

Constitutional Preview in Lawmaking Based on the Principle of Social Justice: Utopia or a Normative Necessity?

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Article	Abstract
Keywords: Constitutional Preview; Social Justice; Lawmaking; Pancasila. Article History Received: Feb 5, 2026 Reviewed Apr 2, 2026; Accepted: Jul 14, 2026; Published: Jul 16, 2026.	<i>The increasing number of judicial review petitions submitted to the Constitutional Court indicates recurring constitutional disputes arising from enacted legislation, reflecting structural weaknesses in Indonesia's lawmaking process. These weaknesses include inadequate constitutional scrutiny during legislative drafting, inconsistencies between statutory provisions and constitutional principles, and insufficient incorporation of social justice values in legislative products. The Fifth Principle of Pancasila affirms that social justice for all Indonesians must serve as a fundamental orientation of public policy, including the legislative process. However, ex post constitutional control through judicial review remains corrective and reactive, addressing constitutional deficiencies only after laws have been enacted and have generated legal uncertainty or adverse social consequences. This article examines the urgency of implementing constitutional preview as an ex ante constitutional oversight mechanism that enables the harmonisation of Pancasila values and the norms of the 1945 Constitution of the Republic of Indonesia during the legislative drafting stage. This study employs a normative legal research method using statutory and comparative approaches, supported by Theory of Development Law, which conceptualises law as an instrument of social reform and development. The findings demonstrate that constitutional preview potentially produces legislation that is more constitutionally compliant, socially responsive, and aligned with the principle of social justice, as constitutional concerns can be identified and addressed prior to enactment. In addition to reducing the frequency of constitutional disputes that lead to judicial review petitions before the Constitutional Court, constitutional preview can strengthen democratic legitimacy, normative effectiveness, and public trust in legislative outcomes. Therefore, constitutional preview constitutes an urgent mechanism for improving Indonesia's legislative system and advancing socially just law grounded in the nation's constitutional values.</i>



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A. INTRODUCTION

Legislation is a response to the need for legal regulation in a society governed by the rule of law. Legal products enacted by legislative institutions in the form of laws or regulations are binding on all segments of society, including the government itself. In legal

systems that adopt the civil law tradition, written legislation plays a central role as an integral component of the legal order. Accordingly, Indonesia, as a country adhering to the civil law system, regards legislation as the primary source of substantive law. However, in certain cases, courts also refer to customary law and religious law. The need for concrete implementation of law has become an important recurring agenda discussed during the terms of office of the House of Representatives as well as the elected President and Vice President, commonly referred to as the National Legislative Programme. Yet, Indonesia's specific challenge, a proliferation of regulations marked by overlaps, inconsistencies, and constitutional deficiencies, calls for a preventive quality-control mechanism: constitutional preview, defined in this study as a pre-enactment review process to ensure conformity of draft legislation with the Constitution before it enters into force. As of October 2025, Indonesia has approximately 61,000 legislative and regulatory instruments, ranging from statutes, government regulations, and ministerial regulations to regional regulations and other subordinate legislation. According to the official regulatory database (peraturan.go.id) maintained by the Ministry of Law of the Republic of Indonesia, there were 1,906 statutes, 218 Government Regulations in Lieu of Law, 4,972 Government Regulations, 19,520 Ministerial Regulations, 6,508 Agency/Institutional Regulations, and 19,689 Regional Regulations (Sujatmiko et al., 2024; Ministry of Law of the Republic of Indonesia, 2025). Furthermore, based on information from the Ministry of Home Affairs, approximately 25 per cent of regional regulations and regional head regulations remain overlapping or inconsistent with higher-level legislation (The Director General of Regional Autonomy, Ministry of Home Affairs, 2021). This sheer volume, combined with widespread inconsistencies, directly underscores the urgency of a preventive mechanism constitutional preview that ensures quality and constitutionality at the drafting stage before regulations multiply further.

Table 1. The Number of Legislative and Regulatory Instruments

Type of Regulation	Number of Regulations
Law (Undang-Undang)	1,906
Government Regulation in Lieu of Law (Perppu)	218
Government Regulation	4,972

Presidential Decree	2,619
Ministerial Regulation	19,520
Institution Regulations	6,508
Local Regulation	19,689
Other Regulations	61,459

Source: peraturan.go.id (November 2025)

Regulatory overlap in Indonesia has become a serious concern among legal scholars, government officials, and the business community. One example is the conflict between Law No. 32 of 2009 on Environmental Protection and the Job Creation Law No. 11 of 2020, wherein provisions on environmental permits were substantially amended without adequate harmonisation, resulting in legal uncertainty over which standard applies in practice. Similarly, the enactment of Law No. 23 of 2014 on Regional Government created widespread inconsistencies with hundreds of existing sectoral ministerial regulations that had not been updated accordingly, generating conflicts that left regional governments unable to determine which rules governed their authority. Joko Widodo publicly acknowledged that Indonesia's excessive number of regulations had hindered investment and economic growth, leading to the introduction of the omnibus law approach, which, despite its ambition, was itself subjected to constitutional review (Constitutional Court Decision No. 91/PUU-XVIII/2020) for procedural and substantive deficiencies (Kunarti et al., 2024).

