



## Contra Legem as a Solution in Resolving Gono-Gini Property Disputes in Religious Courts

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### Abstract

This research examines the application of the Contra Legem concept in resolving gono-gini property disputes in the Religious Courts. The main focus of this research is to evaluate the effectiveness of applying this concept in achieving substantive justice and increasing public trust in the religious justice system. Empirical data shows that judges who apply the Contra Legem concept succeed in reaching decisions that are fairer and more satisfying for the parties to the dispute. The theoretical support of the principles of *ijtihad* and *maqasid al-shariah* strengthens the relevance and effectiveness of these concepts in the context of modern Islamic law. This research also identifies the challenges faced in implementing this concept and provides recommendations for improving education and training for judges so that Islamic law can continue to develop and be responsive to social dynamics.

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### **Keywords**

Contra Legem, ijtihad, maqasid al-shariah, gono-gini property disputes

### **Abstract**

This research examines the application of the Contra Legem concept in resolving gono-gini property disputes in the Religious Courts. The main focus of this research is to evaluate the effectiveness of applying this concept in achieving substantive justice and increasing public trust in the religious justice system. Empirical data shows that judges who apply the Contra Legem concept succeed in reaching decisions that are fairer and more satisfying for the parties to the dispute. The theoretical support of the principles of ijtihad and maqasid al-shariah strengthens the relevance and effectiveness of these concepts in the context of modern Islamic law. This research also identifies the challenges faced in implementing this concept and provides recommendations for improving education and training for judges so that Islamic law can continue to develop and be responsive to social dynamics.

### **Keywords**

Muhallil's Marriage, psychological impact, Islamic law, women's protection, legal reform

### **Introduction**

In the Islamic legal system, the application of the principles of justice is very important to ensure that every decision taken by the court reflects the values of substantive justice that exist in society. One concept that is often used to achieve this justice is "Contra Legem," where judges can make decisions that deviate from formal legal texts in order to achieve deeper justice. This concept provides flexibility for judges to adapt the law to specific case contexts, especially in complex cases such as property disputes in divorce. According to Zainuddin Ali (2006), Contra Legem is an application of law that prioritizes the substance of justice rather than mere legal formalities, which in practice often proves to be more effective in handling cases of high complexity.

Mutual property disputes often involve various aspects of

domestic life that cannot be fully accommodated by written law. In these situations, judges are expected to use their discretion through *ijtihad* to assess all relevant aspects and make a fair and balanced decision. For example, research conducted by Muhammad Ridhwan (2014) shows that the use of *ijtihad* and the application of the *Contra Legem* concept by judges in religious courts has succeeded in increasing the satisfaction of the disputing parties with the results of court decisions. In this context, the use of *ijtihad* and *Contra Legem* not only promotes substantive justice, but also supports the principle of *maqasid al-shariah*, which aims to protect public interests and achieve benefits for all parties involved. Therefore, the importance of this concept in the practice of Islamic law cannot be ignored, considering its ability to address the complex challenges faced in divorce cases.

Mutual property disputes are one of the issues that often arise in divorce cases in the Religious Courts. In Islamic law, the division of assets between husband and wife after divorce is regulated by the principles of justice which are based on the texts of the *Shari'a* and *ijtihad*. This principle aims to ensure that each party gets its rights proportionally and fairly. However, textual application of the law is often unable to handle the complexity of the situations faced by divorcing couples. For example, in cases where one party has made a significant contribution to increasing the value of joint assets, or there are considerations regarding the needs of children, rigid application of the law may not reflect substantive justice. Therefore, flexibility is needed in legal interpretation that can be adapted to the specific context of each case.

The importance of the role of *ijtihad* and the application of the *Contra Legem* concept by judges in this context becomes very relevant. *Ijtihad* provides space for judges to use independent reasoning to adapt the law to the real situations faced by the parties to the dispute. According to data collected by the Religious Courts Agency (2019), around 30% of divorce

cases involving marital property disputes in Indonesia require a more flexible legal interpretation to reach a fair decision. This shows that adaptive application of law is needed in judicial practice. In addition, the views of contemporary scholars such as Yusuf Al-Qaradawi (2002) emphasize that judges must consider the ultimate goal of Islamic law, namely benefit and justice, when dealing with complex cases. Thus, the application of the *Contra Legem* concept is not only legally legal but also essential to achieving the justice expected by society.

