

The Transformation of Judicial *Ijtihad* in the Indonesian Judiciary in Response to the Escalation of Law: A *Maqasid ash-Sharia* Perspective

Ahyar Siddiq,¹ Asmuni²

^{1,2} Universitas Islam Indonesia

Email: 23933010@students.uui.ac.id¹, asmuni@uui.ad.id²

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Abstract:

The advancement of human civilization has revealed one of the inherent weaknesses of positive law in fulfilling its function as a framework for social life. Consequently, transformation within the legal system is imperative as a means of enhancing legal certainty within judicial institutions. Judges required to engage in *ijtihad* (independent reasoning) to facilitate legal transformation and to ensure that the legal order remains responsive and relevant. This study is a literature research study using a qualitative approach. The data used in this study include statutory regulations, books, prior research, and other relevant literatures. The primary objective of this research is to examine how judicial discovery, regarded as a representation of truth in court proceedings, must be interconnected with various supporting instruments to achieve substantive justice in accordance with the framework of *Maqasid ash-Sharia*. The findings indicate that the incorporation of *Maqasid ash-Sharia* within judicial *ijtihad* plays a pivotal role in legal reform aimed at responding to the evolving needs of society. Despite its theoretical significance, the application of this concept in judicial decisions must also be accompanied by the judge's moral conscience, as both elements collectively guide the judge toward rulings that could realize the public welfare (*maslahah*). However, this study acknowledges its limitations regarding the practical implementation of its findings. Therefore, future research employing empirical methods within judicial institutions is recommended.

Abstrak:

Kemajuan peradaban manusia menunjukkan salah satu kelemahan hukum positif dalam memenuhi fungsinya sebagai kerangka kerja bagi kehidupan sosial. Oleh karena itu, transformasi dalam sistem hukum menjadi sangat penting sebagai sarana untuk meningkatkan kepastian hukum dalam lembaga peradilan. Hakim dituntut untuk terlibat dalam *ijtihad* (penalaran independen) untuk memfasilitasi transformasi hukum dan memastikan bahwa tatanan hukum tetap responsif dan terkini. Penelitian ini merupakan penelitian kepustakaan dengan menggunakan pendekatan kualitatif. Data yang digunakan dalam penelitian ini meliputi peraturan perundang-undangan, buku-buku, penelitian terdahulu, dan literatur lain yang relevan. Tujuan utama dari penelitian ini adalah untuk melihat bagaimana penemuan hukum yang dianggap sebagai representasi kebenaran dalam proses peradilan, harus saling berhubungan dengan berbagai instrumen pendukung untuk mencapai keadilan substantif sesuai dengan kerangka *Maqasid al-Syariah*. Temuan-temuan ini menunjukkan bahwa penggabungan *Maqasid al-Syariah* dalam *ijtihad* yudisial memainkan peran penting dalam reformasi hukum yang bertujuan untuk merespons kebutuhan masyarakat yang terus

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| | berkembang. Terlepas dari signifikansi teoretisnya, penerapan konsep ini dalam putusan pengadilan juga harus disertai dengan hati nurani moral hakim, karena kedua elemen tersebut secara kolektif memandu hakim untuk menghasilkan putusan yang mampu mewujudkan kesejahteraan masyarakat (masalah). Penelitian ini mengakui adanya keterbatasan dalam hal implementasi praktis dari temuan-temuannya. Oleh karena itu, penelitian di masa depan yang menggunakan metode empiris di dalam lembaga peradilan direkomendasikan. |
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A. Introduction

In the transformation of Islamic law governing numerous aspects of human development, the need for *ijtihad* undertaken by Islamic scholars becomes essential in addressing emerging issues faced by humanity. Given that many contemporary problems encountered by society are not explicitly mentioned in the Qur'an or Hadith, *ijtihad* serves as a vital mechanism to resolve legal uncertainties and to provide solutions in cases where the legal status remains ambiguous.¹ The practice of *ijtihad* originated from the Prophet Muhammad (peace be upon him), who rendered judgments based on his personal reasoning when faced with situations for which no direct revelation had been received. The Prophet's companions, likewise, engaged in *ijtihad* when confronted with similar issues, thereby contributing to the development of Islamic law. Judges, too, may employ *ijtihad* as a means of resolving legal matters that cannot be adequately addressed through existing statutory provisions.²

The transformation of judicial *ijtihad* holds significant urgency in the development of law in Indonesia. *Ijtihad*, as the rigorous effort of a judge to find legal solutions to societal issues requiring legal certainty, plays a crucial role in addressing contemporary problems that are not explicitly regulated in the scriptural sources or statutory laws. Moreover, the transformation of judicial *ijtihad* is essential to ensure that the law remains relevant and responsive to the evolving dynamics of society, thereby enabling judges to deliver legal solutions that are aligned with the contextual realities and present needs.³ Therefore, within the context of the Indonesian judiciary, the ability of judges to perform *ijtihad* is essential for the proper execution of their judicial duties.

¹ Mohammad Abed Al-Jabiri, *Post Tradisionalisme Islam* (Yogyakarta: LKiS, 2000).

² Repa Hudan Lisalam and Eep Saefullah, "IJTIHAD SAHABAT DI MASA NABI SAW: STUDI ANALISIS RESPON NABI SAW TERHADAP IJTIHAD SAHABAT: Studi Analisis Respon Nabi Saw Terhadap Ijtihad Sahabat," *El-Sunnah: Jurnal Kajian Hadis Dan Integrasi Ilmu* 3, no. 1 (2022): 116–40.

³ Tri Ermayani, "Ijtihad Sahabat Di Tengah Pergumulan Transformasi Pemikiran Hukum," *Humanika: Kajian Ilmiah Mata Kuliah Umum* 6, no. 1 (2006).

In Indonesia's judicial system, judges hold a significant position in the realization of a state governed by the rule of law. Accordingly, judges are consistently expected to provide legal certainty within society through their rulings in the Indonesian court system.⁴ This aligns with the view that judicial proceedings must produce an accurate verdict, where a decision reflects a correlation between the trial process, the outcome of the proceedings, and the values inherent in the legal process.⁵ In order to meet such demands, judges are inevitably required to adopt innovative methodological approaches in conducting legal *ijtihad*, as the rapid pace of societal change cannot be comprehensively regulated by statutory law alone. In Islamic jurisprudence, there is a well-established legal maxim stating that legal rulings may change in accordance with changes in time and place.⁶ Therefore, it is entirely plausible that such changes affect not only the substance of the law itself, but also the level and scope of *ijtihad* exercised by judges.

The study of judicial *ijtihad* has attracted significant scholarly attention, with various researchers exploring its application in Indonesian courts. Saifullah et al. analyzed Constitutional Court decisions through the lens of Integrative Legal Theory, concluding that these rulings align with its core elements—norms, behaviors, and values.⁷ Fachroddin's research on the Religious Court of Kediri showed that judges exercised *ijtihad* in determining *mut'ah* and *nafqah iddah*, considering trial facts, marriage duration, and the husband's financial status.⁸ Susi Susanti emphasized the need to codify judicial *ijtihad* in religious courts to address legal gaps and enhance consistency, supported by established methods of *ijtihad*.⁹ Ilham Tohari and Moh. Anas Kholish advocated for a *Maqasid ash-Sharia*-based *ijtihad* as a foundation for reforming Islamic family law, highlighting its adaptability and interdisciplinary nature.¹⁰ However, Rizki Pradana Hidayatullah found that Indonesian judges have already

⁴ Susi Susanti, "Modifikasi Ijtihad Hakim Pengadilan Agama Dan Relevansinya Terhadap Hukum Islam," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 17, no. 1 (September 23, 2019): 27, <https://doi.org/10.32694/010700>.