These regulatory problems generate tangible legal uncertainty with direct consequences for citizens, businesses, and governance. When two or more regulations govern the same subject differently, enforcement agencies face interpretive dilemmas that result in inconsistent application of the law. Businesses encounter unpredictable permit requirements; citizens lose access to rights they are formally entitled to; and courts are forced to resolve conflicts that should have been prevented at the drafting stage. This condition has led scholars to characterise Indonesia's legislative framework as one suffering from "Regulatory obesity", a state in which the sheer accumulation of overlapping, redundant, and conflicting regulations renders the legal system unwieldy and ineffective (Chandranegara, 2019). Regulatory obesity differs from mere over-regulation: it describes not only excessive quantity but also internal incoherence, in which the legal system can no longer function as a

reliable guide for conduct. Diani Sadiawati et al. identify four general regulatory problems: regulatory conflicts (provisions that clearly contradict other regulations), inconsistency (misalignment between a regulation and its implementing rules), multiple interpretations (ambiguous language producing divergent readings), and non-operability (regulations that remain formally in force but are unenforceable in practice) (The Ministry of National Development Planning, 2015).

According to M. Nur Solikhin, Executive Director of the Centre for Indonesian Law and Policy Studies (PSHK), at least two major problems characterise Indonesia's regulatory system: the continuous proliferation of legislation and the persistent lack of synchronisation and harmony among existing regulations. Regulatory harmonisation operates on two levels examining the substantive compatibility of regulatory content, and identifying overlaps among norms, principles, and rules within laws of equal or horizontal hierarchy (Bachmid, 2025). Solikhin characterises these issues as a "Disaster" impeding national development, thereby necessitating radical and systematic regulatory reform (Sujatmiko et al., 2024).

The Ministry of National Development Planning/Bappenas, in collaboration with PSHK, identified several fundamental weaknesses in Indonesia's legislative system through an evidence-based policy study: (1) suboptimal synchronisation between central and regional policies; (2) the absence of monitoring and evaluation mechanisms; (3) ineffective regulatory planning; (4) disharmony in regulatory drafting; and (5) weak institutional roles and inadequate supporting systems (Sujatmiko et al., 2024). The former Minister of Law and Human Rights, Yasonna H. Laoly, similarly emphasised that regulatory quality remains low, as evidenced by overlapping rules, vertical and horizontal disharmony, and ineffective legislation, thus making comprehensive legislative evaluation imperative (Bachmid, 2025). These conditions ultimately undermine the fundamental objective of law: providing clarity, consistency, and stability principles articulated by Lon Fuller as essential to any functioning legal system (Nur, 2020).

The consequences of this regulatory dysfunction are most visibly reflected in the volume of judicial review cases brought before the Constitutional Court. As of October 2025, the Constitutional Court had registered 2,093 judicial review petitions, of which 353 (16.87%) were granted, signalling that more than one in six statutes challenged was found to be constitutionally defective. This striking figure demonstrates that the lawmaking process has not yet been capable of ensuring constitutional conformity from the outset, precisely

underscoring the gap that a pre-enactment review mechanism constitutional preview—would be designed to close. The data are summarised in Table 2.

Table 2. Cases of Legislative and Regulatory Review Submitted to the Constitutional Court

The Classification of the Constitutional Court Decision	Number of Decisions	Percentage
Granted	353	16.87%
Rejected	805	38.47%
Inadmissible	642	30.67%
Dismissed	36	1.72%
Withdrawn	241	11.51%
Lack of Jurisdiction	16	0.76%

Source: <https://www.mkri.id/perkara/rekapitulasi-perkara/puu> (Mahkamah Konstitusi Republik Indonesia, 2025)

The high proportion of granted petitions indicates a structural problem: statutes are being enacted with insufficient attention to constitutional parameters, particularly the principle of social justice embodied in the Fifth Principle of Pancasila, which requires all public policies and legislation to ensure equitable distribution of benefits, protection of vulnerable groups, and avoidance of structural injustice (Sulaiman & Durin, 2025). Several landmark cases illustrate this concretely: the Constitutional Court's annulment of provisions in the Mineral and Coal Mining Law (Decision No. 10/PUU-X/2012) on grounds of inequitable benefit distribution, and the partial annulment of the Job Creation Law (Decision No. 91/PUU-XVIII/2020) for both procedural and substantive deficiencies affecting workers' rights (Hidayah et al., 2021). These decisions reveal that the principle of social justice has not been adequately internalised in the legislative drafting process, necessitating a mechanism to assess justice-related considerations before statutes take effect.

