

## Review of Siyasa Fiqh on Granting Legal Standing to Foreign Citizens in Judicial Review

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**ABSTRACT:**

**Background:**The increasing mobility of foreign nationals (WNA) in the era of globalization has led to an increasingly intense interaction with the national legal system. In the context of a state based on the rule of law, every individual within the country's jurisdiction can be impacted by various laws and regulations. However, in the Indonesian legal system, the provisions of Article 51 paragraph (1) of the Constitutional Court Law explicitly limit the parties who can file a judicial review to only Indonesian citizens. This situation has given rise to debate regarding the legal standing of foreign nationals in the mechanism for testing laws at the Constitutional Court.

**Aims:**This study aims to analyze the legal standing of foreign citizens in submitting judicial reviews to the Indonesian Constitutional Court and to review this practice through the perspective of fiqh siyasah, particularly the concepts of al-musta'min and al-'adl.

**Methods:**This research employs a normative juridical approach using the statute approach, the conceptual approach, and the case approach. Data were obtained through a literature review of relevant laws and regulations, Constitutional Court decisions, books, and scientific journals. The data were then analyzed qualitatively to interpret legal norms and examine the practice of granting legal standing to foreign nationals from a fiqh siyasah perspective.

**Result:**The research results show that, normatively, foreign citizens are not explicitly recognized as applicants in the judicial review mechanism under the Constitutional Court Law. However, in practice, there are dynamic interpretations in several Constitutional Court decisions that consider the legal interests of foreign parties. From a fiqh siyasah perspective, the concept of al-musta'min and the principle of al-'adl indicate that foreigners legally residing in a territory have the right to legal protection and access to justice.

**Conclusion:**This study concludes that although the Indonesian legal system normatively limits legal standing to Indonesian citizens, a more inclusive approach can be considered to ensure the principle of universal justice and the protection of human rights. The integration of the fiqh siyasah perspective provides a normative foundation that reinforces the importance of access to justice for foreign citizens within the constitutional legal system.

**Keywords:** Legal Standing; Judicial Review; Fiqh Siyasah

### INTRODUCTION

The development of globalization has increased the mobility of people across countries and expanded the interaction between foreign citizens (WNA) and the national legal system of a country. (Mardiyati, 2024, 2025; Suwaibah et al., 2025) In Indonesia, the increasing number of foreign nationals living, working, and investing has led to them interacting more frequently with various national regulations that affect their legal interests. (Muhlisa & Roisah, 2020; Permatadani & Irawan, 2021) In the context of a state based on the rule of law, every individual within the state's jurisdiction has the potential to become a legal subject affected by policies and laws. Therefore, the issue of legal protection and access to justice for foreign nationals is becoming increasingly important to examine, particularly in relation to the mechanism for testing laws through judicial review at the Constitutional Court.

Ideally, a state based on the rule of law upholds the principles of the supremacy of law and equality before the law. (Lutfiyah, 2021; Purwadi et al., 2022). Lubis et al. (2025) This principle affirms that every individual within a jurisdiction has the right to equal protection and justice before the judicial system. However, in practice, there is a gap between this ideal concept and the actual conditions in Indonesia. Based on the provisions of Article 51 paragraph (1) of the Constitutional Court Law, parties who can file a judicial review are explicitly limited to individual Indonesian citizens, customary law community groups, legal entities, and state institutions. This provision has given rise to debate because foreign nationals in Indonesia can also be affected by the law, but are not expressly recognized as having legal standing to file a judicial review of the law at the Constitutional Court.

Amidst developments in international relations and increasing global mobility, research opportunities regarding the legal standing of foreign nationals under judicial review are becoming increasingly relevant. Many countries around the world have provided opportunities for foreign nationals to file constitutional review requests against laws deemed detrimental to their rights. In several cases in Indonesia, the Constitutional Court has even accepted applications involving foreign nationals, although these applications have not always been formally accepted. This situation demonstrates an interesting legal dynamic that merits further study regarding the limitations of legal standing within the Indonesian constitutional legal system.

