalifah Abu Bakar Ash-Shiddiq," *PUSTAKA: Jurnal Bahasa Dan Pendidikan* 5, no. 1 (December 2024): 72–82, https://doi.org/10.56910/pustaka.v5i1.1795.

Second, a *fiqh* configuration that looks not only at Surah Al Anfal verse 41 as a reference but also at the universal values brought by Islam, namely the power of leaders to manage state assets for the public benefit. Third, consideration of the general benefit of citizens—Muslims and non-Muslims—as well as the long-term impact of making the land of *Khaibar a ghanimah*, namely that there will be land left unmanaged and the emergence of feudalism in the structure of society. Based on these 3 material tests, Umar reviewed the old policy and revised it.[41] According to the author, based on the practices carried out during the reign of the Prophet Muhammad SAW and the Khulafaur Rasyidin, *Taḥqīq al-Manāṭ* fulfills the requirements to be considered a method of judicial review in Islamic law.

Judicial Review in Constitutional Law

Based on historical tracing by Mauro Cappelletti, the concept of judicial review began in the Ancient Greek legal system, which stipulated that the content and form of psephisma must not conflict with nomoi; in other words, lower regulations must not conflict with the value of higher regulations. The idea of judicial review is to purify the legislative products produced by lawmakers.[42]

Related to this idea, Hans Kelsen, in his book "*General Theory of Law and State*, argued that the judiciary has the authority to declare a lower-level regulation contrary to a higher-level regulation. Therefore, the idea of judicial review continues to develop, especially after John Marshall coined the term "judicial review." Meanwhile, in its institutionalization, Hans Kelsen is known as the pioneer in establishing the first Constitutional Court. In Kelsen's terms, the legislative process

[41] Muhammad Riza, "Maqashid Syariah Dalam Penerapan Pajak Kharaj Pada Masa Umar Bin Khattab Ra," *Jurnal Ekonomi dan Bisnis Islam* 2, no. 2 (August 2017), https://doi.org/10.32505/jebis.v2i2.181.

[42] Ahmad Wijaya and Nasran Nasran, "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries," *Jurnal Legalitas* 14, no. 2 (October 2021): 85–106, https://doi.org/10.33756/jelta.v14i2.11809.

"recognized the need for an institution with the power to control or regulate legislation.[43]

Hans Kelsen further emphasized that the judiciary has the authority to cancel a law or declare a law not legally binding. In carrying out this function, the holder of judicial power acts as a negative legislator. Hans Kelsen added as follows:[44]

> *"The power to examine the laws as to their constitutionality and to invalidate unconstitutional laws may be conferred, as a more or less exclusive function, on a special constitutional court... The possibility of a law issued by legislative organ being annulled by another organ constitutes a remarkable restriction of the former's power. Such a possibility means that there is, besides the positive, a negative legislator. An organ which may be composed according to a totally different principle from that of the parliament elected by the people".*

This idea then establishes the inevitability of special powers to control the results of legislation issued by the legislative body. Later, Bojan Bugaric read this idea as Hans Kelsen's attempt to create a positive legislature, played by parliament, while the negative legislative model was played by the Constitutional Court.[45] In this model, the Constitutional Court becomes a part that can influence the legislative process in the legislative body. In this regard, Anna Rotman confirms Hans Kelsen's view because its decisions have the power "to make a statute disappear from the legal order*".* Still referring to Hans Kelsen's opinion, when the constitutional court is a negative legislator, then the parliament that produces laws is called a positive legislator. In this sense, not only parliament has a legislative function, but so does the constitutional court.[46]

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[43] Tanto Lailam, "Kelsen vs Schmitt on Guardians of the Constitution Debates and the Impact on the Indonesian Legal System," *Jurnal Konstitusi* 23, no. 1 (March 2026): 001–024, https://doi.org/10.31078/jk2311.

[44] Wiwit Pratiwi et al., "Implications of Constitutional Defiance of Constitutional Court Decisions by Lawmakers," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (December 24, 2025): 734–59, https://doi.org/10.29303/ius.v13i3.1837.

[45] Radian Salman, Sukardi Sukardi, and Mohammad Syaiful Aris, "Judicial Activism Or Self-Restraint : Some Insight Into The Indonesian Constitutional Court," *Yuridika* 33, no. 1 (February 2018): 145, https://doi.org/10.20473/ydk.v33i1.7279.

[46] Selviana Teras Widy Rahayu and Boy Nurdin, "Reconstruction of the Constitutional Court's Authority from a Negative Legislator to a Positive Legislator for the Sake of Substantive Justice," *International Journal of Social Service and Research* 6, no. 6 (June 2026): 510–17, https://doi.org/10.46799/ijssr.v6i6.1413.