Efforts by both the executive and legislative branches to improve regulatory quality, including regulatory streamlining through the omnibus-law approach, have not resolved the

underlying problem. As noted by Mayasari (2020), the Job Creation Law failed to address legislative quality substantially. In line with Mochtar Kusumaatmadja's theory of legal development, law must reflect the living values of society (living law) (Herlindah & Darmawan, 2022), including social justice as enshrined in the Fifth Principle of Pancasila. When enacted statutes contradict the public sense of justice and are subsequently overturned through constitutional review, it demonstrates that social justice was not positioned as a primary reference in the lawmaking process. A pre-enactment review mechanism can ensure that fundamental values, such as social justice, function as guiding parameters from the drafting stage, which is consistent with Mochtar's vision that law must align with societal values.

Comparative practice demonstrates that pre-enactment constitutional review has been successfully implemented in several countries, with measurable improvements in legislative quality. France offers the most prominent model: under Article 61 of the 1958 Constitution, the Conseil Constitutionnel must review institutional acts, certain parliamentary bills, and parliamentary rules before promulgation. Between 1958 and 2023, the Conseil issued over 800 decisions on legislation prior to enactment, with approximately 30 per cent resulting in full or partial invalidation, thereby preventing unconstitutional laws from entering into force (Conseil Constitutionnel, 2023). Germany's Federal Constitutional Court, while primarily a post-enactment body, exercises preventive review through abstract norm control proceedings initiated before laws take effect, which has contributed to the high constitutional conformity of German legislation. Portugal and Spain similarly employ constitutional preview mechanisms through their respective constitutional tribunals. These experiences demonstrate that pre-enactment review reduces the volume of post-enactment constitutional challenges and improves legislative quality over time. These are precisely the outcomes that Indonesia needs, given its high rate of successful judicial review petitions.

Therefore, constitutional consistency between legal reform, constitutional foundations, and national philosophy is essential. The persistent constitutional challenges against statutes clearly indicate disharmony between legislation and core values, such as social justice. The pre-enactment review mechanism, hereafter referred to as constitutional preview, serves as an instrument to promote such harmonisation. Philosophically, the Fifth Principle of Pancasila represents the State's objective of achieving welfare and justice (Syahriar & Bazarah, 2024). When legislation deviates from this principle, it loses its moral and philosophical legitimacy. Pre-enactment constitutional scrutiny thus functions as a

harmonising safeguard, ensuring that every legislative product is grounded in social justice in accordance with Pancasila and the 1945 Constitution.

Pursuant to Article 95B of Law No. 15 of 2019 on the Formation of Laws and Regulations, statutory monitoring and review are conducted at three stages: planning, implementation, and follow-up. The pre-enactment review mechanism the constitutional preview is a preventive measure during the planning stage, aimed at ensuring constitutional conformity before enactment. In principle, such a mechanism allows draft legislation to be invalidated if deemed inconsistent with the Constitution, thereby functioning as a preventive safeguard. This authority would significantly contribute to a principled, constitution-based legislative process. Therefore, strengthening a constitutional preview system, whether through the Constitutional Court, the House of Representatives' Legislative Body, or a National Regulatory Agency as mandated by Law No. 15 of 2019, is essential to address regulatory disharmony and legislative overproduction. Accordingly, this study seeks to advance a comprehensive analysis of the urgency of implementing constitutional preview during the legislative planning stage, grounded in the Theory of Legal Development and the Perspective of Social Justice.

B. METHODS

This study employs a qualitative research method (Brian et al., 2023) grounded in normative legal research, which systematically examines legal norms, principles, and doctrines through the analysis of primary and secondary legal sources. In practice, the qualitative approach was applied through three complementary techniques: (1) document analysis, comprising a systematic review of statutory texts, constitutional provisions, legislative histories, and official regulatory databases including Law No. 12 of 2011 on the Formation of Laws and Regulations and its 2019 amendment (Law No. 15 of 2019), the 1945 Constitution of the Republic of Indonesia, and relevant Constitutional Court decisions; (2) a comparative case study, involving an examination of constitutional preview mechanisms in France, Germany, Portugal, and Spain to identify implementable models for Indonesia; and (3) conceptual analysis, in which the collected legal materials were interpreted through two theoretical frameworks the Theory of Legal Development (Mochtar Kusumaatmadja) and the Perspective of Social Justice as embodied in the Fifth Principle of Pancasila. This methodological triangulation ensures transparency and analytical rigour by grounding normative conclusions.

C. RESULTS AND DISCUSSION

The Urgency of Establishing Constitutional Preview in Indonesia's Lawmaking Process: The Perspective of Development Law

In the review of legislation, two types of review mechanisms are generally recognised. First, an *a priori* review is conducted on legislative instruments while they are still in draft form or have not yet acquired binding legal force (*preview*). Second, a *posteriori* review, which is applied to legislation after it has formally entered into force (*review*) (Simamora & Manik, 2024).