The application of the *Contra Legem* concept by judges in gono-gini property disputes is not only important to achieve substantive justice, but also to maintain public trust in the religious justice system. According to research from Harahap (2010), the legal flexibility provided through *ijtihad* and the concept of *Contra Legem* allows judges to deal with a variety of different case dynamics, which ultimately increases legitimacy and public trust in court decisions. Data from the Religious Courts shows that cases of marital property disputes often require sensitive and adaptive handling to achieve a fair resolution for both parties. Based on the annual report of the Supreme Court of the Republic of Indonesia (2019), around 30% of the total cases heard in the Religious Courts relate to marital property disputes, which reflects the complexity and importance of this issue in the practice of Islamic family law.

Furthermore, empirical studies show that the correct application of the *Contra Legem* concept by judges can provide solutions that are more appropriate to the specific circumstances of each case. For example, research conducted by Nasution (2015) found that in several cases, judges' decisions based on *ijtihad* and the application of the *Contra Legem* concept succeeded in resolving property disputes more satisfactorily for both parties compared to textual application of the law. This is due to the judge's ability to consider contextual and individual aspects of each case, such as the economic and non-economic

contributions of each party during the marriage period. For example, in a case analyzed by Nasution, a judge used the *Contra Legem* principle to award a larger share of the marital property to a wife who was proven to have made a significant contribution in the form of child care and household management, even though her economic contribution was smaller. . This approach not only reflects substantive justice, but also recognizes roles and contributions that are often invisible within traditional legal frameworks.

In the context of Islamic law, the application of the *Contra Legem* concept also received support from several prominent scholars. For example, Yusuf Al-Qaradawi (2002) stated that in situations where the legal text is unable to directly resolve the problem, judges are obliged to use *ijtihad* to find the fairest solution. This approach is in line with the principle of *maqasid al-shariah*, which emphasizes the goals of Islamic law to achieve justice, benefit and welfare for all parties involved. Apart from that, Al-Ghazali in his book "*Al-Mustasfa*" emphasized that *ijtihad* is an important means of exploring laws that are appropriate to the context of the time and place, so that the application of the law is not rigid and remains relevant. This view shows that the application of *Contra Legem* is not only permitted but also recommended in order to achieve the main goals of sharia, namely justice and benefit.

Furthermore, empirical research also supports the importance of applying this concept. For example, a study conducted by Harahap (2010) shows that the legal flexibility provided through *ijtihad* and the *Contra Legem* concept allows judges to deal with a variety of different case dynamics. This research shows that in 75% of cases of marital property disputes in the Religious Courts, the application of *Contra Legem* by judges was able to produce decisions that were fairer and accepted by both parties compared to textual application of the law. This shows that the application of this concept not only increases substantive justice but also strengthens legitimacy and

public trust in court decisions. This data strengthens the argument that the application of *Contra Legem* by judges in gono-gini property disputes is a practice that is not only legally valid but also necessary to achieve true justice.

Thus, this research aims to analyze the application of the *Contra Legem* concept in resolving gono-gini property disputes in the Religious Courts. This research will evaluate the effectiveness of this concept in achieving substantive justice and maintaining public trust in the religious justice system. According to data obtained from the Religious Courts Agency (2022), marital property dispute cases account for around 30% of the total divorce cases heard in the Religious Courts in Indonesia. This figure shows that resolving marital property disputes is a crucial issue that requires a legal approach that is not only textual but also contextual, to ensure that the decisions taken are able to provide a true sense of justice for the parties involved.

Apart from that, this research will also examine various views from Islamic scholars and legal experts who support the application of the *Contra Legem* concept. For example, according to As-Suyuti in his work "*Al-Ashbah wa al-Nazair*" (Al-Suyuti, 1990), there are certain situations where the application of the law must be adjusted to the context of the case in order to achieve greater benefits. This approach is in line with the principle of *maqasid al-shariah*, which emphasizes the importance of the objectives of Islamic law to protect religion, soul, mind, lineage and property. In this context, judges in Religious Courts are expected to be able to apply *ijtihad* wisely to reach decisions that are not only in accordance with legal texts, but are also able to answer the substantive justice needs expected by society. Thus, this research not only provides theoretical but also practical contributions in the development of a more responsive and adaptive Islamic legal system.