Explaining the significance of judicial power in the legislative process, Vicky C. Jackson and Mark Tushnet state that when constitutional judges review the results of the legislative process, their decision-making process is closer to that of the legislative body. Furthermore, given the importance of judicial review in the legislative process, Vicky C. Jackson and Mark Tushnet refer to it as a third chamber in the legislative process. This is emphasized as follows:

> *"As a description of function, constitutional courts exercising politically initiated abstract review can be conceptualized profitably as a third legislative chamber whose behavior is nothing more or less than the impact—direct and indirect—of constitutional review on legislative outcomes".*[47]

Thus, overall, the concept of judicial review is very closely related to legislative mechanisms. Theoretically, it can be considered a replacement for the need for other chambers in the legislative body. Its existence is clear as a counterweight to legislative products, both after approval by the legislative body and after passage into law. In addition, judicial review is a guarantee for the people of legislative results that deviate from the people's fundamental aspirations.[48] Therefore, judicial review is an external control tool in the legislative process.[49]

Hans Kelsen's main thoughts on the Constitutional Court in Austria[50] have influenced the "way" of law in many countries,[51] namely regarding the purification of the legislative process or the formation of laws through Judicial Review. [52]

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[47] Vicki C Jackson and Mark Tushnet, *Comparative Constitutional Law* (New York: Foundation Press, 1999).
[48] Young-Ju Lee, "State Compensation Liability for Legislative Action," *Kyung Hee Law Journal* 61, no. 1 (March 2026): 111–57, https://doi.org/10.15539/KHLJ.61.1.4.
[49] Fahmi Ramadhan Firdaus and Bayu Dwi Anggono, "Safeguarding Constitutional Democracy: The Role Of The Indonesian Constitutional Court Through Formal Review," *Litigasi* 26, no. 2 (January 29, 2026): 199–237, https://doi.org/10.23969/litigasi.v26i2.23285.
[50] Sara Lagi, "Hans Kelsen and the Austrian Constitutional Court (1918-1929)," *Co-Herencia* 9, no. 16 (July 2012): 273–95, https://doi.org/10.17230/co-herencia.9.16.10.
[51] O. O. Lohoiko, "The Constitutional Courts of Austria and Czechoslovakia as the First Institutional Model of Constitutional Justice in Europe," *Uzhhorod National University Herald. Series: Law* 1, no. 93 (March 2026): 262–67, https://doi.org/10.24144/2307-3322.2026.93.1.37.
[52] Dri Utari Christina Rachmawati, Ekawestri Prajwalita Widiati, and Zendy Wulan Ayu Widhi Prameswari, "Formal Constitutional Review of the Legislative Process: An Obvious Accommodation or an Innovation for Democracy?," *Gdańskie Studia Prawnicze*, no. 4(56)/2022 (December 2022): 42–53, https://doi.org/10.26881/gsp.2022.4.03.

According to Lars Vinx, Pure Legal Theory brings together Legal Naturalism and Legal Positivism. Control in the form of judicial review is necessary, especially if the majority in the legislative body supports the president. This means judicial review can be seen as a means of purifying laws produced by legislative institutions. This is what Hans Kelsen said: "recognized the need for an institution with power to control or regulate legislation." The basic idea is to purify the results of legislation issued by legislative institutions that are contrary to the constitution.[53] Without judicial control, and with strong political interests in the legislature, laws can easily be detrimental to society. Thus, the presence of the Constitutional Court, which has the authority to conduct judicial review directly, has influenced the legislative process in Indonesia. In this way, the Constitutional Court has become a controller of legislative power in the event of possible errors, both formal and substantial, in the legislative process.[54]

According to Leonard W. Levy, the concept of judicial review began when a member of the United States Congress expressed anger. “Judicial review is a usurpation of authority!” shouted Richard Dobbs Spaight. Levy later noted this cry as the beginning of judicial review's emergence. Spaight's outcry in 1787 signaled his rejection of the justices' proposal that Congress' decision could be amended. Spaight considered this concept to usurp Congress' power.[55]

Another event best known in the history of judicial review was what John Marshall, Chief Justice of the United States Supreme Court, did. He canceled the Judiciary Act of 1789 because its contents were deemed to be contrary to the United States Constitution. The reason given is that judges have been sworn in to uphold the Constitution, so if there are regulations that are deemed to conflict with the

[53] Mohamed El-Ghawati, “The Role Of The Constitutional Judiciary In Conforming Legislation And Strengthening Federal Rule,” *Journal of Legal and Political Studies* 13, no. Special Issue 2025 (April 2025): 303–17, https://doi.org/10.17656/jlps.10294.
[54] Lars Vinx, “Hans Kelsen and the Material Constitution of Democracy,” *Jurisprudence* 12, no. 4 (2021): 466–90, https://doi.org/10.1080/20403313.2021.1921493.
[55] Alex Stein, “Article The Inevitability of Marbury v. Madison,” *SSRN Electronic Journal*, 2026, https://doi.org/10.2139/ssrn.6431300.