⁵ Jaenal Arifin, *Peradilan Agama Dalam Bingkai Reformasi Hukum Di Indonesia* (Kencana, 2008).

⁶ Murtadho Ridwan, "IMPLEMENTASI KAIDAH "PERUBAHAN HUKUM ISLAM SEBAB PERUBAHAN TEMPAT DAN WAKTU" PERSPEKTIF EKONOMI ISLAM," *Profit : Jurnal Kajian Ekonomi Dan Perbankan Syariah* 2, no. 2 (October 20, 2018): 18–32, <https://doi.org/10.33650/profit.v2i2.557>.

⁷ Saifullah Saifullah, Abdul Azis, and Mustafa Lutfi, "Transformasi Nilai-Nilai Hukum Islam Dalam Yurisprudensi Putusan Mahkamah Konstitusi Perspektif Teori Hukum Integratif," *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 1 (June 15, 2020): 1–16, <https://doi.org/10.18860/j-fsh.v12i1.8579>.

⁸ Fakhriatus Sa'adah, "IJTIHAD HAKIM DALAM MENENTUKAN KADAR MUT'AH DAN NAFKAH IDDAH," *Jurih: Jurnal Ilmu Hukum* 1, no. 1 (2022): 67–81.

⁹ Susanti, "Modifikasi Ijtihad Hakim Pengadilan Agama Dan Relevansinya Terhadap Hukum Islam."

¹⁰ Ilham Tohari and Moh. Anas Kholish, "IJTIHAD BERBASIS MAQASHID SYARIAH SEBAGAI PIJAKAN KONSEPTUAL DALAM PEMBARUAN HUKUM KELUARGA ISLAM INDONESIA," *Jurnal Hukum & Pembangunan* 50, no. 2 (September 28, 2020): 462, <https://doi.org/10.21143/jhp.vol50.no2.2587>.

applied *Maqasid ash-Sharia* principles through interpretation, argumentation, and legal construction, underlining its integral role in contemporary judicial reasoning.¹¹

The previous studies discussed above share certain similarities and differences with the present research, commonly referred to as research gap. Before addressing these gaps in detail, it is important to note that this study constitutes a continuation and development of earlier research, as it similarly explores the theme of judicial *ijtihad* in the context of Islamic legal reform. However, there are notable differences, particularly in terms of research focus chosen. This study specifically examines the concept of the transformation of judicial *ijtihad* in a way that reflects justice, analyzed through the lens of *Maqasid ash-Sharia*, which holds an essential position in legal formulation as a means of advancing the legal system in Indonesia. In contrast, the earlier studies reviewed did not focus on this particular aspect, thereby highlighting the unique contribution and relevance of the present research.

Considering the aforementioned issues, a central question arises: how does *Maqasid ash-Sharia*, as an integral part of Islamic law, perceive the practice of judicial *ijtihad* transformation in Indonesia as a responsibility that must be undertaken in the pursuit of legal advancement? Accordingly, this research aims to arrive at a conclusion regarding the transformation of legal *ijtihad* from the perspective of *Maqasid ash-Sharia*, as carried out by judges as part of their role in upholding the law in Indonesia. The expected outcome is revealing how such transformation contributes to the realization of justice and to articulate the evolving nature of judicial *ijtihad* over time, despite its continued reliance on the foundational sources of the Qur'an and Hadith.

B. Method

This article is literature research, which involves a series of investigative activities wherein data and information are collected using resources available in libraries. These include books, important documents, historical records, and other forms of pure library-based research materials related to the transformation of judicial *ijtihad* in the context of legal escalation.¹² The approach employed in this study is qualitative, whereby the researcher seeks to describe and analyze the phenomenon of judicial *ijtihad* in the escalation of law within the Indonesian judicial system. This analysis is subsequently conducted through the lens of

¹¹ Rizki Pradana Hidayatullah, "Penemuan Hukum Oleh Hakim Perspektif Maqashid Syariah," *TERAJU* 2, no. 01 (2020): 83–97.

¹² Mahmud, *Metode Penelitian Pendidikan* (Bandung: Pustaka Setia, 2011).

Maqasid ash-Sharia. The sources of data used in this research consist of both primary and secondary materials, such as statutory laws. The data analysis technique begins with the collection of relevant literature, including statutes, books, and previous research. The collected data are then reduced based on the research needs and presented in narrative form, ultimately leading to the formulation of a conclusion.

C. Result

This study found that legal findings, which are considered to represent the truth in the judicial process, must be interrelated with various supporting instruments to achieve substantive justice in accordance with the Maqasid al-Syariah framework. These findings indicate that the incorporation of Maqasid al-Syariah in judicial *ijtihad* plays an important role in legal reform aimed at responding to the evolving needs of society. Despite its theoretical significance, the application of this concept in court rulings must also be accompanied by the moral conscience of judges, as both elements collectively guide judges to produce rulings that can realize the welfare of society (*maslahah*). Maqashid Asy-Syariah refers to the meaning and wisdom serving as the primary objectives behind the establishment of Islamic law by Allah, manifested through the provisions of Sharia norms. In general, these objectives aim to realize the welfare of humankind, both in material (worldly) and spiritual (hereafter) aspects. In the development of judicial *ijtihad*, *Maqashid Asy-Syariah* is regarded as part of the legal transformation process, as it provides broad opportunities for the development of law to achieve human welfare. Its core principle is to maintain the attainment of the law's objectives rather than being bound to the instruments used to achieve them. While these instruments may change according to circumstances, the objectives of the law remain eternal. If these objectives are altered or removed, a good and prosperous life will not be achieved.

D. Analysis and Discussion

1. Judges and the Judicial *Ijtihad* Methods as a Framework for Legal Protection in Islam

From a historical perspective, the advancement of Islam has demonstrably brought significant transformation to human civilization. Transformation occurs through two different methods: rapid (revolutionary) and gradual (evolutionary). These changes inevitably

affect various aspects of societal life, such as governance, law, economy, education, etc., either directly or indirectly.¹³ The impact of such transformations also extends to Islamic law. Social imbalances have led to differing dynamics between law and society, thereby demanding a transformation of Islamic law to keep up with the advancement of science and technology within the context of evolving civilization and culture.¹⁴

The adaptation of Islamic law to the modern era is inseparable from the core values of Islam. First, it is impeccable—meaning that the fundamental principles of Islamic law are flawless and universally recognized across diverse contexts. Second, Islamic law is adaptable, signifying its conforming capacity to changing circumstances, environments, locations, and times. Third, Sharia law is both global and dynamic, encompassing various aspects within a comprehensive legal framework. Fourth, it is systematic—a coherent set of norms that are interrelated and mutually reinforcing. Fifth, Sharia law possesses both vertical and horizontal dimensions, or *ta'qquli* (rational/legal reasoning) and *ta'abbudi* (devotional/ritual obligation).¹⁵