Although the issue of legal standing for foreign nationals has been discussed in several legal studies, studies integrating constitutional law perspectives with Islamic legal approaches, particularly *fiqh siyasah*, are relatively limited. Most previous research has focused on normative legal aspects or comparative laws between countries without linking them to the values of justice within the Islamic legal tradition. (Azkia & Bahri, 2025; Rafid, 2022; Rusydi, 2025) Therefore, this study attempts to fill this gap by analyzing the practice of granting legal standing to foreign nationals in judicial review through the *fiqh siyasah* approach, specifically by using the concepts of *al-musta'min* and *al-'adl* as the basis for normative analysis.

The selection of the variables studied in this study, including *fiqh siyasah*, is based on their relevance to the principles of justice and legal protection for individuals, including foreigners residing within a country. In *fiqh siyasah*, the concept of *al-musta'min* is recognized, namely, foreigners who obtain permission and legal protection while within a country's territory. (Nature, 2018). In addition, Islam also emphasizes the principle of *al-'adl* (justice) as a universal value that must be upheld without distinction of religion, race, or nationality. (Cahaya et al., 2025; Simanjuntak & Khalid, 2025). Thus, the concepts in *fiqh siyasah* can provide a broader normative perspective in understanding the practice of legal protection for foreigners in the modern constitutional legal system.

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However previous studies have not thoroughly analyzed the issue of legal standing for foreign nationals in the Indonesian constitutional system by integrating constitutional law with Islamic legal perspectives, particularly fiqh siyasah. Nor have they critically examined how concepts of justice in Islamic law can contribute to resolving this limitation.

This study fills this gap by analyzing the legal standing of foreign nationals in judicial reviews from the perspectives of positive constitutional law and fiqh siyasah, focusing on the concepts of *al-musta'min* and *al-'adl*. This study's integrative approach, combining constitutional legal analysis with Islamic legal principles, provides a more comprehensive and ethically grounded understanding of access to justice for foreign nationals. This study aims to offer a new perspective on evaluating limitations of legal standing and contribute to developing a more inclusive and just constitutional legal system in Indonesia.

### METHOD

#### Research Design

This study employs a normative juridical approach aimed at analyzing the legal concept and practice of granting legal standing to foreign nationals in judicial review before the Indonesian Constitutional Court. This approach positions law as a system of norms reflected in legislation and judicial decisions. The study applies three main approaches: the statute approach, the conceptual approach, and the case approach. The statute approach is used to examine legal provisions related to legal standing in the 1945 Constitution and the Constitutional Court Law. The conceptual approach is used to explore theoretical concepts within fiqh siyasah, particularly *al-musta'min* and *al-'adl*. Meanwhile, the case approach is used to analyze Constitutional Court decisions involving foreign nationals in judicial review.

#### Participants

In normative legal research, the term participant does not refer to human respondents, but rather to the source of legal material that is the object of analysis. Therefore, this study uses two types of legal materials: primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court and its amendments, and Constitutional Court decisions relating to the legal standing of foreign citizens. Meanwhile, secondary legal materials consist of books, scientific journals, academic articles, and legal documents relevant to the study of fiqh siyasa, human rights, and constitutional law. The selection of these legal materials aims to gain a comprehensive understanding of the legal standing of foreign citizens in the judicial review system in Indonesia.

#### Instrument

The main instruments in this research are documentation study and literature analysis. The researcher collected data through a review of various legal documents, including laws and regulations, Constitutional Court decisions, and academic literature related to the research topic. Furthermore, this study also employed legal concept analysis techniques to interpret the principles of fiqh siyasa relevant to the issue of legal standing for foreign nationals. All obtained documents were then systematically analyzed to identify concepts, legal principles, and the dynamics of judicial review practices related to the rights of foreign nationals in the Indonesian legal system.

## Data Analysis

The data in this study were analyzed qualitatively using a structured normative legal analysis framework. To ensure a more systematic and in-depth analysis, the process was conducted through four main stages:

1. Norm Interpretation Stage

At this stage, the researcher interprets positive legal norms related to legal standing, particularly Article 51 paragraph (1) of the Constitutional Court Law and relevant Constitutional Court decisions. The interpretation is carried out using grammatical, systematic, and teleological approaches to understand both the explicit meaning and the underlying legal objectives of the norms.

2. Case Analysis Stage

The researcher examines selected Constitutional Court decisions involving foreign nationals to identify patterns of judicial reasoning, including how the Court interprets or expands the concept of legal standing in practice. This stage aims to reveal the gap between normative provisions and judicial practice.