Constitution, then the judge must carry out a review of these regulations. The second reason Marshall put forward is that the Constitution is the supreme law of the land, so there must be an opportunity to test regulations against it to ensure they do not violate the Constitution. The next reason is that judges cannot reject cases, so if someone requests a judicial review, then that request must be fulfilled.[56]

What Marshall decided was related to a case involving William Marbury against James Madison. This case began at the end of President John Adams' administration. Adams' successor was Thomas Jefferson, who defeated him in the election of 1800. During the transition period before handing over the presidency, Adams signed letters of appointment to appoint judges and ambassadors. Among those appointed were William Marbury, Dennis Ramsay, Robert Townsend Hooe, and William Harper. Meanwhile, John Marshall, who at that time served as Supreme Court Justice and Presidential Secretary, also helped prepare the letters. Unfortunately, the letter was not handed over as it should have been. The next day, when President Thomas Jefferson went to work, the letter was still in the presidential office. The letter was eventually retained by James Madison, whom Thomas Jefferson appointed as Secretary to the Presidency, replacing John Marshall. The basis for withholding this letter then became the root of the problem and led Marbury to file a lawsuit at the Supreme Court. Basically, Congress had approved the appointment letter, and it had received an official presidential seal.[57]

Marbury and his friends, through their attorneys, argued that the Supreme Court had the right to decide on the case they submitted and issue the appointment letter. The legal basis was the Judiciary Act of 1789. However, the Jefferson

[56] Andi Arfan Sahabuddin, "The 'Constitutional Interest' Paradigm vs. the 'Constitutional Injury' Requirement in Judicial Review Requests," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (October 2025): 7310–31, https://doi.org/10.31941/pj.v24i1.7124.
[57] Wolfgang Hoffmann-Riem, "Two Hundred Years of Marbury v. Madison: The Struggle for Judicial Review of Constitutional Questions in the United States and Europe," *German Law Journal* 5, no. 6 (2004): 685–701, https://doi.org/10.1017/S2071832200012797.

administration rejected this. Instead, Congress, controlled by Republicans who sided with Jefferson, passed a law. It froze all Supreme Court trials for one year.[58]

Despite this, the trial was still held. In its decision, written by Marshall himself, the Supreme Court confirmed that the decree was valid. This means that the letter of appointment issued by John Adams was legally valid. Marbury and his friends have the right to occupy the positions in question. However, according to its decision, the Supreme Court does not have the authority to order government officials to hand over the letter. The Supreme Court also rejected the plaintiff's request that it issue a decision letter to replace the one issued by former President Adams. The reason is that the decision letter, issued under the mandate of Section 13 of the Judiciary Act of 1789, is considered contrary to Article II, Section 2 of the United States Constitution. This laid the groundwork for the emergence of the concept and practice of judicial review. In this case, Marshall also stated that all laws made by Congress, if they conflict with the Constitution as "the supreme law of the land," must be declared invalid.[59]

Judicial review gives the judiciary the authority to make these assessments. This organ can completely remove laws that are deemed unconstitutional so that the law cannot be implemented by other organs. On the other hand, if the organ does not cancel it, it can still be considered valid. The form of supervision carried out on regulations issued by representative institutions, in this case the legislature, can be considered as a reflection of the "checks and balances" mechanism. In contrast to the principle of "separation of powers," which reflects a rigid separation of powers, the principle of "checks and balances" analyzes more the process of monitoring and balancing power and is not a principle of rigid division.[60]

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[58] Herbert A. Johnson and William E. Nelson, "Marbury v. Madison: The Origins and Legacy of Judicial Review," *The American Journal of Legal History* 45, no. 1 (January 2001): 107, https://doi.org/10.2307/3185357.
[59] Larry D. Kramer, "Marbury and the Retreat from Judicial Supremacy," *Constitutional Commentary* 20, no. 2 (2003): 205, https://doi.org/10.24926/26390742.1811.
[60] Puguh Windrawan, "Gagasan Judicial Review Dan Terbentuknya Mahkamah Konstitusi Di Indonesia," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 2, no. 1 (2013): 1–26, https://doi.org/10.14421/sh.v2i1.1885.

The initial proposal for judicial review of laws in Indonesia came during the second session of the Indonesian Preparatory Committee for Independence (BPUPKI) on July 11, 1945. M. Yamin's primary point was the need for the Supreme Court or High Court to compare legislation to determine whether it conformed to the Constitution. Then, during the Large Meeting of the Investigating Committee for Preparatory Work for Independence on July 15, 1945, M. Yamin again proposed comparing laws with the Constitution. However, Soepomo rejected this proposal on the grounds that a system for comparing laws with the Constitution does exist, but we must know what that system means. Moreover, according to Soepomo, the Draft Indonesian Constitution does not use a system that differentiates in principle between three bodies, namely legislative, executive, and judicial, meaning that the judicial power will not control the power of law. Apart from these two reasons for rejection, Soepomo also stated that, in practice, when there is a dispute over whether a law conflicts with the Constitution, it is not a juridical issue but a political one, so this system is not good for the Indonesian State that will be formed. Moreover, there are not many legal experts in Indonesia, and they do not have experience regarding this matter.[61]

