

## ABSTACT

Kholifatullah Al Arief Nur Rahman, NIM 10210008, 2014. *The Judge Opinion About The Position of Maqâshid Al-Syariah in Rechtsvinding in Religious Court District Malang*. Thesis. Al-Ahwal Al-Syakhshiyah Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang.  
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A law is impossible to regulate all aspects of human life completely. Even sometimes rule of law is incomplete and unclear. However, the judge is forbidden to reject a case by reason the rule is incomplete, unclear or even no rule. Islamic law and positive law recognizes that there is not perfect rule of law. The limited law can not regulate all human activities so the judge is required to perform *rechtsvinding* to resolving a case. *Rechtsvinding* in Islamic law is called *ijtihad*, *ijtihad* can be done when *mujtahid* understands *maqâshid al-syariah* as the purpose of enactment of the law. The purpose of this research is to determine the method that used by judge in *rechtsvinding*, position of *maqâshid al-syariah* in *rechtsvinding*, and its application in judge's decision.

This research is empirical study, data in this research is descriptive qualitative. The collected data are in the form of primary data, which supported by several secondary data and analyzed by the data for this research. The data is collected by interview and documentary. While the descriptive data analysis to describe a situation or phenomena that occur in the field. At the final stage of the research, it concluded according with formulation of the problem.

Research finding are the method that used by religious court of district Malang judge in *rechtsvinding* are interpretation and law construction. The *maqâshid al-syariah* position in *rechtsvinding* as consideration when there is not certain legal rule and understand the purpose of enactment of law. The application of *rechtsvinding* that uses *maqâshid al-syariah* as consideration is in the judge's decision on marriage dispensation, by using *maqâshid al-syariah* as a consideration. In the child custody case, the judge uses *maqâshid al-syariah* to understand the purpose of the legal text. In the origin of children case, the judge uses *maqâshid al-syariah* as a destination to decide cases with judge's discretion.