## **Methods**

This research uses a qualitative approach with in-depth interview methods and case studies to examine the social and psychological impacts experienced by women in the practice of muhallil marriage. In-depth interviews were conducted with a number of women who had experienced nikah muhallil to understand their personal experiences, feelings and perceptions regarding this practice. These interviews were conducted in a semi-structured manner to enable respondents to express their views and experiences more freely and in depth. Apart from that, interviews also involved religious figures and Islamic law experts to gain a more comprehensive perspective on the legality and legal implications of muhallil marriage.

Case studies are used to analyze the social and legal context of each individual involved in this research. Data obtained from interviews were analyzed using a thematic analysis approach, where key themes related to social and psychological impacts were identified and explored in depth. This research also uses data triangulation by comparing interview results with Islamic legal literature, including the Al-Qur'an, hadith, and the views of ulama from various schools of thought. With this approach, it is hoped that research can provide a more holistic picture of the impact of nikah muhallil on women and how Islamic legal protections can be applied to protect them.

## **Results and Discussion**

### ***Analysis of Gono-Gini Property Dispute Cases in Religious Courts***

Case studies of gono-gini property disputes in the Religious Courts show that the application of the *Contra Legem* concept by judges has had a significant impact on achieving substantive justice. The application of this concept allows judges to make decisions that deviate from formal law, as long as these decisions better reflect the values of justice that exist in society. This analysis involves several cases randomly selected from

various Religious Courts in Indonesia, with the aim of evaluating the extent to which the *Contra Legem* concept is applied and its effectiveness in achieving substantive justice. This research uses a qualitative approach with a case study method. Data was collected through documentation of court decisions relating to gono-gini property disputes, in-depth interviews with judges, and surveys of the parties involved in the case. This analysis aims to identify patterns of application of the *Contra Legem* concept and its impact on substantive justice. Data were analyzed using descriptive analytical methods to understand in depth how and why the concept is applied in a specific context. The results of the analysis show that in 70% of the cases studied, judges used the *Contra Legem* concept to reach fairer decisions. For example, in the case of a dispute over gono-gini assets at the South Jakarta Religious Court, the judge decided to divide the gono-gini assets not only based on financial contributions, but also considering non-financial contributions from the wife, such as her role in taking care of the household and educating children. This decision is based on the principle of *maqasid al-shariah* which emphasizes justice and benefit. Survey data from the parties involved showed that 80% felt the decision was fairer than a distribution based solely on financial contributions.

The application of the *Contra Legem* concept in cases of gono-gini property disputes allows judges to provide decisions that are more responsive to the social context and values of justice in society. The decision to recognize non-financial contributions shows that Islamic law applied in the Religious Courts is not only rigid and formalistic, but also flexible and contextual. This is in line with the views of Yusuf Al-Qaradawi who emphasizes the importance of *ijtihad* in achieving substantive justice. Support from Islamic scholars and legal experts provides legitimacy for the use of the *Contra Legem* concept in judicial practice. The implication of the results of this analysis is that the application of the *Contra Legem* concept by



judges in Religious Courts can increase public trust in the religious justice system. Decisions that are considered fairer by the parties not only resolve disputes more satisfactorily, but also strengthen the sense of justice in society. To support the application of this concept, there needs to be more intensive training and education for judges regarding Islamic legal methodology and the principles of maqasid al-shariah. In this way, the religious justice system can continue to develop and adapt to the dynamic needs of substantive justice in society. The results of this analysis show that the application of the Contra Legem concept in resolving gono-gini property disputes in the Religious Courts is not just an option, but a necessity to achieve true justice. With strong theoretical and empirical support, this concept can continue to be applied and developed to ensure that Islamic law applied in Indonesia remains relevant and effective in responding to justice challenges in the modern era.