The rationale behind the Supreme Court being given this authority during the New Order era was because some legal experts at that time were of the opinion that the lack of regulation regarding the Constitutional Court and judicial review in the 1945 Constitution of the Republic of Indonesia did not mean that judges did not have the authority to review laws against the Constitution because judges automatically had this authority as a logical consequence of the position and function of judicial power as stipulated in the 1945 Constitution.[62]

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[61] Abdurrachman Satrio, "Restoring Indonesia's (Un)Constitutional Constitution: Soepomo's Authoritarian Constitution," *German Law Journal* 24, no. 2 (March 2023): 402–16, https://doi.org/10.1017/glj.2023.16.

[62] Iskandar Muda, Bintan R. Saragih, and Ferry Edwar, "Constitutional Authority Based on the Constitutional Court Decision in Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 3 (September 2023): 221–42, https://doi.org/10.25041/fiatjustisia.v17no3.2636.

Along with this, there is an urge to improve the tradition of reviewing legal regulations, not only limited to regulations under the law but also to laws against the Constitution. The authority to review laws against the Constitution is given to a separate court outside the Supreme Court. Based on this idea, an independent Constitutional Court alongside the Supreme Court is necessary.[63] Indonesia itself then implemented this concept in the third constitutional amendment in 2001. The Constitutional Court of the Republic of Indonesia was then formed on August 13, 2003. From the beginning of its formation until now, the Constitutional Court of the Republic of Indonesia has been based on Article 24 of the 1945 Constitution of the Republic of Indonesia (UUD 1945) and Article 10 of Law No. 24 of 2003, Law No. 8 of 2011, and Law No. 7 of 2020 concerning the Constitutional Court, and has four authorities and one obligation.[64] These authorities include testing laws against the Constitution, deciding disputes over the authority of state institutions granted by the Constitution, deciding on the dissolution of political parties, and deciding disputes about the results of general elections.[65] Meanwhile, it must decide on the House of Representatives' opinion regarding violations by the President and/or Vice President under the Constitution. In addition, the Constitutional Court's decision is final and binding, so no further legal action can be taken.[66]

Lessons from the *Taḥqīq al-Manāṭ* Method for Advancing Knowledge in Constitutional Law.

If we consider the factors behind the release of *Taḥqīq al-Manāṭ*, we will see that its motives are religious and beneficial. Therefore, the author needs to explain

[63] Luthfi Widagdo Eddyono, "The Constitutional Court and Consolidation of Democracy in Indonesia," *Jurnal Konstitusi* 15, no. 1 (2018): 1–26, https://doi.org/10.31078/jk1511.
[64] Luthfi Widagdo Eddyono, "Independence of Indonesian Constituttional Court In Norms and Practices," *Constitutional Review* 3, no. 1 (2017): 71–97, https://doi.org/10.31078/consrev314.
[65] Putra Perdana Ahmad Saifulloh et.al, "Legal Standing to the Corruption Eradication Commission As a Applicant for the Dissolution of a Political Party at the Constitutional Court," *Jurnal Konstitusi* 20, no. 2 (2023): 318–39, https://doi.org/10.31078/jk2028.
[66] Putra Perdana Ahmad Saifulloh, "The Obligation of the Constitutional Court of Indonesia to Give Consideration in the Process of Dissolution of Societal Organizations," *Constitutional Review* 4, no. 1 (2018): 131–156, https://doi.org/10.31078/consrev416.

the method for the birth of *Taḥqīq al-Manāṭ* and relate it again to the method for the birth of Judicial Review Decisions at the Constitutional Court, to prevent decisions that are counterproductive to the value of public benefit. The method for the birth of *Taḥqīq al-Manāṭ* is as follows:

a) *Taṣawwur al-Wāqiʿ* (Describing Real Phenomena as a Whole)[67]

It is the highest norm in legal science to design *taṣawwur* before enacting the law. In the field of *fatwā*, *taṣawwur* is presenting a complete description of a case in an abstract sense and finding its essence without providing justification or negation. Waqi' is the synergy of case, time, and place in one unified whole.

b) *Takyīf Fiqhī* (Configuration of Jurisprudence Theory with Cases)[68]

After describing the legal phenomenon in its entirety, both its essence and impact, the next thing that must be done in the *Taḥqīq al-Manāṭ* process is *takyīf fiqhī*. According to Muhammad Syabir:

التكييف الفقهي هو تحديد حقيقة الواقعة المستجدّة لالحاقها بأصل فقهي, خصّه الفقه الاسلامي بأوصاف فقهية, للوافعة المستجدّة عند التحقق من المجانسة فى الحقيقة بقصد اعطاء تلك الاوصاف