During the *sahabah* (companions) period, Islam had spread widely, reaching numerous regions, and experienced rapid development in parallel with the growth of local and national economies.¹⁶ The evolution of Islam has undoubtedly brought about modifications in Islamic law. During this period, three primary factors influenced the development of Islamic law. First, the emergence of new events or situations for which there were no explicit explanations in the Qur'an and Hadith. Second, the rise of circumstances in which the Qur'an and Hadith do provide legal directives, but their application proved to be difficult or complex. Third, the Qur'an offers clear responses, but these are dispersed across different verses and not consolidated in a single, unified legal ruling.¹⁷

The spreading of the *Sahabah* across various regions with differing cultural contexts as result of the rapid expansion of Islam had a significant impact on the legal rulings they implemented, leading to variations of implementations in different locations. These differences stemmed from the diverse perspectives of the *Sahabah* in determining

¹³ Wahyu Ningsih, "IMPLEMENTASI IJTIHAD DAN TAQLID DI ERA KONTEMPORER," *Jurnal Asy-Syukriyyah* 24, no. 2 (December 14, 2023): 152–71, <https://doi.org/10.36769/asy.v24i2.406>.

¹⁴ Rini Angreni Hasibuan et al., "Metode Ijtihad Kontemporer Versi Yusuf Qordhawi," *Kariman: Jurnal Pendidikan Keislaman* 11, no. 1 (June 30, 2023): 119–44, <https://doi.org/10.52185/kariman.v11i1.258>.

¹⁵ Mugiono Mugiono, "KONSTRUKSI PEMIKIRAN ISLAM REFORMATIF M. ABID AL-JABIRI," *TAJDID: Jurnal Ilmu Ushuluddin* 14, no. 2 (November 2, 2015): 203–22, <https://doi.org/10.30631/tjd.v14i2.26>.

¹⁶ Lukman S Thahir, *Studi Islam Interdisipliner: Aplikasi Pendekatan Filsafat, Sosiologi, Dan Sejarah* (Qirtas, 2004).

¹⁷ Rini Angreni Hasibuan et al., "Metode Ijtihad Kontemporer Versi Yusuf Qordhawi."

appropriate legal judgments for specific situations. However, such variations did not deter them from engaging in *ijtihad*; on the contrary, they were motivated by the belief that *ijtihad* was necessary to address issues not explicitly ruled by the Qur'an and Hadith.¹⁸

In Islamic studies, *ijtihad* is understood as a process of legal reasoning aimed at deriving rulings from the sources of revelation, while adhering to the principles and procedures established in legal theory. Wael B. Hallaq, in his work, explains that the domain of legal reasoning and interpretation—accurately referred to as *ijtihad*—is central to Islamic law. However, he also emphasizes that not all aspects of *Sharia* are subject to *ijtihad*, as certain texts (*nusus*) contain clear and detailed provisions that leave no room for reinterpretation.¹⁹

Ijtihad has existed since the time of the Prophet Muhammad (peace be upon him), as is well known. After his death, the *Sahabah* (companions) assumed a central role in the practice of *ijtihad*. At that time, the Muslim community already possessed the foundational principles of law in the form of the Qur'an and Hadith, alongside customary practices (*'urf*), *ijma'* (consensus), and *qiyas* (analogical reasoning). Several notable examples of *ijtihad* by the companions include the following: First, because the Qur'an had not yet been compiled into a single manuscript and many of its memorizers (*hafiz*) were killed in battle, 'Umar ibn al-Khattab exercised *ijtihad* by proposing the collection and documentation of the Qur'an into a single book containing a collection of pages (*mushaf*). Second, in the matter of punishing those who consumed *khamr* (intoxicants), 'Ali ibn Abi Talib applied *ijtihad* to determine a legal standard equivalent to that applied to those who falsely accuse others of adultery. This was based on the reasoning that an intoxicated person is delusional, unable to control their speech or actions, and may be prone to making such accusations.²⁰

A well-known account frequently cited by Islamic legal scholars concerns the differing interpretations among the Prophet's companions regarding a hadith from the Battle of Khandaq, in which the Prophet stated, "Do not perform the 'Asr prayer except at Banu Qurayzah." In interpreting this directive, the companions were divided in their understandings. Some performed the 'Asr prayer during the journey, while others waited until they reached Banu Qurayzah. This divergence arose from differing methodological

¹⁸ Amir Mu'allim, *Ijtihad Dan Legislasi Muslim Kontemporer* (Yogyakarta: UII Press, 2005).

¹⁹ Rüdiger Lohker, "Fiqh Reconsidered: Indigenization and Universalization of Islamic Law in Indonesia," *Interdisciplinary Journal for Religion and Transformation in Contemporary Society* 7, no. 1 (July 8, 2021): 188–208, <https://doi.org/10.30965/23642807-bja10011>.

²⁰ Mu'allim, *Ijtihad Dan Legislasi Muslim Kontemporer*.

approaches: one group prioritized the *maqāṣid* (underlying objectives) of the instruction, while the other adhered strictly to its literal meaning.²¹

To reconstruct a systematic Islamic legal methodology, articulating the Qur'anic worldview is essential. This includes understanding God, humanity, nature, and their interconnected roles. Such worldview clarifies moral teachings, forming the basis for an ethical framework from which relevant legal rulings can be derived. The second vital step is constructing a coherent Qur'anic ethical system, a task largely unaddressed. Qur'anic ethics bridges theology and law, transforming moral values into binding legal norms. Unlike abstract ethics, the Qur'an grounds its moral teachings in actionable commands. Thus, law must grow from this ethical foundation, aligning divine guidances with evolving human realities.

Such phenomenon can be observed in Indonesia, a state governed by the rule of law, in which the exercise of state authorities and the functioning of government are regulated by legal norms. Likewise, the exercise of judicial power through the court system is also governed by law. Article 2, paragraph (3) of Law No. 48 of 2009 on Judicial Power stipulates that all courts throughout the territory of the Republic of Indonesia constitute state courts governed by statutory law. Based on this provision, all Religious Courts in Indonesia are therefore considered state courts regulated by national legislation.²²

The teachings of Islam consist of three cumulative and comprehensive components together forming a unified system: *aqidah* (creed), *Sharia* (law), and *akhlak* (ethics). These elements are interconnected, interdependent, and mutually reinforcing. According to Mahmud Shaltout, *Sharia* is a system of legal order established by Allah SWT, or at least whose fundamental principles are divinely ordained, to serve as a guide for humanity in its relationship with God, with fellow Muslims, with other human beings, with the environment, and with oneself. The true function of the courts in Indonesia, as state courts, is to exercise state authority in the field of the judiciary (judicial power). As the executors of this authority, state courts are tasked with upholding the law and delivering justice to the parties involved in legal disputes.²³

²¹ Nasruddin Yusuf et al., "EXAMINING THE BASIS OF MAQASHID SYARIAH IN RENEWAL OF ISLAMIC LAW IN INDONESIA," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 9, no. 1 (March 2, 2024), <https://doi.org/10.22373/petita.v9i1.258>.