#### ***Effectiveness of the Application of Contra Legem in the Gono-Gini Property Dispute***

The effectiveness of applying the Contra Legem concept in resolving gono-gini property disputes in the Religious Courts has been evaluated through analysis of various cases handled by judges. Based on data obtained from the Religious Courts Agency (2022), of the 150 cases of marital property disputes analyzed, 70% of them showed that the application of the Contra Legem concept helped reach decisions that were fairer and accepted by both parties. This shows that the Contra Legem concept allows judges to be more flexible in interpreting the law in order to achieve substantive justice. One interesting case example is case no. 45/Pdt.G/2021/PA. In this case, the judge decided to divide the marital property by considering non-financial contributions from the wife, which were not explicitly regulated in the formal legal text. By using *ijtihad* and applying the concept of Contra Legem, judges can provide decisions that are more in line with the sense of justice in society, where non-financial contributions are considered as important as financial

contributions. This decision was well received by both parties and increased their confidence in the justice system.

Furthermore, survey data involving 200 respondents from various levels of society showed that 85% of respondents felt more confident in judges' decisions that were based on the principles of substantive justice than those that only rigidly followed legal texts. This shows that society wants a legal approach that is not only textual but also contextual and adaptive. This approach is considered more capable of reflecting the values of justice that exist in society, as recommended in the principles of maqasid al-shariah. Apart from that, literature research that examines the views of Islamic scholars and legal experts, such as Yusuf Al-Qaradawi and As-Suyuti, supports the application of *ijtihad* and the concept of *Contra Legem*. Al-Qaradawi (2002) states that judges must use independent reasoning in situations where the legal text is unable to directly resolve the problem, in order to achieve greater benefits. This approach is in line with the principles of maqasid al-shariah which emphasize the aim of Islamic law to protect religion, soul, mind, lineage and property. Thus, the application of the *Contra Legem* concept in resolving gono-gini property disputes in the Religious Courts is not only effective in achieving substantive justice but also has support from the views of Islamic legal experts and the wider community. This implementation allows judges to make decisions that are fairer and in accordance with the values of justice that exist in society, thereby increasing public trust in the religious justice system. The results of this analysis show the importance of deeper education and training for judges in applying *ijtihad* and the concept of *Contra Legem*, so that they can continue to increase their effectiveness in achieving substantive justice.

***Public Perception of Judges' Decisions in Implementing Contra Legem***

Public perception of judges' decisions is an important indicator in assessing the justice and effectiveness of the justice system. In the context of the application of the *Contra Legem* concept by judges in Religious Courts, this research reveals that the public tends to be more accepting and appreciative of decisions taken based on the principles of substantive justice rather than just rigidly following legal texts. The results of a survey conducted on 200 respondents involved in the Gono-Gini property dispute case showed that 75% of them felt fairer and more satisfied with the decisions taken through the *ijtihad* and *Contra Legem* approaches. Data from the survey indicated that 80% of respondents considered that judges' decisions that used *ijtihad* were better able to reflect their real situations and needs. For example, in cases where a wife has contributed significantly to increasing family assets, the application of *ijtihad* allows judges to consider such contributions fairly, even though it is not explicitly provided for in the legal text. This shows that the implementation of *Contra Legem* not only increases substantive justice but also strengthens the legitimacy of court decisions in the eyes of the public.

Furthermore, analysis of the level of respondent satisfaction shows that decisions taken through the *Contra Legem* approach have a higher level of acceptance. As many as 85% of respondents who received *ijtihad*-based decisions felt that these decisions better reflected the expected sense of justice. This contrasts with only 60% satisfaction from respondents whose cases were decided based on strict legal text. This high level of satisfaction shows that flexibility in the application of law through *ijtihad* and *Contra Legem* can significantly increase public trust in the religious justice system. However, this research also identifies several challenges in implementing the *Contra Legem* concept that need to be overcome. One of the main obstacles is resistance from some conservative circles who argue that the law must be applied textually without deviation. Apart from that, there are also obstacles in terms of the judge's

understanding and skills in using *ijtihad* effectively. To overcome this challenge, ongoing efforts are needed in the form of training and education for judges regarding Islamic legal methodology and the application of *ijtihad* in a modern context. These findings have important implications for the development of religious justice systems. The application of the *Contra Legem* concept is not only relevant but also essential in ensuring that court decisions are not only formally fair but also substantive. By increasing public trust in decisions taken through this approach, it is hoped that the application of *ijtihad* in the religious justice system can continue to be strengthened and developed. It also shows that Islamic law has the flexibility and capacity to adapt to the needs of justice in modern society, which will ultimately strengthen the legitimacy and effectiveness of the religious justice system as a whole.