Mean: "*(Takyīf fiqhī) is to determine the essence of the phenomenon that is currently developing in order to adapt it to the basis of its fiqh, which has been specified by Islamic jurisprudence with the provisions of fiqh as well, which is intended to provide these provisions to the phenomenon being studied when it is confirmed that it is homogenous (between the principles of fiqh) and the essence of the phenomenon".*

c) *Tanzīl Aḥkām* (Manifestation of Law into Reality)[69]

Tanzīl aḥkām is the final stage where a *mujtahid* reduces *legal ideas into reality. Here, a mujtahid truly qualifies the accuracy and effectiveness of legal* ideas. The

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[67] Aksin Wijaya et.al, "Rethinking Gender Justice in the Quran: A Critical Exploration of Muslim Feminist Perspectives," *Jurnal Studi Ilmu-Ilmu Al-Qur'an Dan Hadis* 26, no. 1 (2025): 77–98, https://doi.org/10.14421/qh.v26i1.5704.

[68] Abu Umar Faruq Ahmad et.al, "Takyif Fiqhi on the Permissibility of Ijarah Mawsufah Fi Al-Dhimmah: A Critical Analysis," *International Journal of Islamic Thought* 17, no. 1 (2020): 1–14, https://doi.org/10.24035/ijit.17.2020.165.

[69] Ahmad Syafi'i Sulaiman Jamrozi et al., "Maqashid Al-Sharia in the Study of Hadith and Its Implication for the Renewal of Islamic Law," *Justicia Islamica* 19, no. 1 (June 2022): 74–93, https://doi.org/10.21154/justicia.v19i1.3269.

instrument required for this qualification is *maʾālāt al-afʿāl*. *Ma'alatul af'al* is a contemplative effort to read the risks that arise when establishing laws. A law that should be strict can become lenient, and vice versa. In fact, *maʾālāt al-afʿāl* is part of the *taṣawwur process. Because taṣawwur requires a contemplative attitude to read reality as a whole. Risk is part of the essence of reality itself.*

Ma'alatul af'al in practice compares the current impact with the long-term impact, both in terms of benefits and *mafsadah*. Therefore, this stage is also called the prediction stage. The process of predicting legal impacts must not be based on conjecture (*wahm*) or guesswork (*iftirāḍiyyāt*). In fact, this prediction is not the same as anticipation (*istibāq*). Predictions must consider the elements, events, and empirical changes that become future risk variables (probability theory).

d) *Ḥukm al-Wāqiʿ* (Legal Conclusions for Reality)[70]

This research's typology of *Taḥqīq al-Manāṭ* aims to weigh the strength of the *mukallaf* in accepting the law (*iʿtibār aḥwāl al-mukallaf quwwatan wa ḍaʿfan*) and to weigh the benefits and *mafsadah* (*mīzān bayna al-maṣāliḥ wa al-mafāsid).*[71] In the context of the birth of judicial review decisions at the Constitutional Court according to the Constitutional Court Law and Constitutional Court Regulation Number 06/PMK/2005 of 2005 concerning Procedure Guidelines in Legal Review Cases, the trial mechanism is related to the process of a case; the Constitutional Court trial can be divided into 4,

[70] Mohammad Hashim Kamali, "Maqasid and Fiqh Al-Waqi' (Jurisprudence of Reality)," in *Goals and Purposes of Shariah* (Oxford University PressNew York, NY, 2025), 84–87, https://doi.org/10.1093/9780197786390.003.0012.

[71] Aditya Prastian Supriyadi, Mustafa Lutfi, and Kurniasih Bahagiati, "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Maslahah," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (December 24, 2025): 411–51, https://doi.org/10.18860/j.v16i2.35169.

namely Preliminary Examination, Trial Examination, Judge Deliberation Meeting, and Pronouncement of Decision.[72]

Article 40, paragraph (1), of the Constitutional Court Law states that Constitutional Court hearings are open to the public, except for judges' deliberation meetings. Thus, of the 4 types of trials, all are held openly to the public except for judges' deliberation meetings. This provision also indicates that judges' deliberation meetings are closed and confidential. However, in practice, trial examinations can be carried out behind closed doors based on the decision of the panel of constitutional judges.[73] The trial mechanism at the Constitutional Court is as follows:

1) Preliminary Inspection

A preliminary examination is a trial conducted to check the completeness and clarity of the application material before entering the main case examination. In practice, this preliminary examination, in addition to examining the completeness of the case administration, also examines two aspects that determine the sustainability of the case, namely whether the applicant has the qualifications to submit the intended application, or what is known as having legal standing, and whether the case being filed falls under the authority of the Constitutional Court.[74]

Clarity of the petition material is one area of preliminary examination, so what is requested can be formulated and understood clearly by both the applicant and the constitutional judge. This is necessary so that the trial examination can be carried out effectively and focus on the issues requested. Overall, the preliminary examination includes: 1) Applicant's identity and qualifications, authority to act, and