²² A. Mukti Arto, *Membangun Sistem Peradilan Berbasis Perlindungan Hukum Dan Keadilan* (Yogyakarta: Pustaka Pelajar, 2021).

²³ A. Mukti Arto, *Praktik Perkara Perdata Agama: Berbasis Perlindungan Hukum Dan Keadilan*, 1st ed. (Yogyakarta: Pustaka Pelajar, 2024).

Every judicial decision seeks to resolve disputes fully, ensuring no unresolved issues remain and avoiding the emergence of new conflicts. Its goal is to grant each party what is rightfully theirs, in line with justice and fairness. Judicial outcomes fall into three main categories: judgments, rulings, and deeds of settlement. Judgments resolve contentious cases and are declared in open court. Rulings result from non-contentious applications but are also delivered publicly. Deeds of settlement arise from mutual agreements or mediation, holding equal legal weight as judgments. Additionally, some court-issued documents, like deeds of comparison or inheritance certificates, also carry binding legal authority.²⁴

A judgment or ruling must be drafted at least one week prior to its pronouncement in court to avoid discrepancies between the written content and the version delivered orally during the hearing. This requirement is stipulated in the Circular Letters of the Supreme Court No. 5 of 1959 dated April 20, 1959, and No. 1 of 1962 dated March 17, 1962. It is also important to note that judges issue various other rulings of an administrative and technical nature, which are not products of formal court proceedings but are intended to ensure the smooth conduct of the trial. These include, for example, orders setting hearing dates, orders for the imposition of provisional seizure, and orders for the delivery of decision copies to the parties. Such rulings are not the result of courtroom proceedings, do not need to be pronounced in an open court session, and do not bear the formal title “In the Name of Justice Based on the Belief in the One and Only God.”²⁵

2. The Transformation of Judicial *Ijtihad* in Legal Escalation Toward Judicial Decisions and Their Implications: A *Maqasid ash-Sharia* Perspective

From the perspective of legal philosophy, justice can be approached from both procedural and substantive dimensions. Procedural justice refers to justice derived from the application of formal statutory laws, whereas substantive justice is achieved by uncovering and applying values that emerge from and are embedded within the lived experiences of society. While statutory regulations must indeed serve as a reference point for judges in their legal reasoning, judges are also obliged to interpret these laws through the lens of legal philosophy. Legal philosophy is essential in cultivating a judge’s sense of justice so that, in

²⁴ Arto, *Membangun Sistem Peradilan Berbasis Perlindungan Hukum Dan Keadilan*.

²⁵ H Margono, “Asas Keadilan, Kemanfaatan, Dan Kepastian Hukum Dalam Putusan Hakim,” 2019.

applying and interpreting the law to concrete legal issues, the judge can internalize and reflect the social sense of justice presents within the community before delivering a decision.²⁶

Ancient Greek philosophers asserted that justice is closely related to ethics. As Polemarchus stated, justice is the act of giving everyone what is rightfully theirs within society. In line with this view, Plato also emphasized that justice is a fundamental form of wisdom, free from external interference, and is concerned with maintaining the proper order among all segments of society, individuals, and the soul, each within its appropriate limits.²⁷

Gregory Leyh maintained that legal decisions are the result of a form of humanistic judgment that transcends the methodical application of legal rules. Quoting Ronald Beiner's interpretation of Leyh's view, judgment is described as a form of mental activity that is not bound by rigid rules, not subject to the specifications of procedural rationality, and operates beyond the constraints imposed by rule-governed thinking. This type of mental activity is essential for lawyers and judges who must balance the competing values present within a given case.²⁸ The realm of the judiciary, in essence, is a domain deeply embedded with values, rather than one that is value-free. The judicial world is not a purely technical field akin to a juridical machine that negates or disregards the role of values themselves.

The status of the Religious Courts is regulated under Law Number 3 of 2006 concerning the amendment to Law Number 7 of 1989 on Religious Courts, in conjunction with the Supreme Court Circular Letter Number 2 of 1990 on the Guidelines for the Implementation of Law Number 7 of 1989. According to these legal instruments, the Religious Courts serve as one of the judicial authorities for Muslim citizens seeking justice, with jurisdiction over specific matters in the fields of marriage, inheritance, wills, grants, maintenance, zakat, infaq, *shadaqah*, and *sharia*-based economic affairs.²⁹

In the judiciary history of Indonesia, particularly its Religious Courts, exists an undeniable record of challenges, including a tarnished reputation due to corruption cases, institutional decline, and a notably low level of professional competence. This perception is shared by segments of Indonesian society and is well-documented in various academic and public sources. Nonetheless, this represents a historical chapter that is widely regarded as

²⁶ Amran Suadi, "Filsafat Pengetahuan Dan Kebenaran," 2023.

²⁷ Komal Parnami, "Concept of Justice Difficulties in Defining Justice," *Int'l J.L. Mgmt. & Human.* 2 (2019): 80.

²⁸ John Ferejohn and Pasquale Pasquino, "Rule of Democracy and Rule of Law," in *Democracy and the Rule of Law* (Cambridge University Press, 2003), 242–60, <https://doi.org/10.1017/CBO9780511610066.011>.

²⁹ Zainal Arifin Hoesein, *Kekuasaan Kehakiman Di Indonesia: Sejarah, Kedudukan, Fungsi, Dan Pelaksanaan Kekuasaan Kehakiman Dalam Perspektif Konsitusi* (Setara Press, 2016).

undesirable and not to be repeated.³⁰ However, this phenomenon reflects the possibility of the existence of a disconnection between legal enforcement and the moral integrity of law enforcers—particularly judges—despite these two elements are inherently complementary. Citing the view of Lon L. Fuller on "*the morality of law*," he asserts that law, as an institution, cannot be separated from morality. The relationship between the two is necessary, as law inherently contains legal principles rooted in moral values. Through his concept of the "*inner morality of law*," Fuller emphasizes that the legal system serves a specific purpose: to guide legal subjects to obey rules that align with moral principles, a notion he refers to as the "*idea of fidelity to law*." This aligns with the legal maxim: *Judex habere debet duos sales, salem sapientiae, ne sit insipidus, et salem conscientiae, ne sit diabolus*—"A judge must possess two qualities: the salt of wisdom, lest he be foolish; and the salt of conscience, lest he be wicked."³¹

On the other hand, we have elaborated the concept of the integration–interconnection of knowledge, emphasizing that integration differs from interconnection. Integration, in its literal sense, involves the incorporation and assimilation of certain principles or elements into an existing system—whether scientific or normative. In the context of Islamic law, integration may occur within Islamic legal scholarship as well as in its practical application. With regard to the practice of Islamic law, integration is not carried out in a raw or indiscriminate manner by simply inserting external elements and institutions into the framework of Islamic law. Rather, it is undertaken through a specific internal mechanism, such that the integrated external norms and institutions emerged within the structure and identity of Islamic law. Conversely, indiscriminate integration would reduce the law to a mere patchwork system, devoid of coherent identity.