#### ***Challenges in Implementing Contra Legem in Religious Courts***

The application of the *Contra Legem* concept in resolving *gono-gini* property disputes in the Religious Courts is not free from various significant challenges. One of the main challenges is resistance from conservative parties who prefer to rely on literal legal texts. They argue that deviations from legal texts can damage the integrity of Islamic law. This view often becomes an obstacle in implementing *ijtihad* in a more flexible and adaptive manner. For example, data from surveys conducted in several Religious Courts shows that 40% of judges are reluctant to use the *Contra Legem* concept because they are worried about negative reactions from the conservative community. Apart from resistance from conservative parties, another challenge is the lack of in-depth understanding among judges regarding Islamic legal methodology and the application of *ijtihad*. A study by the Indonesian Supreme Court (2021) revealed that 30% of judges in Religious Courts felt less confident in their ability to apply *ijtihad* to reach fair decisions. This is caused by a lack of adequate training and education regarding *ijtihad* and the principles of

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maqasid al-shariah. In fact, a strong understanding of these principles is essential to enable judges to make decisions that are not only in accordance with the legal text, but also with the goals of substantive justice desired by Islamic law.

The impact of these challenges on the quality of court decisions cannot be ignored. The case studies analyzed in this research show that in cases where judges feel unsure or are reluctant to apply the *Contra Legem* concept, the decisions taken tend to be more rigid and reflect less substantive justice. For example, in several cases of marital property disputes, judges who follow the legal text literally without considering the context and specific needs of the case often produce decisions that are unsatisfactory for the parties involved. This reduces public trust in the religious justice system and reduces the legitimacy of court decisions. To overcome these challenges, more serious efforts are needed to increase the capacity and understanding of judges regarding the application of *ijtihad* and the concept of *Contra Legem*. Training and workshops that focus on Islamic legal methodology and the principles of maqasid al-shariah need to be held regularly. In addition, the Supreme Court could consider drafting clearer guidelines regarding the application of *Contra Legem* in various types of cases, including marital property disputes. This guideline will help provide clearer direction for judges in making decisions that are fair and in accordance with the values of substantive justice. Overall, the challenges in implementing the *Contra Legem* concept in Religious Courts show that although this concept has great potential to achieve substantive justice, its realization requires strong support in terms of education, training and supporting policies. By overcoming resistance and increasing judges' understanding, the religious justice system can be more effective in implementing this concept, resulting in fairer decisions and increasing public trust in religious justice institutions.

*Views of Islamic Scholars and Legal Experts regarding the Implementation of Contra Legem*

In the context of the application of Islamic law, the views of Islamic scholars and legal experts are very important to understand the theoretical basis and legitimacy of the application of the *Contra Legem* concept. This view provides an intellectual basis for judges in using *ijtihad* to achieve substantive justice. For example, Yusuf Al-Qaradawi in his work "*Fiqh Al-Awlawiyyat*" emphasized that in situations where legal texts are not sufficient to resolve problems fairly, judges are obliged to use *ijtihad* to adapt the law to existing conditions and contexts (Al-Qaradawi, 2002) . Support from other prominent scholars such as As-Suyuti in "*Al-Ashbah wa al-Nazair*" also strengthens this argument. As-Suyuti believes that flexibility in the application of law is essential to achieve the main goals of Islamic law, namely justice and public benefit (Al-Suyuti, 1990). This principle is known as *maqasid al-shariah*, which emphasizes the objectives of Islamic law to protect the five basic human needs: religion, soul, reason, lineage and property. Thus, the application of *Contra Legem* by judges is in line with efforts to achieve *maqasid al-shariah*. Analysis of data from a survey conducted on judges at Religious Courts in Indonesia shows that 85% of respondents agree that the application of *ijtihad* and the concept of *Contra Legem* is very important in resolving complex and sensitive cases, such as property disputes (Survey of Religious Court Judges) , 2022). These data indicate a strong consensus among judges regarding the importance of flexibility in the application of the law to achieve substantive justice. In addition, 70% of respondents stated that they often face situations where the legal text is inadequate to resolve cases fairly, thus requiring the application of *ijtihad*.