[72] Wilma Silalahi and Yunita Estu Lestari, "Pengujian Perundang – Undangan : Legislative Review Executuve Review Dan Judicial Review," *Jurnal Pustaka Cendekia Hukum Dan Ilmu Sosial* 3, no. 2 (October 2025): 131–41, https://doi.org/10.70292/pchukumsosial.v3i2.149.
[73] Sugeng Riyadi et al., "The Urgency of Establishing Constitutional Court Procedural Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, December 2023, 209–23, https://doi.org/10.24090/volksgeist.v6i2.9607.
[74] Gede Dandi Pratama Putra and I Gede Yusa, "Role of the Constitutional Court in Indonesia's Electoral Justice System," *International Journal of Business, Law, and Education* 7, no. 1 (January 2026): 238–46, https://doi.org/10.56442/ijble.v7i1.1374.

power of attorney: 2) The applicant's legal position; 3) The content of the petition is within the authority of the Constitutional Court, and if necessary, simplification of the issues raised is carried out, including combining cases that have the same posita and petitum: 4) Changes to the application either on the judge's advice or on the applicant's own wishes; 5) Evidence that will be submitted; 6) Witnesses and experts and the subject matter of the information to be given; 7) Setting the trial schedule and court order.[75]

A panel of judges usually conducts the preliminary examination. However, in certain cases considered important and requiring immediate decisions, a panel of plenary judges may also conduct the preliminary examination directly. In this preliminary examination, the constitutional judge is obliged to provide advice to the applicant on completing and/or revising the application. Article 39, paragraph (2), of the Constitutional Court Law sets a time limit of 14 (fourteen) days for applicants to complete or correct their application.[76]

A panel of judges conducts the preliminary examination, which is open to the public. The preliminary examination may be carried out more than once if it is necessary to correct, complete, and clarify the application and to check the revisions made by the applicant. The results of the preliminary examination hearing will be reported by the panel of judges to the plenary of judges of the Constitutional Court, in the event that the preliminary examination is carried out by a panel of judges.[77]

The report is accompanied by a recommendation from the panel of judges on whether the case can be continued to trial due to the fulfillment of the requirements for legal standing and the authority of the Constitutional Court, or whether it is decided that it cannot be accepted without entering into the main case because one

[75] Riyadi et al., "The Urgency of Establishing Constitutional Court Procedural Law."
[76] Aleksey G. Samusevich, "'Non-Application' of Constitutional Provisions as a Form of Constitutional Law Enforcement (on the Example of Article 20 of the Constitution of the Russian Federation)," *Constitutional and Municipal Law*, May 2026, 2–5, https://doi.org/10.18572/1812-3767-2026-5-2-5.
[77] Selviana Teras Widy Rahayu and Richard, "The Independence of Constitutional Court Judges Amid Political Polarization," *Greenation International Journal of Law and Social Sciences* 3, no. 3 (November 2025): 1162–72, https://doi.org/10.38035/gijlss.v3i3.604.

or both of the requirements for legal standing and the authority of the Constitutional Court are not fulfilled.[78] In addition to these two alternatives, a case may also be deemed to fall within the Constitutional Court's authority before entering the main examination. Therefore, the examination of these two matters is carried out simultaneously and becomes part of the main case examination. The plenary of judges can decide to accept the recommendation of the panel of judges or decide differently from that recommendation. Therefore, even though the preliminary examination that follows the trial is conducted by a panel of judges, the decision is still taken by a plenary of judges, namely 9 constitutional judges, or at least 7 constitutional judges.[79]

2) Trial Examination

A trial examination is a type of trial conducted to examine the application, evidence, the respondent's statement (if any), witness statements, expert statements, and statements from related parties. For the purposes of trial examinations, constitutional judges are obliged to summon the parties involved in the case to provide the necessary information and/or request written information from the state institutions related to the petition. The state institution in question must provide the requested information within 7 days.[80]

Trial examinations are, in principle, carried out by a plenary of constitutional judges, except in certain cases, based on the decision of the Chief Justice of the Constitutional Court, which can be carried out by a panel of judges. Trial hearings are held openly, unless otherwise determined by the panel of judges. The stages of

[78] Dinda Rambe, "The Absence of Constitutional Complaints in the Authority of the Constitutional Court Regarding the Protection of Public Benefit Rights in Indonesia," *Nusantara: Journal of Law Studies* 2, no. 2 (2023): 147–55, https://doi.org/https://doi.org/10.5281/zenodo.17388677.
[79] Citra Irwan Simbolon, Fadlan Fadlan, and Kaspol Jihad, "Juridical Analysis of the Authority of Judges to Decide Sentencing Cases in the Perspective of Proportionality and the Principle of Justice," *Journal of Multidisciplinary Academic and Practice Studies* 1, no. 2 (November 2023): 143–49, https://doi.org/10.35912/jomaps.v1i2.1731.
[80] Erlinda Putri Nurdiyanti et al., "Authority of Amicus Curiae in Constitutional Proceedings : Bridging Society and the Constitutional Court," *West Science Law and Human Rights* 2, no. 03 (July 2024): 218–24, https://doi.org/10.58812/wslhr.v2i03.970.

the trial examination are as follows:[81] a) Submission of the main points of the application orally; b) Submission of the main points of the respondent's answer or; c) Verbal statements from the parties involved; d) Examination of evidence from the applicant as well as from the respondent and related parties; e) Submission and examination of witness and/or expert statements submitted by the applicant; f) Submission and examination of witness and/or expert statements submitted by the respondent or related parties; g) Submission of conclusions by the applicant; h) Submission of conclusions by the respondent and/or related parties.