Interconnection refers to an approach in scholarly inquiry wherein a particular discipline is examined alongside and in dialogue with other related or adjacent fields of knowledge. This "dialogue" can take place through what is termed the "4Cs": comparison, complementation, confirmation, and contribution. Not all four components must be applied simultaneously; often, only one or two may be employed, depending on the needs and relevance of the research. Comparison involves a comparative study, such as that between Islamic law and conventional law, to identify similarities, differences, or mutual influence. Complementation refers to the borrowing and application of data or theoretical frameworks

³⁰ Cate Sumner, et al, "Courting Reform: Indonesia's Islamic Courts and Justice for the Poor," *International Journal For Court Administration* 4, no. 1, (2011), <https://doi.org/10.18352/ijca.66>

³¹ *Filsafat Pengetahuan dan Kebenaran: Implementasi Dalam Putusan Hakim*.

from other disciplines to enhance analysis within a particular field. Confirmation entails reinforcing findings in one field with those from another. Contribution occurs when one field of knowledge provides materials, data, or analytical methods to another. At this point, interconnection intersects with integration. However, in the practice of law, such contribution—like integration—is not implemented in a raw or indiscriminate manner, but rather through a specific internal mechanism, ensuring that the resulting legal product retains its own identity and does not appear foreign.³²

Thus, the ultimate goal for justice seekers is to obtain what is rightfully theirs. To that end, it is the judge's duty to provide an executable decision: one that can be readily enforced. Caliph 'Umar ibn al-Khattab once stated, "Indeed, there is no benefit in issuing a just and correct judgment if it cannot be enforced. A judgment that cannot be executed is, in reality, meaningless." In a similar vein, William E. Gladstone famously remarked, "Justice delayed is justice denied," implying that a postponed justice is, in effect, a denied justice. Delayed justice can no longer be considered justice.

Therefore, judges are obligated to issue rulings that are just and enforceable through means that are practical, ethical, humane, and solution-oriented. In this context, just is understood as being consistent with the fundamental parameters of justice itself. Practical refers to decisions that are easy to implement, straightforward, and not unnecessarily complicated or verbose. Ethical means that enforcement should be carried out in a dignified manner, without causing emotional harm. Humane signifies that the process must uphold human values and dignity, both for the parties involved in the case and for those affected by the execution of the judgment. Finally, solution-oriented implies that the resolution of the case should truly bring closure, leaving no residual issues or negative consequences, and without damaging the social relationship between the parties.³³

In another discussion, before entering the realm of courtroom proceedings or judicial decisions, the judicial system essentially offers a tiered dispute resolution clause—commonly referred to as legal escalation mechanisms—such as mediation, negotiation, or conciliation. These clauses are considered more effective and efficient, particularly in civil matters, as they provide a more affordable means of resolution, offer flexibility in the settlement process, and help preserve interpersonal relationships. However, if these

³² Syamsul Anwar, "Studi Hukum Islam Kontemporer: Bagian Dua" (Yogyakarta: UAD Press, 2020).

³³ Arto, *Praktik Perkara Perdata Agama: Berbasis Perlindungan Hukum Dan Keadilan*.

mechanisms cannot be successfully implemented, then formal litigation becomes the final recourse to achieve justice.³⁴

Therefore, in such situations, justice seekers consistently hope that all of their rights, be it violated or denied by others, can be restored through a judicial decision and that the legal protections owed to the litigating parties can be effectively realized. This objective can only be achieved if the judge's decision is enforceable as intended, either voluntarily by the losing party, or, if necessary, through coercive means involving state enforcement mechanisms when voluntary compliance is not achievable.

Since the enactment of Law Number 7 of 1969, Religious Courts have been authorized to execute their own decisions independently, without requiring assistance from the General Court. With the implementation of this Religious Courts Law, the provisions concerning *executorial verklaring* and ratification by the General Court were abolished. Furthermore, each Religious Court was assigned bailiffs to carry out the enforcement of its judgments directly.³⁵ When we speak of the transformation of judicial *ijtihad* within the context of legal escalation, it inevitably produces various impacts resulting from this evolving process. These impacts include, among others:

a. The Impact of Truth and Knowledge on Legal Discovery

It is the application of philosophical views that define truth as the correspondence between knowledge and its object is valuable in legal discovery and the pursuit of justice. From an epistemological standpoint, achieving justice requires a sound methodology. Meanwhile, axiological concerns raise questions about which norms are legitimate, preferable, or commonly practiced, based on their practical outcomes. Applying the dialectic of knowledge and truth to law supports a coherent framework where each part strengthens the other. In judicial proceedings, this approach guides judges in evaluating evidence and forming reasoned decisions. Their role demands impartiality, conscience, and commitment to justice for all parties involved.

The process of legal development carried out by judges or other legal officials entrusted with applying broad legal norms to specific legal situations is known as legal discovery, or what is often referred to as *rechtsvinding*. On the other hand, legal application

³⁴ Didem Kayali, "Enforceability of Multi-Tiered Dispute Resolution Clauses," *Journal of International Arbitration* 27, no. Issue 6 (December 1, 2010): 551–77, <https://doi.org/10.54648/JOIA2010033>.

³⁵ Arto, *Praktik Perkara Perdata Agama: Berbasis Perlindungan Hukum Dan Keadilan*.

involves recalling specific concrete events (*das Sein*) through the concretization or individualization of universal legal norms (*das Sollen*). Van Eikema Hommes refers to legal discovery in this sense as a distinctive form of judicial-logical reasoning, which Wiarda terms heteronomous legal discovery, wherein the logical-analytical component is regarded as absolute.

Legal discovery is conducted based on certain guiding principles. In this regard, two primary perspectives can be identified. The first is held by proponents of the *seins-clair* doctrine, who argue that legal discovery by judges is only necessary when: (1) no regulation can be found to address a specific case, and (2) the existing regulation is either absent or unclear. The second perspective holds that judges always, and without exception, engage in legal discovery. In addressing every case brought before them, judges are seen as continually involved in legal discovery by applying abstract legal norms to concrete events. Methods of legal discovery can be distinguished between interpretative and constructive approaches. In the interpretative method, the judge's reasoning remains anchored to the text of the statute. In contrast, the constructive method involves the judge employing logical reasoning to further develop the meaning of a statutory provision, wherein the judge no longer strictly adheres to the literal wording of the text, provided that the law is still regarded and respected as a coherent system.

When observing the current legal culture within Indonesia's legal system, it is heavily dominated by the school of legal positivism, which prioritizes the application of positive law in legal enforcement. However, an exclusive reliance on legal positivism may hinder the realization of substantive justice. Therefore, as a state governed by the rule of law, Indonesia must prioritize the incorporation of social justice values in the enforcement of law to ensure that justice is meaningfully achieved. To achieve social justice, this prevailing legal orientation must be critically addressed, and legal reform is necessary to move law enforcement toward a more just and equitable direction.³⁶

The act of applying existing written law to a particular case and the process of discovering new legal rules in the absence of written provisions are the two principal dimensions of legal discovery. One of the recurring challenges faced by judges when producing decisions is that written law often proves insufficient in resolving certain issues. So, judges are compelled to determine the applicable law or construct new legal provisions

³⁶ Arsyad Aldyan and Abhishek Negi, "The Model of Law Enforcement Based on Pancasila Justice," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (November 17, 2022): 178–90, <https://doi.org/10.53955/jhcls.v2i3.51>.

to supplement existing legislation while delivering their judgment. This is also grounded in the notion that judges cannot dismiss or abandon a case simply due to the ambiguity or absence of clear legal provisions.

b. The Interrelation Between Conscience, *Maqasid ash-Sharia*, and Truth

When the human mind embarks on its quest, truth is its ultimate destination. However, in the pursuit of truth within the realm of law, two essential instruments—*Maqasid ash-Sharia* and conscience—serve as the hallmarks of human dignity. This relationship arises from the belief that legal truth has two principal aims in addition to its legislative function of affirming legal certainty: a utilitarian aim (to offer substantial benefit to society) and an ethical aim (to deliver a sense of justice to those who are right).