Within the concept of judicial review, particularly judicial review exercised by the judiciary, it is necessary to distinguish between the terms *judicial review* and *judicial preview*. The term *review* denotes re-examining or reassessing, derived from the words “Re” and “View.” In contrast, *preview* derived from “Pre” and “View” refers to examining an object before it reaches its final or complete form (Simamora & Manik, 2024). With respect to statutory objects, there is a fundamental distinction between legislation that has not yet been formally enacted and, thus, does not possess binding legal force, and legislation that has already been enacted and is legally binding (Simamora & Manik, 2024). If a statute is already in force, its examination is appropriately classified as judicial review. However, if the object under examination remains a draft bill, the process cannot be categorised as judicial review but rather as judicial preview. This implies that when the judiciary is vested with authority to examine an unenacted legislative product, such examination constitutes an *ex ante* review.

The *ex ante* review mechanism is not solely intended to ensure the conformity of draft legislation with the Constitution; it is also to harmonise the draft with other relevant statutes. Such harmonisation is essential to prevent overlapping or conflicting legislation (Bachmid, 2025). The concept of *ex ante* review does not require an assessment of the correspondence between legal norms and empirical facts. Instead, it is preventive in nature, as it focuses on draft legislation rather than laws that have already been enacted. For reviewers, it is sufficient to assess whether the norms contained in a draft bill are synchronised with constitutional norms, thereby minimising the potential for constitutional harm following enactment. Beyond safeguarding constitutionality, *ex ante* review also contributes to improving legislative quality. Poor legislative quality is not only attributable to constitutional incompatibility but also to disharmony with existing statutes and flawed legislative

methodologies. Disharmony among statutes may result in over-legislation and even legal uncertainty due to inconsistent regulatory frameworks (Bachmid, 2025).

When *ex ante* review is specifically linked to constitutional scrutiny, it is referred to as “Preventive constitutional review” or *a priori* constitutional review, which some scholars argue is more accurately described as “Constitutional preview” rather than “constitutional review.” The term *preview* is considered more appropriate because the examination is conducted *a priori* and preventively, before the formal enactment of a draft bill as binding legislation. Accordingly, the review targets a legal instrument that has not yet been officially promulgated. Only after a draft bill has undergone constitutional preview and has been declared consistent with the Constitution may it be enacted as binding law (Simamora & Manik, 2024). By way of illustration, judicial review cases before the Constitutional Court over the past three years demonstrate an increasing number of decisions declaring statutes unconstitutional, as presented in Table 3 below:

Table 3. Summary of Judicial Review of Laws before the Constitutional Court of the Republic of Indonesia, 2023–2025

Year	Registered	Granted	Rejected	Inadmissible	Withdrawn	Dismissed	Granted (%)
2023	168	13	57	41	25	0	7.74%
2024	189	18	77	31	22	8	9.52%
2025	248	32	84	95	38	4	12.9%

Source: mkri.id/perkara/rekapitulasi-perkara/puu

Table 3 indicates a continuous increase in the number of judicial review cases over the past three years. The percentage increase in judicial review registrations from 2023 to 2024 was approximately 12.5%, while from 2024 to early December 2025, it rose significantly to 31.22%. The growing number of registered cases has also affected the outcomes of judicial review proceedings, particularly in terms of granted and rejected petitions. In 2025, the proportion of granted decisions reached 12.9% of the total cases registered during that year, representing an increase of approximately three percentage points compared to 2024. These quantitative data indicate that the Constitutional Court has been working intensively to resolve cases, particularly judicial review cases, amid the growing number of statutes subjected to *a posteriori* constitutional review.

The increasing number of judicial review petitions submitted to the Constitutional Court over the past three years raises serious concerns regarding the quality of legislative drafting in Indonesia. The data show a consistent upward trend: a 12.5% increase from 2023 to 2024, followed by a sharp rise of 31.22% from 2024 to early December 2025. This

significant escalation not only reflects heightened public participation in constitutional litigation, but also signals that a growing number of statutes enacted by the legislature carry constitutional deficiencies, both formally and substantively. In this context, Mochtar Kusumaatmadja's Theory of Legal Development becomes directly relevant to the argument for constitutional preview. Kusumaatmadja posits that law must function not merely as a set of binding norms, but as an active instrument of national development that reflects and reinforces the living values of society (*living law*). Therefore, legislation that fails constitutional standards is not merely a procedural deficiency; it represents a fundamental failure of the law to serve its developmental function. Constitutional preview refers to Kusumaatmadja's theory of intervening at the drafting stage: by screening bills for constitutional conformity before enactment, the mechanism ensures that each legislative product aligns with both the 1945 Constitution and societal values. It is meant to embody, most critically, the principle of social justice as enshrined in the Fifth Principle of Pancasila. In this sense, constitutional preview serves as both a legal safeguard and a developmental instrument, converting Kusumaatmadja's theoretical proposition into a concrete institutional practice capable of deriving the pattern of escalating constitutional deficiencies evidenced by the judicial review data above.