3. Comparative and Theoretical Analysis Stage

The findings from positive law are then compared with the theoretical framework of *fiqh siyasah*, particularly the concepts of *al-musta'min* (legal protection for foreigners) and *al-'adl* (justice). This stage evaluates whether the limitations in positive law align or conflict with broader principles of justice in Islamic legal thought.

4. Synthesis Stage

In the final stage, the researcher integrates the results of normative legal analysis and *fiqh siyasah* concepts to develop a comprehensive interpretation of legal standing for foreign nationals. This synthesis aims to formulate a balanced perspective that bridges positive constitutional law and Islamic legal principles, particularly in promoting access to justice and equality before the law.

Through these analytical stages, the study provides a more systematic explanation of how legal norms, judicial practices, and Islamic legal principles interact in shaping the concept of legal standing for foreign nationals in Indonesia.

## RESULTS AND DISCUSSION

### Result

This study finds that the legal standing of foreign nationals in judicial review before the Indonesian Constitutional Court is normatively restricted by Article 51 paragraph (1) of the Constitutional Court Law, which explicitly limits applicants to Indonesian citizens, customary law communities, legal entities, and state institutions. This provision indicates that foreign nationals are not formally recognized as constitutional applicants within the Indonesian legal framework.

However, analysis of constitutional court practices indicates a dynamic legal interpretation within several Constitutional Court decisions. In a number of cases, the Constitutional Court has accepted petitions filed by foreign nationals, although these petitions have not always been substantively accepted. One frequently cited example is the judicial review case involving a foreign national in the Constitutional Court's decision on the Narcotics Law. In that case, the petition filed by the foreign national was declared inadmissible, but several constitutional judges dissented, stating that foreign nationals should be granted legal standing under certain circumstances. This demonstrates the scope for interpretation in understanding the concept of legal standing within the Indonesian constitutional legal system.

Furthermore, this study found that the practice of restricting the legal standing of foreign nationals is often influenced by considerations of state sovereignty and the limitations of constitutional jurisdiction. However, in the context of globalization and human rights protection, these restrictions have sparked debate about the principle of equality before the law. Several other

countries have even provided opportunities for foreign nationals to file constitutional challenges if they can prove that their fundamental rights have been violated by a law. This demonstrates that the constitutional legal approach to the status of foreign nationals can vary depending on the legal system in each country.

From the perspective of Islamic jurisprudence, the research findings demonstrate that the concepts of *al-musta'min* and *al-'adl* can be used to understand the practice of legal protection for foreign nationals in the modern context. The concept of *al-musta'min* provides a normative basis that foreigners legally residing in a territory have the right to obtain legal protection and security. Meanwhile, the principle of *al-'adl* emphasizes that justice must be upheld universally without distinction of race, religion, or nationality. Therefore, the analysis of Islamic jurisprudence demonstrates that providing access to justice for foreign nationals through legal mechanisms, including the possibility of recognizing legal standing, is in line with the principle of universal justice in Islamic law.

## Discussion

The findings of this study demonstrate that the issue of legal standing for foreign nationals in judicial review within the Indonesian Constitutional Court cannot be understood solely through a normative reading of positive law. Instead, it reflects a deeper tension between formal constitutional limitations and the broader demands of justice in a contemporary legal system. While Article 51 paragraph (1) of the Constitutional Court Law explicitly restricts legal standing to Indonesian citizens and certain legal entities, judicial practice indicates a more flexible interpretive space. This confirms that the concept of legal standing in Indonesia is not entirely rigid but remains open to development through judicial reasoning. (Darmadi, 2020; Hasan et al., 2024; Muhtar et al., 2023).

In addition, the discussion regarding the legal standing of foreign citizens in judicial review cannot be separated from the debate between the principle of state sovereignty and the principle of protecting human rights. (Andani, 2020; Fikriya et al., 2023; Pahlevi & Bustomi, 2022) On the one hand, states have the authority to determine the limits on who can use constitutional mechanisms within the national legal system. However, on the other hand, developments in international law emphasize that every individual within a state's jurisdiction has a fundamental right to receive fair legal protection. (Prasetio et al., 2024; Rusadi et al., 2025) Therefore, the debate regarding the legal standing of foreign citizens essentially reflects a balancing process between state interests and the protection of individual rights in the modern legal system.