In the Constitutional Court hearing, in addition to the petition, the respondent's answers and statements from related parties, as well as expert statements, are also submitted in writing. Therefore, at the trial forum, oral delivery is not done by reading the written documents submitted to the Constitutional Court, but by conveying only the main points considered important. It then continues with an examination in the form of questions and answers with the applicant, respondent, related parties, and constitutional judges.[82]

3) Judges Deliberation Meeting

The Constitutional Court Law contains only one provision relating to judges' deliberative meetings. Article 40, paragraph (1), of the Constitutional Court Law states that Constitutional Court hearings are open to the public, except for judges' deliberative meetings. The law does not explain what is meant by a judge's deliberative meeting. The Constitutional Court Regulations also do not regulate judges' deliberative meetings. The Judges' Deliberation Meeting is a type of plenary session, which is closed in nature. Judges' deliberation meetings that discuss cases are confidential and are only attended by constitutional judges, clerks, and substitute clerks. In these judges' deliberation meetings, the progress of a case and

[81] Suhaeri Suhaeri, "Analysis Of The Gap Between The Process Of Forming Legislation And The Decision Process Of The Constitutional Court," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 1 (March 2025): 970–84, https://doi.org/10.62976/ijijel.v3i1.1054.
[82] Sepriandison Saragih, Sarles Gultom, and Roy Marthen Moonti, "Introduction Theory and Practice Court Procedural Law Constitution," *International Journal of Multidisciplinary: Applied Business and Education Research* 3, no. 10 (October 2022): 2049–60, https://doi.org/10.11594/ijmaber.03.10.17.

related decisions and provisions are discussed. Specifically, judges' deliberative meetings to make case decisions are regulated in Article 45, paragraphs (4) to (10) of the Constitutional Court Law.[83]

4) The Verdict

The decision-pronouncing session is essentially a plenary session, but it is different from the plenary session of the trial examination. In the plenary session, the Constitutional Court pronounces the decision on the agenda by reading the decision in a case that has been examined and tried. The decision is usually read aloud in turn by a panel of constitutional judges, starting with the chairman of the session, followed by the other constitutional judges; in the conclusion section, the chairman of the session reads the verdict and conclusion.[84] Each constitutional judge receives a part of the decision to read sequentially, except for judges who submit a different opinion (dissenting opinion).[85] The judge who submits a dissenting opinion or concurring opinion reads his own opinion after the chairman of the trial reads the decision. The plenary session to pronounce the decision must be held openly to the public. This is necessary because if the decision is pronounced in a closed trial, the Constitutional Court's decision will be invalid and have no legal force. The Constitutional Court's decision obtains permanent legal force from the time it is pronounced in a plenary session, and it is open to the public. Thus, the Constitutional Court's decision is permanent and binding from the moment the verdict is pronounced. The following figure shows the Constitutional Court Trial Flow.[86]

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[83] Lena Hornkohl et al., "Judicial Deliberation – A Comparative Analysis of the Decision-Making Processes in the Highest Civil Courts, Constitutional Courts and International Courts," *SSRN Electronic Journal*, 2022, https://doi.org/10.2139/ssrn.4078587.

[84] Septi Nur Wijayanti et al., "Exploring the Feasibility of a Special Electoral Court to Achieve Electoral Justice," *Lex Scientia Law Review* 10, no. 1 (May 20, 2026): 101–36, https://doi.org/10.15294/lslr.v10i1.26985.

[85] Mohammad Syaiful Aris et al., "The Development of Interpretations of Structured, Systematic and Massive Violations in the 2024 Regional Head Elections," *Jurnal IUS Kajian Hukum Dan Keadilan* 14, no. 2 (2026): 422–55, https://doi.org/https://doi.org/10.29303/ius.v14i2.1882.

[86] I Nyoman Suandika et al., "The Legal Power of the Constitutional Court Decisions Remains," *Journal of Social Research* 2, no. 12 (November 2023): 5112–22, https://doi.org/10.55324/josr.v2i12.1606.