According to Mochtar Kusumaatmadja, law is not an autonomous entity but an integral component of the national development process (Aulia, 2018). Within the development framework, law must function as a means of directing social change and fostering a more orderly, just, and civilised society. From this perspective, the effectiveness of law is largely determined by the quality of the legislation underpinning state governance. Statutes enacted through a sound, methodical, and participatory legislative process are capable of providing legal certainty and preventing normative conflicts. Conversely, laws enacted hastily, without adequate academic analysis and meaningful public participation, tend to produce legal instability and ultimately increase reliance on constitutional adjudication as a corrective mechanism (Hariri & Arifin, 2025).

Empirical data suggest that the rise in judicial review petitions reflects widespread dissatisfaction among citizens and stakeholders with the quality of statutes enacted by the government and the legislature. The 12.5% increase in judicial review cases during the 2023–2024 period already indicated an emerging trend of problematic legislation. The much steeper increase of 31.22% between 2024 and early December 2025 further confirms that legislation produced during this period increasingly deviated from principles of prudence,

clarity of formulation, openness, and hierarchical harmonisation particularly with the 1945 Constitution.

Mochtar Kusumaatmadja asserts that in a state governed by the rule of law, all power must be subject to law, based on the principle of equality before the law (Aulia, 2018). He further argues that the success of law as an instrument of development depends on its effectiveness in society, which can be measured through compliance levels, normative clarity, and systemic stability. A sharp increase in constitutional challenges indicates declining legal effectiveness and growing legal uncertainty, as society no longer perceives enacted statutes as constitutionally sound. This is further evidenced by the increasing ratio of granted judicial review decisions. In 2025, approximately 12.9% of registered judicial review cases were granted, accounting for an increase of about three per cent compared to 2024. This trend demonstrates the Constitutional Court's role in safeguarding the Constitution, while confirming that many challenged statutes indeed contain fundamental constitutional defects.

From the perspective of development law theory, these conditions indicate a regression in Indonesia's legislative system. Mochtar Kusumaatmadja underscores that the quality of law is closely linked to the quality of the institutions that produce it. Weak legislative performance characterised by inadequate public participation, rushed enactment, and insufficient academic review results in laws that fail to function as instruments of development and instead generate normative conflict, legal uncertainty, and additional burdens on the judiciary.

Recent legislative practices in Indonesia, as reflected in the increasing volume of judicial review cases, reveal structural deficiencies in the lawmaking process, including weak academic foundations, limited sociological and philosophical analysis, and closed legislative procedures. Such practices contradict the principle of meaningful participation that characterises modern democratic lawmaking. Consequently, constitutional litigation becomes a direct form of societal correction against flawed legislative processes. If this trend persists, the national legal system risks a crisis of legitimacy. As Mochtar Kusumaatmadja notes, legal legitimacy is largely determined by public acceptance. When legislation is perceived as constitutionally defective or substantively unjust, law can no longer effectively function as a tool of development. Over time, this may undermine legal stability, exacerbate uncertainty, and hinder economic growth and investor confidence.

Therefore, the increasing number of judicial review petitions over the past three years

should not be viewed merely as a judicial technical issue, but as a structural symptom of declining legislative quality. Addressing this problem requires a fundamental reform of the legislative process, as grounded in Mochtar Kusumaatmadja's principles of development law, encompassing methodical drafting, meaningful public participation, strong academic foundations, and a firm commitment to legal certainty and justice. Only through such reforms can law regain its function as an effective instrument of national development.

Formulation Policy for the Establishment of Constitutional Preview in Indonesia from a Social Justice Perspective

The results of this study indicate that Pancasila represents the nation's culture as the nation's noble ideals. Originating from Indonesia's legal tradition, Pancasila reflects a cultural conception consisting of interrelated cultural values, norms, and rules. According to Bernard Arief Sidharta, Pancasila is a *way of life*, formulated as a unity of five principles, each expressing a fundamental value, while simultaneously functioning as an operational principle as the foundation of people's lives, including in the administration of state affairs and the development of practical law (Indra & Budianto, 2021).

A modern legal order is not only expressive, as it articulates a worldview, a sense of justice, and other cultural values, but also instrumental, functioning to achieve societal goals (Herlindah & Darmawan, 2022). To ensure that Indonesian law develops and interacts with other nations, it is necessary to preserve and simultaneously develop general legal principles with a universal character. Within the framework of national development, priority should be given to indigenous principles derived from customary law that remain relevant to contemporary life (Maulana et al., 2024).