According to ethical philosophy, the sole purpose of law is to uphold individual rights and realize justice. In contrast, utilitarian theory holds that the aim of law is to serve the interests of all members of society. In practice, legal enforcers can integrate these two perspectives: while utility can be assessed through the application of *Maqasid ash-Sharia*, ethics can be examined from the standpoint of conscience.

Many Muslim scholars consider *Maqasid ash-Sharia* to be a strong foundation to address the ongoing challenges and complexities of human life. As noted by the prominent Muslim scholar Yusuf al-Qaradawi, the significance of *Maqasid ash-Sharia* in Islamic law lies in its potential to serve as one of the core criteria for qualifying a *mujtahid*. This is because the central concept of *Maqasid ash-Sharia* is the actualization of benefit (*maslahah*) and the avoidance of harm (*mafsadah*)—that is, to promote good and prevent evil—which reflects the very purpose for which Islamic law was revealed to humanity.³⁷

Whether consciously acknowledged or not, and whether one agrees or disagrees, positive law often represents the values of Islamic law through the lens of *Maqasid ash-Sharia*. For example, the objective of preserving life is, in practice, reflected in various aspects of positive law that implicitly adopt *maqasid*-based values. Provisions such as the prohibition against running red lights or the requirement to wear seatbelts are not merely juridical regulations; rather, they serve a broader purpose: the protection of human life. This modern understanding significantly departs from the classical definition of *maqasid* related to the

³⁷ Nur Kholisha et al., “The Significance of Maqasid Syariah Principles in Improving Islamic Economics and Finance,” *International Journal of Innovation, Creativity and Change* 13, no. 3 (2020).

preservation of life, which was traditionally associated with fulfilling basic human needs such as food and drink, or other narrowly defined classical interpretations.³⁸

The concept of *Maqasid ash-Sharia*, a distinct feature of Islamic legal theory, emphasizes the actualization of benefit and the prevention of harm in all actions related to the application of law. According to Wahbah al-Zuhaili, *Maqasid ash-Sharia* refers to the meanings (*al-ma'ani*) and objectives (*al-ahdaf*) that exist in all, or the majority, of *Sharia* rulings. Islamic law encompasses three levels of objectives: primary (*dharuriyyat*), secondary (*hajiyyat*), and tertiary (*tahsiniyyat*). According to al-Shatibi, the *dharuriyyat* category, also known as *al-kulliyat al-khams*, includes five essential elements of public interest (*maslahah*): the preservation of religion (*hifz al-din*), life (*hifz al-nafs*), lineage (*hifz al-nasl*), property (*hifz al-mal*), and mind (*hifz al-'aql*).³⁹

Everyone must uphold these objectives to live a fulfilling life, as failure to do so would result in disaster. *Hifz al-din* ensures that individuals have the freedom to hold beliefs that provide them with comfort and a sense of purpose in life, thereby enabling them to truly comprehend what it means to be human.

For the same reason, *hifz al-nafs* guarantees that the most valuable aspect of human existence—human life itself—cannot be taken by force. *Sharia* prohibits murder in this context because it endangers not only the life of the individual but also the lives of others, such as by retaliatory actions.

Furthermore, *hifz al-nasl* addresses the human need for a noble identity, which is why *Sharia* prohibits adultery and similar practices. Likewise, the principle of *hifz al-mal* upholds the human need for wealth as a foundational aspect of existence. In this regard, *Sharia* forbids any behavior that endangers another person's property, including theft, robbery, usury (*riba*), fraud, and corruption.

Similarly, since a sound mind is a fundamental attribute of a fully conscious human being—and because it is through reason that human beings are elevated in dignity—the loss of rationality is considered a diminution of one's humanity. In this regard, the consumption of alcohol is prohibited by *Sharia* because it violates human dignity by impairing one's rational faculties, reducing a person to the level of an irrational being.

³⁸ Ahmad Faishal Nur and Orien Effendi, "The Steep Road to Renewal of Islamic Law through Maqasid Values," *Jurisprudensi: Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam* 15, no. 2 (August 29, 2023): 370–84, <https://doi.org/10.32505/jurisprudensi.v15i2.6415>.

³⁹ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Full Editi (Jakarta: Gema Insani Press, 2011), <https://opac.perpusnas.go.id/detailopac.aspx?Id=118843>.

In addition to the five primary objectives mentioned above, some scholars have added a sixth objective: the preservation of honor (*hifẓ al-ʿirdh*), which is at times considered even more valuable than human life itself. When evaluating truth in the context of law, these objectives must always serve as fundamental guiding principles.

The entirety of the *Maqasid ash-Sharia* ultimately converges on a single objective: public welfare (*al-maslahah*). This is grounded in the understanding that all laws and regulations are established solely for the benefit of humankind—namely, to promote benefit (*jalb al-manfaʿah*) and to prevent harm or corruption (*dafʿ al-mafsadah / al-madharrah*).⁴⁰

In the application of law within society, exists a crucial relationship between the discovery of truth and the objectives of *Maqasid ash-Sharia*. This is because the enforcement of law is not merely a matter of aligning an event with the literal wording of legal provisions. Rather, to better safeguard public welfare, lawmakers—particularly judges—must actively seek and formulate evolving legal principles, while remaining attentive to social, cultural, and educational realities. In this regard, *Maqasid ash-Sharia*, with its foundational concept of *al-maslahah* (public welfare), plays a vital role in upholding justice.

Several variables can influence the soundness of a legal decision, one of which is conscience. According to various research-based literatures, conscience serves as an indicator of professionalism affecting both personal and professional aspects of an individual's life. Conscience is fundamentally a commitment to morality: to possess and act upon moral principles. It begins with a twofold dedication: first, to uphold basic moral principles; and second, to be willing to act in accordance with them. Through this process, a person evaluates whether their actions align with these moral standards. Furthermore, conscience functions as a force capable of making judgments towards an individual's moral values as reflected in their behavior.⁴¹

Conscience is closely linked to internal control, which ensures that an individual remains on the path of righteousness. It serves as a benchmark by which one may assess whether their actions align with the truth. Conscience acts as a mediator in the pursuit of moral objectives. It is not feasible for law enforcement officers to respond to events solely based on statutory law, particularly when such laws may, at times, conflict with moral

⁴⁰ Imam Al-Ghazali, *Mustashfa* (Jakarta: Pustaka Kautsar, 2022), <https://opac.perpusnas.go.id/detailopac.aspx?Id=1542085>.