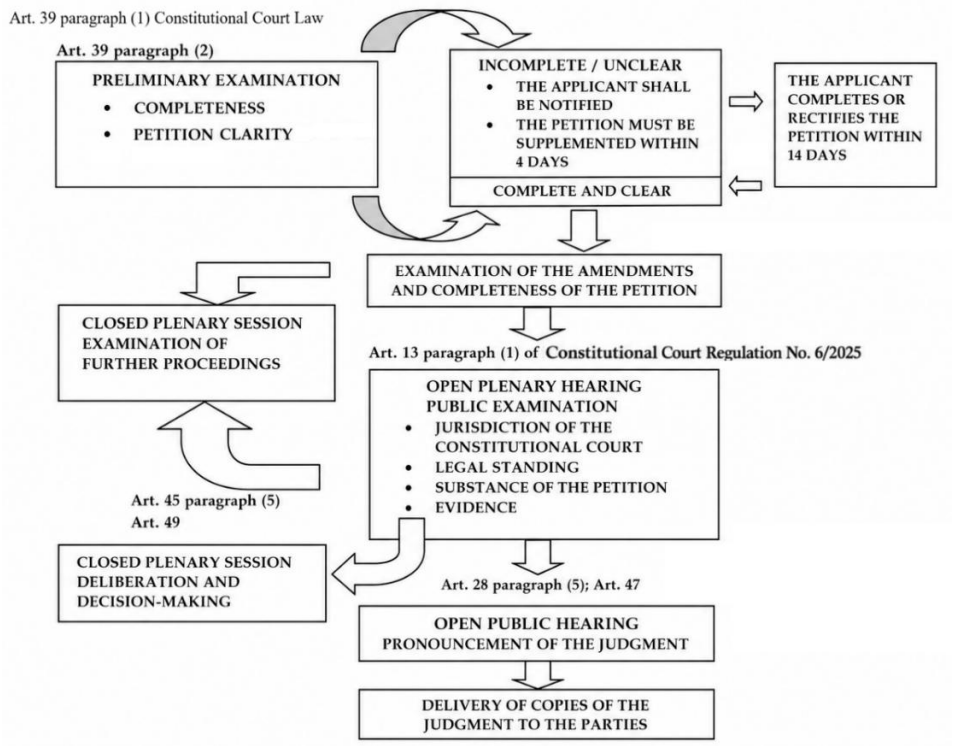

Figure 1. Constitutional Court Trial Flow
Source: *Adeb Davega Prasna & Meri Yarni, 2025.*

The legal basis for decisions on constitutional cases is the 1945 Constitution, as the written constitution of the Republic of Indonesia. The decision to grant must be based on at least 2 (two) valid pieces of evidence and the judge's belief that the request meets the constitutional reasons and requirements as intended in the Constitution. Therefore, the decision must contain the facts revealed and legally proven at trial and the legal considerations on which it is based. Decision-making is carried out by deliberation to reach consensus in a judges' deliberation meeting through a closed plenary session.

To guard and uphold the supremacy of the constitution, democracy, justice, and citizens' constitutional rights, the 1945 Constitution has given the Constitutional Court four powers and one constitutional obligation. To carry out these constitutional authorities and obligations, procedural law is necessary to

regulate the mechanisms and procedures for proceedings at the Constitutional Court.[87]

The law that develops in society requires the Constitutional Court to follow legal developments, including procedural law. The development of the Constitutional Court's procedural law in practice requires ijtihad from constitutional judges to identify new legal approaches that uphold the supremacy of the constitution, democracy, justice, and citizens' constitutional rights. The Constitutional Court's procedural law is formal law that enforces material law, namely the part of constitutional law within the Court's authority. The procedural law of the Constitutional Court is intended as procedural law that applies generally in cases that fall under the authority of the Constitutional Court, as well as procedural law that applies specifically to each authority in question. The existence of the Constitutional Court with its authority gives rise to the need for new law, namely procedural law, and to develop it in order to enforce the law in Indonesia.[88]

According to the author, the *Taḥqīq al-Manāṭ* method can be used by constitutional judges in reviewing laws against the 1945 Constitution, and it can be applied in deliberative meetings of constitutional judges so as to prevent decisions that are counterproductive to public benefit values , and for academics to add to the scientific knowledge of constitutional law and Islamic constitutional law. This can be implemented through constitutional conventions.

Conclusion

Taḥqīq al-Manāṭ is a method of applying general legal rules to certain contextual cases. The author concludes that *Taḥqīq al-Manāṭ* is a method of Judicial Review in Islamic law and that it can contribute to constitutional law science if adopted. The findings indicate that constitutional judges can adopt the *Taḥqīq al-*

[87] Saldi Isra, "Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia," *Jurnal Konstitusi* 11, no. 3 (2014): 409–27, https://doi.org/10.31078/jk1131.
[88] Ahmad Fadlil Sumadi, "Hukum Acara Mahkamah Konstitusi Dalam Teori Dan Praktik," *Jurnal Konstitusi* 8, no. 6 (2011): 849–79, https://doi.org/10.31078/jk861.

Manāṭ method to test laws against the 1945 Constitution. This study recommends applying *Taḥqīq al-Manāṭ* in constitutional judges' deliberation meetings to prevent decisions that are counterproductive to the public interest, and this can be implemented through constitutional conventions.

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