According to Prof. Sudikno Mertokusumo, legal principles are not concrete legal rules; rather, they are general foundational ideas that underlie concrete legal norms found within or behind every legal system. These principles manifest in legislation and judicial decisions as positive law and can be identified by examining the general characteristics of specific legal norms (Rokilah & Sulasno, 2021).

Legal principles cannot be equated with legal norms, as a conceptual gap between principles and norms exists. To bridge this gap, legal principles must be incorporated into the lawmaking process by being transformed into legal norms. The main characteristics of legal principles include the following:

2. Legal principles constitute the foundation of the legal system and represent its

basic ideas;

3. Legal principles are more general than statutory provisions or judicial decisions;
4. Legal principles serve as the underlying basis of the legal system;
5. Legal principles are abstract in nature;
6. Unlike statutory rules, legal principles do not lose their validity although no longer applied; and
7. Legal principles may function both within and beyond positive law, as they serve as benchmarks of value (Rokilah & Sulasno, 2021).

As articulated by Jum Anggraini, the relevance of these characteristics to Pancasila is evident in the five foundational principles that underlie Indonesian national life:

2. The principle of Divinity, which mandates that no national legal product may contradict religion or adopt a hostile stance toward it;
3. The principle of Just and Civilised Humanity, which requires that Indonesian law be grounded in humane values and respect for human rights;
4. The principle of Unity and Nationalism, which mandates that Indonesian law function as an integrated national legal system applicable to all Indonesians and serve as an instrument of national unity;
5. The principle of Democracy, which requires that power be subject to law and that sovereignty reside in the people through their representatives; and
6. The principle of Social Justice, which mandates equal rights for all citizens and equality before the law (Indra & Budianto, 2021).

Legal principles serve to guide legislators in the lawmaking process. According to Maria Farida Indrati, when a principle of legislation is transformed into a legal norm, it necessarily entails the existence of sanctions for noncompliance. Therefore, legislators should refrain from directly incorporating legal principles or principles of legislative drafting as legal norms in statutory regulations (Rokilah & Sulasno, 2021). In other words, legal principles should not be codified explicitly in legislation, as doing so reduces them to legal norms, whereas principles occupy a higher normative position than written law. Legal principles embody *rechtsidee* legal ideals that contain intrinsic values while the values inherent in legal principles constitute the fundamental foundations for the realisation of positive law.

The development of principles underpinning the construction of positive law in

Indonesia must consistently adhere to the principles of the Pancasila-based rule of law. Consequently, law must neither be enacted nor enforced through authoritarian power (*machstaat*). The Indonesian conception of the rule of law, characterised by Pancasila, requires that popular sovereignty be exercised in accordance with constitutional democracy, while simultaneously affirming that Indonesia is a democratic state governed by law (*democratische rechtsstaat*) (Hadiprabowo et al., 2024). For comparative purposes, the position of the Pancasila rule of law in relation to other concepts of the rule of law, as described by La Ode Husen (2005), is presented in Table 4.

Table 4. Comparative Analysis of Rule of Law Concepts

Rule of Law Concepts	Key Characteristics	Main elements
Islamic Nomocracy	Derived from the Qur'an and Sunnah; Nomocracy Rather Than Theocracy; Brotherhood and Humanism.	Deliberation, equality, an independent judiciary, and social welfare
<i>Rechstaat</i>	Derived from human reason; liberalistic/individualistic in orientation.	Recognition and protection of human rights, <i>trias politica</i> (separation of powers), administrative judiciary, and governance based on the principle of legality (<i>wetmatig bestuur</i>).
Rule of Law	Derived from human reason; liberalistic/individualistic in orientation.	Supremacy of Law, Equality before the Law, Individual rights
Socialist Legality	Derived from human reason; communist, atheistic, and totalitarian in nature	Law as an Instrument of Socialism.
The Pancasila Rule of Law	A close relationship between the state and religion, grounded in the belief in the One Supreme God, and based on the	Pancasila; a government system based on the rule of law; constitution; independent judiciary and administrative

principle of kinship courts; equality; and
(familialism). separation of powers.

Pancasila serves as the cultural root of the nation and must function as both a guardian of the state and a guide for legal development, reflecting an open approach to the evolving needs of the country (Hadiprabowo et al., 2024). Legal development in Indonesia is closely linked to the formulation of constitutional preview policies within the framework of the Pancasila-based Rule of Law. As a state founded on the belief in One Supreme God and the principle of familialism, Indonesian legal development demands that all policies and legislation from the outset align with moral values, social justice, and collective interests based on the 1945 Constitution (UUD NRI 1945). Constitutional preview functions as a preventive mechanism to ensure that draft laws do not conflict with the Constitution, thereby reinforcing the principles of constitutional supremacy, equality before the law, and the protection of citizens' constitutional rights.