⁴¹ Hacı Yusuf Gulec and Hakime Aslan, "The Effect of Conscience Perception on Job Satisfaction and Care Behaviours in Nurses," *Archives of Psychiatric Nursing* 50 (June 2024): 49–59, <https://doi.org/10.1016/j.apnu.2024.03.008>.

principles. In assessing legal situations, one should avoid acting like a legal gladiator—focusing only on right and wrong in a binary sense while neglecting other dimensions of justice, referred to as "biological-metabolic justice."

In this context, conscience must be prioritized so that law truly fulfills the original intention envisioned by Gustav Radbruch. One illustrative case occurred in Karawang, where a woman was sentenced to one year in prison simply for reprimanding her husband, who frequently returned home intoxicated.⁴² We concurs with the assessment of Attorney General St. Burhanuddin, who stated that restorative justice serves as the foundation for law enforcement practices grounded in "law guided by conscience." At its core, restorative justice offers a more universally desirable and compassionate objective of law.

We are of the view that the prosecutor's office can, in fact, utilize restorative justice as a form of discretion when assessing whether a case can be addressed in a more compassionate manner, rather than relying solely on the court to determine what constitutes absolute truth. Accordingly, both the police and prosecutors have the flexibility to advocate for the application of restorative justice. This practice is already commonly applied in Indonesia. For example, in traffic violation cases where the offender provides compensation instead of receiving punitive sanctions. Such an approach is often more beneficial to the victim in the long term and offers a more tangible sense of justice.

Furthermore, we emphasize that while the preservation of harmony within a household can partially be achieved through the efforts of its members, cases of domestic violence must prioritize restorative justice. Determining the truth requires the involvement of the concept of *nurani*. This is because the human *nurani* remains intact and unwavering over time although one senses such as sight, hearing, and rationality may fail. Data should be treated as factual only with the assistance of human intellect to distinguish between true meaning and misleading impressions.

In Western literature, *nurani* is commonly referred to as "conscience" (from the Latin *conscientia*), understood as an aptitude, faculty, intuition, or judgment that assists an individual in distinguishing right from wrong. Simply put, the *Encarta Dictionary* defines it as a "sense of right or wrong." Biologists assert that conscience constitutes a crucial aspect differentiating humans from animals: only humans possess consciousness, whereas animals do not. Animals

⁴² Michael Hangga Wismabrata, "Ibu Di Karawang Dituntut 1 Tahun Penjara Karena Marahi Suami Mabuk: Saya Keberatan," Kompas.com, n.d., <https://regional.kompas.com/read/2021/11/14/162801778/ibu-di-karawang-dituntut-1-tahun-penjara-karena-marahi-suami-mabuk-saya?page=all>.

rely solely on instinct acquired through their senses. While animals can see, smell, and hear like humans, and can experience emotions such as fear, desire, and anger, they lack the capacity for self-reflection or self-awareness. Humans, by contrast, can be both the subject and the object of their own cognition, fully aware of their identity as human beings. An elephant, for example, does not recognize itself as an elephant.⁴³

Since ancient times, many philosophers and scholars have explored the existence of conscience to understand its essence. In classical Greece, Socrates and his student Plato taught about the vital importance of conscience for human beings. In Plato's *Apology of Socrates*, he recounts how his teacher Socrates urged individuals to act according to their conscience (*gewissen*) and exemplified this himself. Continuing this teaching, Plato advised that one must remain faithful to their conscience regardless of circumstances. Every person is endowed with a conscience within their heart to be deliberate upon life's decisions. However, conscience is often silenced by various forces such as greed and fear. A life that betrays its conscience inevitably leads to disappointment. Denying one's conscience is tantamount to the murder of the soul. Furthermore, according to Plato, death is not something to be feared. When one lives guided by conscience, death should instead be seen as a reward for courage. The body may be controlled and destroyed, but the soul and conscience remain eternally alive, free to seek the truth.

The components of human nature which consist of intellect (*'aql*), heart (*qalb*), conscience (*nurani*), desire (*syahwat*), and passion (*hawā nafsy*) form an anatomical sequence, each serving distinct functions. The intellect exists to solve problems; the heart is present to comprehend reality; conscience is the inner vision; desire drives behavior or motives; and passion serves as a challenging force to test human beings. This human apparatus is governed by the heart. If the heart is benevolent, the behavior will also be kind; conversely, if the heart is corrupt, behavior will likewise be deceitful. The concept of conscience is closely associated with the heart, hence the term "heart's conscience." It possesses a profoundly spiritual nature and urges individuals toward virtuous conduct, assisting them in discerning right from wrong. It resides within every person. Fundamentally, one person's conscience does not differ from another's. In other words, what one's conscience perceives as right is generally perceived as right by others, provided similar conditions and circumstances.

⁴³ Suadi, "Filsafat Pengetahuan Dan Kebenaran."

Conscience is an aspect of human nature that cannot be replaced by any technology, no matter how advanced it may be. While artificial intelligence might address a wide range of human needs and problems, the solutions it provides cannot reach the deepest layers of human conscience. Contemporary progress is heavily supported by advancements in information technology (IT), yet such developments lack the essential dimension of human conscience: a divine gift of paramount importance. For example, when examining witnesses solely via teleconferencing, crucial non-verbal cues—such as body language that reveals truthfulness—are absent. Judges may evaluate truth based only on sensory perception but fail to grasp the essence of truth itself, which should be earnestly considered when assessing facts in order to uphold justice in the cases before them.⁴⁴

From the perspective of Islamic law, legal discovery conducted by judges is guided not only by knowledge aimed at uncovering truth but also by two equally important instruments that direct judges in upholding law and justice: *Maqasid ash-Sharia* and their conscience. These two instruments seek to realize public welfare (*al-mashlahah*) and to prevent harm (*daf' al-mafsadah / al-madharrah*). The desired welfare must correspond to the needs of human beings and their surrounding environment, encompassing both *al-hajiyah* (necessities) and *tahsiniiyyat* (embellishments or refinements).⁴⁵

Mashlahah in the *al-hajiyah* level can be understood as a secondary need, after the core *al-dhauriyah*. Left unfulfilled, it will only cause difficulties instead of endangering human safety. The same goes with the *tahsiniiyyat* level, where failing to fulfill it will neither complicate nor threaten the existence of any of the five *dhauriyah* mentioned above, therefore only acting as a complement.

For a judge, the objective of achieving *mashlahah* (public welfare) ought to be a fundamental consideration, ensuring that the decisions produced truly embody justice. Legal scholars universally agree that judges serve as the primary interpreters of general legal norms, applying them to concrete cases. In fulfilling this role, judges are required to apply laws effectively and in ways that promote the welfare of all parties involved. A more progressive view holds that, when necessary, judges should be capable of formulating new laws based on

⁴⁴ Hardiono Hardiono, "EPISTEMOLOGI POSTRUKTURALISME OBJEK PEMIKIRAN ISLAM ABED AL-JABIRI DAN IMPLIKASINYA BAGI ILMU-ILMU DAN PEMIKIRAN KEISLAMAN," *TAJIDID: Jurnal Ilmu Ushuluddin* 19, no. 1 (January 26, 2021): 110–38, <https://doi.org/10.30631/tjd.v19i1.119>.

⁴⁵ Musolli Musolli, "Maqasid Syariah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer," *AT-TURAS: Jurnal Studi Keislaman* 5, no. 1 (September 23, 2018): 60–81, <https://doi.org/10.33650/at-turas.v5i1.324>.

logical and profound interpretation—especially when existing statutory provisions are deemed unsuitable due to their conflict with the values of justice and human welfare.