From the perspective of *siyasa fiqh*, the results of this research show that the concept of *al-musta'min* and the principle of *al-'adl* provide a strong normative foundation in understanding legal protection for foreigners. In the Islamic legal tradition, foreigners who obtain permission to be in a territory have the right to protection of life, property and access to justice. (Hamidi & Christian, 2021; Kurniastuti & Putra, 2024) The principle of justice in Islam is also universal and not limited by differences in citizenship. Thus, the *fiqh siyasa* approach can provide an ethical and philosophical perspective that enriches modern constitutional law discourse, particularly in understanding how legal systems can accommodate the principle of universal justice without neglecting the principle of state sovereignty.

## Implications

The findings of this study have important implications for the development of the constitutional legal system in Indonesia, particularly in broadening the understanding of access to justice for individuals within the country's jurisdiction. In the context of globalization, human mobility across borders is increasing, resulting in increasingly intense interactions between foreign citizens and national legal systems. Therefore, the legal system needs to consider the possibility of a more inclusive approach to providing legal protection, particularly when an individual's fundamental rights are potentially violated by a statutory regulation. This approach is not only relevant from a

national legal perspective but also aligns with internationally recognized universal principles of human rights.

### **Research contribution**

This research provides theoretical and conceptual contributions to the study of constitutional law by integrating a modern constitutional law perspective with a fiqh siyasah approach. This integration results in a more comprehensive understanding of the concept of legal standing for foreign citizens within the judicial review mechanism. Furthermore, this research contributes to the development of contemporary Islamic legal studies by demonstrating the relevance of the concepts of al-musta'min and al-'adl in explaining the practice of legal protection for individuals outside the category of citizens. Thus, this research opens up a space for dialogue between constitutional law and Islamic legal traditions in building a more inclusive and just legal system.

### **Limitations**

This study has several limitations that should be considered. First, it uses a normative juridical approach that focuses on the analysis of legal documents and academic literature, thus not directly involving empirical data from judicial practice. Second, this study is limited to an analysis of Constitutional Court decisions and concepts in fiqh siyasah (legal jurisprudence) without conducting a broader comparison with constitutional legal systems in various countries. Therefore, the results of this study emphasize conceptual analysis rather than empirical evaluation of the implementation of legal policies in judicial practice.

### **Suggestions**

Based on the findings of this study, it is recommended that further research develop a broader study through a comparative approach between the Indonesian legal system and constitutional legal systems in other countries that have provided space for foreign citizens in judicial review mechanisms. Furthermore, future research could also employ an empirical approach involving a more in-depth analysis of constitutional court practices. This approach is expected to provide a more comprehensive understanding of how the principles of protecting individual rights and state sovereignty can be harmonized in a modern constitutional legal system.

## **CONCLUSION**

This research shows that the legal standing of foreign citizens in the judicial review mechanism at the Indonesian Constitutional Court still faces normative limitations. Based on positive legal provisions, specifically Article 51 paragraph (1) of the Constitutional Court Law, applicants who can file judicial reviews of laws are explicitly limited to Indonesian citizens and certain legal entities. However, the dynamics of judicial practice indicate a more progressive scope for interpretation in several Constitutional Court decisions that consider the legal interests of foreign citizens. This indicates that although existing regulations are still restrictive, developments in legal practice open up the possibility of a more flexible approach in understanding the legal standing of foreign citizens in the context of protecting constitutional rights.

From the perspective of *siyasah fiqh*, this research finds that the concept of *al-musta'min* and the principle of *al-'adl* provide a normative basis that is relevant in understanding legal protection for foreign citizens. In the Islamic legal tradition, foreigners who are legally in a territory have the right to obtain legal protection and justice without discrimination. Therefore, the integration of the *fiqh siyasah* perspective in the study of constitutional law can provide a more comprehensive approach in understanding the principles of universal justice in the modern legal system. It is hoped that the findings of this research will contribute to the development of a legal system that is more inclusive, balanced between the principles of state sovereignty and the protection of individual rights, and responsive to the dynamics of globalization and cross-border interactions.

## **AUTHOR CONTRIBUTION STATEMENT**

NAA conceptualized the research, conducted data collection, performed the legal analysis, and drafted the manuscript. AKS supervised the research process, provided theoretical guidance and methodological direction, and reviewed as well as revised the manuscript to improve its academic quality. All authors read and approved the final version of the manuscript.

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