Moreover, the existence of constitutional preview reflects a government system based on law, featuring an independent judiciary, while simultaneously strengthening the separation of powers and the system of checks and balances among the legislative, executive, and judicial branches to achieve the objectives of the Pancasila-based Rule of Law. In this framework, the House of Representatives (DPR) and the President are not the sole authorities determining whether a draft bill becomes law; the judiciary, particularly the Constitutional Court, can assist in aligning the law with constitutional values before it is promulgated (Zain et al., 2023).

Pancasila, as the *staatsfundamentálnorm*, serves as the foundational principle for the formation of legislation, given its role as the nation's *rechtsidee* (Indra & Budianto, 2021). This requires that the formation, implementation, and application of positive law be guided by Pancasila, including during the review of positive law or draft regulations prior to enactment. By establishing Pancasila as the *staatsfundamentálnorm*, legal development must adhere to Pancasila's principles (Hadiprabowo et al., 2024). Efforts to reinvigorate Pancasila in legislation should include, at minimum:

1. The status of Pancasila
2. The foundational basis of Pancasila
3. Alternative forms of Pancasila
4. The direction and objectives of Pancasila (Indra & Budianto, 2021)

According to Jimly Asshiddiqie, all legislation contains provisions that are either mandatory (mandatory provisions) or directive (directory provisions). Mandatory provisions must be strictly followed or fulfilled, whereas directive provisions require substantive adherence (Jimly Asshiddiqie, 2010b). Thus, laws regulating the application of Pancasila in national life are generally directive, providing guidance rather than absolute obligations for the nation.

Legislation should meet the criteria of good legislation. Substantively, laws should be easily identifiable, retrievable, and traceable, with clear form, type, jurisdiction, and authorship (Busthami, 2023). Good legislation binds the public and is created by competent authorities following prescribed procedures. Constitutional preview reinforces this by ensuring both the technical and substantive compliance of draft legislation with the *grundnorm* before promulgation.

1. Article 2 of Law No. 12 of 2011 states that Pancasila is the source of all national laws. According to A. Hamid, the principles for proper legislative formation are as follows: Indonesia's legal ideal Pancasila which serves as both a guiding star and aspiration.
2. The rule of law and constitutional governance principles, which apply Pancasila as fundamental norms.
3. The principles of governance under a constitutional system, establishing legislation as the foundation and limit for governmental activity (Busthami, 2023).

Constitutional preview is highly relevant to the creation of good legislation, as it serves as a preventive instrument to ensure the sequential fulfilment of legal formation principles. Through constitutional preview, draft legislation can be tested against Pancasila as a guiding star and legal ideal, preserving the nation's fundamental values throughout the legislative process. This mechanism reinforces the principles of the rule of law and constitutional governance, ensuring that norms are consistent with the 1945 Constitution as the nation's fundamental law. Ultimately, constitutional preview strengthens governance under the constitutional system, guaranteeing that laws are constitutionally tested and preventing abuse of power from the drafting stage.

Pancasila, as both the nation's way of life and state ideology, embodies intrinsic and instrumental values. Its intrinsic values include social justice for all, people's sovereignty through democracy and representation, and national unity. Its instrumental values translate

into actionable guidance, strategies, objectives, and institutional arrangements, implemented in practice to respond to societal needs and contemporary challenges. Constitutional preview exemplifies the instrumental application of Pancasila's Fifth Principle: Social Justice for All Indonesians.

1. Instrumental and intrinsic values of the Fifth Principle encompass justice across all national sectors for all citizens;
2. Equitable material and spiritual welfare for all;
3. Balance between rights and obligations, and harmonious, sustainable development of social justice is grounded in the principles of divinity, humanity, unity, and democracy.

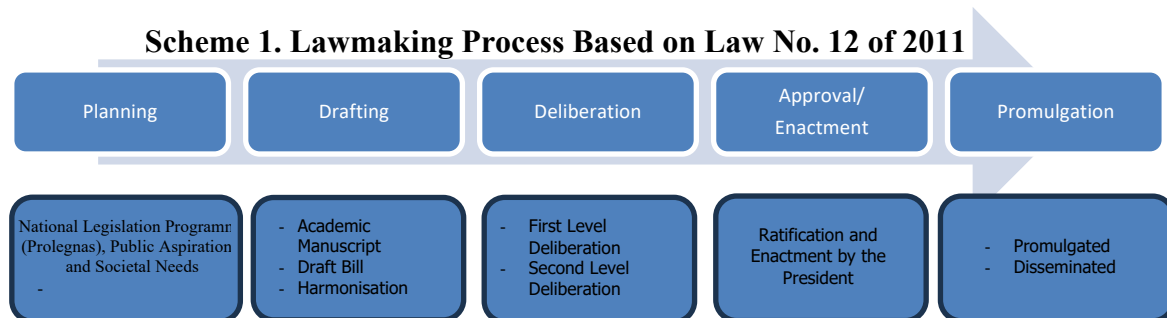
Constitutional preview ensures that legislation adheres to these principles, enabling early evaluation of draft norms to guarantee fairness without discrimination, equitable access to education, health, employment, and livelihood, as well as economic independence and sustainability. It ensures that legislation aligns with social justice, human dignity, and democratic principles.