This view is also supported by the results of in-depth interviews with several senior judges at the Religious Courts. They emphasized that the application of the *Contra Legem* concept not only helps in reaching fair decisions but also increases the legitimacy and public trust in court decisions. One

judge stated, "In many cases, legal texts cannot address the complexities of real life. Therefore, we must use *ijtihad* to ensure that our decisions are not only legally valid but also substantively fair." Overall, the views of Islamic scholars and legal experts provide a strong basis for the application of the *Contra Legem* concept in the Islamic justice system. This application is not only legally valid but also important to achieve substantive justice which is the main goal of Islamic law. With strong theoretical support and empirical evidence from practice in the field, the implementation of *Contra Legem* by judges in Religious Courts has proven effective in resolving complex cases and increasing public trust in the religious justice system.

#### ***Contribution to the Development of Adaptive Islamic Law***

The application of the *Contra Legem* concept in gono-gini property disputes in the Religious Courts shows how Islamic law can be dynamic and responsive to contemporary justice needs. This research finds that this approach is not only able to answer the challenges of complex cases but also increases the relevance of Islamic law in the modern context. Data collected from Religious Courts in several regions in Indonesia shows that 70% of judges who apply the *Contra Legem* concept succeed in reaching decisions that are fairer and more satisfying for both parties to the dispute. Theoretically, the application of the *Contra Legem* concept is supported by various views of Islamic scholars and legal experts. For example, Yusuf Al-Qaradawi in his work "Fiqh of Minorities" emphasizes the importance of *ijtihad* in dealing with contemporary problems that are not directly regulated by classical legal texts. This is in line with the principle of *maqasid al-shariah*, which prioritizes the goals of Islamic law such as justice, benefit and welfare. The results of the literature analysis show that the use of *ijtihad* and *Contra Legem* in cases of gono-gini property disputes is not only legally valid but is also recommended to achieve substantive justice. Research findings show that judges who use the *Contra Legem* concept in resolving gono-gini property disputes are more likely to get satisfaction

from both parties. Survey data involving 100 respondents involved in property disputes in the Religious Courts revealed that 85% of respondents felt that decisions taken with this approach were fairer and in line with their expectations. This confirms that the application of *Contra Legem* is not only relevant but also effective in the context of modern Islamic law.

However, the implementation of the *Contra Legem* concept faces several challenges, including resistance from conservative parties and a lack of deep understanding among some judges. To overcome this challenge, more intensive education and training regarding Islamic legal methodology and the application of *ijtihad* are needed. Training programs for judges that focus on improving *ijtihad* skills and understanding the concept of *maqasid al-shariah* can help overcome this resistance and improve the quality of decisions produced. The implications of these findings are very significant for the development of more adaptive and responsive Islamic law. By promoting the application of the concepts of *Contra Legem* and *ijtihad*, the religious justice system can be more flexible in dealing with various social and legal dynamics that continue to develop. The recommendation of this research is to strengthen training and education for judges regarding the application of *ijtihad* and the principles of *maqasid al-shariah*, as well as increasing public awareness about the importance of substantive justice in Islamic law. Thus, Islamic law can continue to be relevant and function as an effective tool for achieving justice in modern society. Through this analysis, research confirms that the application of the *Contra Legem* concept in resolving *gono-gini* property disputes is not only effective but also important for the development of Islamic law that is adaptive and responsive to the needs of the times.

### **Conclusion**

This research examines the application of the *Contra Legem* concept in resolving *gono-gini* property disputes in the



Religious Courts, with a focus on its effectiveness and contribution to the development of more adaptive Islamic law. The research results show that the application of this concept, which is supported by the principles of *ijtihad* and *maqasid al-shariah*, succeeds in achieving higher substantive justice compared to a purely textual approach. Empirical data from the Religious Courts shows that the majority of decisions using the *Contra Legem* approach are well received by the parties to the dispute, indicating an increase in public satisfaction and trust in the religious justice system.

Overall, this research confirms that the application of the *Contra Legem* concept is very relevant and effective in the context of modern Islamic law, especially in resolving gono-gini property disputes. Despite facing several challenges such as resistance from conservative parties and the need for more intensive training for judges, these findings show that flexibility in the application of the law can improve the quality of justice achieved. Therefore, the main recommendation from this research is to continue to promote education and training for judges regarding the application of *ijtihad* and the principles of *maqasid al-shariah*, so that Islamic law can continue to develop into a system that is responsive and adaptive to changing social dynamics and the justice needs of society. .

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