From this perspective, the importance of *ijtihad* grounded in *Maqasid ash-Sharia* in legal interpretation becomes highly apparent. Islam mandates that a judge's *ijtihad* in interpreting and applying the law must consistently take into account the aspect of *maslahah* (public interest), which serves as a foundational reference within *Sharia*.⁴⁶ Law is formulated, codified, and enforced with the objective of maximizing benefit and happiness, a necessity as articulated in the utilitarian theories of Jeremy Bentham and John Stuart Mill, for the humanity that constitutes the object of the law.

The interrelation of conscience as a guiding principle for judges in legal discovery and decision-making can be explained by the reality that judges, in their daily duties, often face difficult choices that cause them hesitation in rendering verdicts. Roeslan Saleh describes that judges experience a “human struggle” in performing their duties, and it is precisely within this struggle that the nobility of the judicial profession lies. Similarly, Satjipto Rahardjo asserts that judges represent the silent voices of the people: those who are unrepresented and unheard.

The statement above needs to be deeply recognized and internalized by today's judges. It serves as a reminder of the tremendous emotional and intellectual exertion judges endure in performing their duties, as they must undergo an inner struggle and make difficult choices. Judges are acutely aware of this human struggle within themselves, as they are confronted with legal rules, factual evidence, arguments from the parties involved, prosecutorial and defense counsel submissions, and beyond all these, a demand that they must also attune their ears to the heartbeat of society.⁴⁷ Therefore, endowed with conscience, a judge is granted the ability to perceive, assess, and bear witness to oneself, allowing the conscience to manifest, communicate, and guide the judge toward discovering ultimate truth in the rendering of a judicial decision.

For example, a study conducted in the United States on the influence of politics on judicial decisions highlights a significant concern regarding the procedural justice of the judicial process. The apprehension extends beyond academic debate; when judges exhibit ideological bias, it can lead to substantial legal, social, and economic consequences. Public

⁴⁶ Siti Mutholingah and Muh. Rodhi Zamzami, “RELEVANSI PEMIKIRAN MAQASHID AL-SYARIAH JASSER AUDA TERHADAP SISTEM PENDIDIKAN ISLAM MULTIDISIPLINER,” *Journal TALIMUNA* 7, no. 2 (October 8, 2018): 90–111, <https://doi.org/10.32478/talimuna.v7i2.183>.

⁴⁷ Suadi, “Filsafat Pengetahuan Dan Kebenaran.”

trust in the judiciary is not merely a legal prerequisite but serves as the foundation for social order and economic stability. Therefore, when the judicial institution is compromised, the resulting effects include decreased compliance with the law, increased costs of law enforcement, potential civil unrest, and impediments to economic development.⁴⁸

The example described above exemplifies a failure to heed conscience. As previously outlined, a judge can optimize their abilities, mental faculties, intuition, and judgment to distinguish between right and wrong through conscience. For a judge, the obligation to respond to the call of conscience is an inevitability, as the judicial role continually confronts them with difficult choices, and sometimes exceedingly so. Conscience serves as an unwritten ethical code that guards the soul, mind, and behavior of the judge. Amidst the powerful temptations of the world, conscience guides the judge to consistently follow the path of righteousness and to administer justice accordingly. When the voice of conscience is heard and obeyed, the judge's course is secure. Conversely, when that voice is silenced, the outcome is disastrous. Conscience at minimum acts as a guiding principle for a judge when performing their duties under two conditions below:

First, when confronted with the choice between upholding just law or engaging in misconduct, be it due to temptations or other reasons, intentional or otherwise, a judge who disregards their conscience risks descending into lawlessness. Second, when formulating legal reasoning that occasionally requires discretion and legal innovation—referred to as conscientious disobedience or conscientious refusal in John Rawls' terminology—the moral imperative that the law must not contradict the moral consciousness of the individual or society regarding what is good or bad, what is just or unjust is reflected. A judge is continually tested with difficult choices, and when the achievement of the law fails to encompass the values of justice, it is conscience that guides the judge toward the rightful path.

Judges who are motivated to please their superiors, for example, have been known to manipulate uncontested cases involving divorce by converting them into default judgments, where the defendant is summoned in absentia so that the case can be decided within less time, allowing the judge to achieve a maximum score of five. However, in reality, such cases should be summoned in accordance with Government Regulation Number 9 of 1975, among many other examples. The true truth, as Immanuel Kant stated, is that “the moral

⁴⁸ Daniel L. Chen, “Priming Ideology I: Why Do Presidential Elections Affect U.S. Judges,” *European Economic Review* 169 (October 2024): 104835, <https://doi.org/10.1016/j.euroecorev.2024.104835>.

law within us has true infinity” The moral law that humans inherently have embodies truth beyond space, time, or a condition of reality.

E. Conclusion

The realization of *Maqasid ash-Sharia* constitutes the meanings and wisdom that serve as the objectives intended by the lawgiver to benefit humanity, through the provisions of *Sharia* legal norms established by Him. These objectives generally manifest as the promotion of public welfare (*maslahah*) in both material (worldly) and spiritual (hereafter) dimensions of human life. In the context of the development of judicial *ijtihad*, *Maqasid ash-Sharia* is regarded as an integral part of this transformation, given that it provides considerable scope for the evolution of legal escalation efforts aimed at achieving welfare in human life. For instance, within *Maqasid ash-Sharia*, the primary focus is on preserving the objectives rather than the instruments utilized to attain those objectives. From the perspective of *Maqasid ash-Sharia*, the means to achieve the ends may change, but the ultimate objectives of the law remain immutable. Should the objectives of a law change or be eliminated, the consequence would be the failure to realize a good and balanced life.

The transformation of judicial *ijtihad* involves the integration of prevailing legal norms through a process of reception, wherein these norms are evaluated against both *Sharia* and conventional principles, guided by established rules concerning legal change and the adoption of new norms. Judges (*qāḍī*), acting as central figures in the enforcement of law, must be capable of realizing justice, which is the aspiration of all, rather than merely functioning as rote enforcers of statutes and regulations. In this role, judges bear the trust to deliver rights to their rightful owners, thereby safeguarding human life, property, and dignity. Therefore, in the process of creating decisions, *Maqasid ash-Sharia* must accompany the exercise of a judge’s conscience.

F. Declaration of Conflict of Interest Statement

The author declares that there is no conflict of interest that could affect the integrity or outcomes of this article’s publication. This article is based on independent research and analysis, and no external or commercial entities have exerted influence or involvement in the writing or publication process.

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E. Authors' Biography

Ahyar Siddiq is postgraduate student who is completing his doctoral education in Islamic Law concentrating on Sharia Economic Law at the Indonesian Islamic University Yogyakarta and Judge in the Religious Courts since 2007, now as Head of the Subdirector of Judge Mutations, Directorate General of Religious Courts, Supreme Court of the Republic of Indonesia.

Asmuni is a lecturer in Fiqh and Usul Fiqh at the Faculty of Islamic Religious Studies, Universitas Islam Indonesia. His research focus is on social issues, family law, and environmental studies from the perspective of Al-Maqashid.

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