The Pancasila Value Indicators, as outlined in the Regulation of Pancasila Ideology Building Agency (BPIP Regulation) No. 4 of 2022, guide law and policy formation, monitoring, and review. Aligning draft legislation with these indicators through constitutional preview ensures that legal provisions reflect social justice, citizen welfare, and constitutional compliance. Articles 2 and 3 of the regulation mandate alignment with these indicators, creating a framework in which social justice in lawmaking is achievable, not utopian.

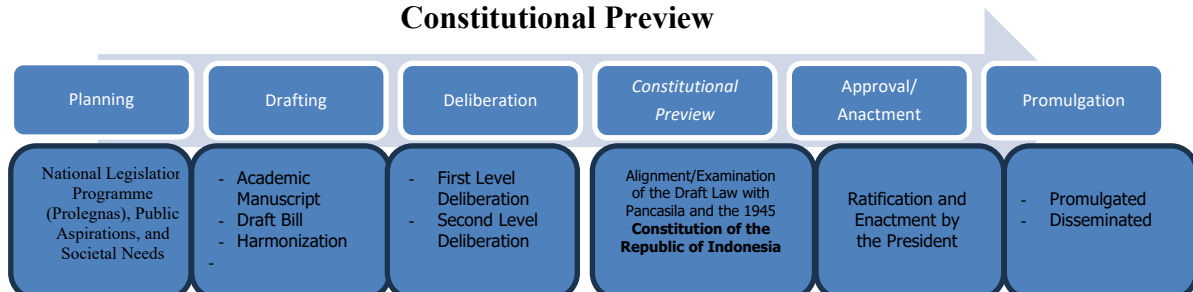
In practice, Indonesia's legislative process consists of five stages: Planning, Drafting, Discussion, Ratification/Approval, and Promulgation (Law No. 12 of 2011, Article 1(1)). Constitutional preview can be integrated between the Discussion and Ratification stages, providing an institutionalised mechanism to assess constitutional alignment and social justice before legislation is enacted.

Through constitutional preview, legislation can be guided from the start to ensure it promotes justice, welfare, creative and responsible citizen engagement, equitable access to education, health, employment, and livelihoods, while fostering sustainable, fair, and environmentally sound economic systems. By serving as a balanced preventive control, constitutional preview transforms the aspiration for high-quality, socially just legislation into a realistic objective within Indonesia's legal and political framework.

Scheme 1. Lawmaking Process Based on Law No. 12 of 2011



Scheme 2. Law-Making Process with the Implementation Mechanism of Constitutional Preview



Source: Created by the author

Every law must aim to promote public welfare; in other words, the Fifth Principle of Pancasila, “Social Justice for All the People of Indonesia,” as the state’s foundational value, should be implemented through legislation that meets the following criteria:

1. Promoting Societal Welfare

Each law formulated under the constitutional preview mechanism is expected to avoid harming the public interest by reviewing its alignment with Pancasila and the 1945 Constitution of the Republic of Indonesia prior to enactment, thereby ensuring the welfare of society across all aspects of life.

2. Avoiding Provisions Detrimental to The Public Interest

Laws developed through the constitutional review mechanism, based on collective agreement, should prioritise the interests of the public as mandated by Pancasila and the 1945 Constitution, ensuring that they are not exploited for the benefit of specific

groups or factions

D. CONCLUSION

Constitutional Preview represents a strategic mechanism for strengthening the quality, constitutionality, and social justice orientation of legislation in Indonesia. By ensuring that draft laws are reviewed for consistency with Pancasila and the 1945 Constitution prior to enactment, this mechanism can prevent constitutional disputes, reduce reliance on ex post judicial review, and enhance legal certainty (Siboy et al., 2022). To implement Constitutional Preview effectively, the government and the House of Representatives (DPR) should initiate amendments to the legislative framework, particularly Law No. 12 of 2011 on Lawmaking as amended, to formally incorporate Constitutional Preview into the lawmaking process. Furthermore, the Constitutional Court should be granted a clearly defined authority to conduct ex ante constitutional review of bills before promulgation, supported by detailed procedural regulations. Strengthening institutional coordination among the legislature, executive, and Constitutional Court is also essential to ensure the effective operation of this mechanism. These measures are necessary to promote legislation that is constitutionally compliant, socially responsive, and aligned with the Fifth Principle of Pancasila is Social justice for all Indonesians.

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