

THE RECONSTRUCTION OF *MAQĀṢĪDAL-SYARĪ'AH* APPROACH IN ISLAMIC ECONOMY: INSIGHTS FROM JASSER AUDA PERSPECTIVE

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Abstract

This literature review aims to provide insight into the reconstruction of Islamic law (*fiqh*) through the *maqāṣīdal-syarī'ah* approach in Jasser Auda's perspective and how the contextualization is with the practice of Islamic economics in Indonesia. *Maqāṣīd* in Jasser Auda's perspective has four meanings, namely wisdom behind a law, good final goal to be achieved by law, divine goals and moral concepts that are the basis of law, and *mashālih*. The concept of modern Islamic law based on *maqāṣīdal-syarī'ah* is an offer of Jasser Auda's thought to provide solutions in the balance and harmony of human life between the affairs of the hereafter and the world. Jasser Auda in his research tries to reconstruct the old *maqāṣīd* concept which is protection and preservation towards the *maqāṣīd* theory which refers to development and rights. Therefore, the concept of *maqāṣīd* offered by Jasser Auda places the values and principles of

humanity at the foremost. The implications of the application of *maqāṣid al-syari'ah* using the *maṣlahah* instrument in the context of the Islamic economy in Indonesia are used to fulfill the needs of sharia policies in the economic sector which do not only revolve around Islamic banking matters.

Keywords: *Maqāṣid al-syari'ah*, *maṣlahah*, Islamic economics, and Jaser Auda.

1. Introduction

The study of the development of Islamic law places the concept of *maqāṣid al-syari'ah* in an important position, because it discusses the purpose of establishing law in Islam (Yusdani, 2001, p. 38). *Maqāṣid al-syari'ah* is an intellectual and historical product which is open to reconstruction (Rasyidi, 2020, p. 46). Various kinds of human historical domains with various discourses, models, and activities that surround them every day change and even seem very difficult as if they are not accommodated in the legal values or norms that exist in *naṣṣ* (Al-Qur'an-Sunnah). *Tatanāhā al-nuṣūṣ wa lā tatanāhā al-maqā'i*, the meaning: revelation is no longer sent down, while events or legal requirements continue to develop (<http://www.iiit/maqasid>).

Therefore, the doctrinaire-normative-deductive approach to legal development is no longer sufficient to accommodate the legal needs of society. Islam as an ideal in legal representation feels unable to respond to the rapidly changing global world. The “empirical-historical-inductive” approach to legal development based on the historical reality or space of humanity needs to be reconsidered as a medium for interpreting Islam (Islamic law) in the realm of modern human life. The science of *uṣūl al-fiqh* as a methodological tool needs to be sharpened by using a multidimensional approach to answer the problems faced by *ummah* today's. Jasser Auda tried to talk about three sciences at once: *maqāṣid al-syari'ah*, *uṣūl al-fiqh*, and system philosophy. These three knowledge were

previously separated and not connected with each other. Interestingly, Auda was able to make it a unity and integrated with each other (Syarifullah, 2018, p. 218).

Islamic legal thinkers with the *maqāṣīdal-syarī'ah* approach include Jasser Auda with his book “Maqāṣīdal-Syarī'ah as Philosophy of Islamic Law: A Systems Approach”. This figure has a concern in the field of Islamic law which gave birth to his ideas regarding issues of Islamic law (*maqāṣīdal-syarī'ah*) which have their own challenges. To be more focused, the author focuses this discussion on Jasser Auda's view of *maqāṣīdal-syarī'ah* and the role of *maqāṣīdal-syarī'ah* in establishing Islamic law according to Jasser Auda.

2. Jasser Auda Intellectual and Social Background

Jasser Auda is an associate professor at the Faculty of Islamic Studies at Qatar University (QFIS) with a focus on Public Policy studies in the Islamic Studies program. He is a member and founder of several organizations such as the “International Union of Muslim Scholar” based in Dublin; “Academic Board of the International Institute of Islamic Thought” in London; “International Institute of Advanced Systems Research (IIAS)” in Canada; The UK's “Board of Trustees of the Global Civilizations Study Center (GCSC)”; member of the Executive Board of the Association of Muslim Social Scientists (AMSS) in the UK; member of the Forum Against Islamophobia and Racism (FAIR) in the UK; and consultant for islamonline.net (www.jasserauda.net).

He obtained his Ph.D (doctoral) degree from two places, namely the University of Wales, England in the field of Islamic Legal Philosophy in 2008 and the University of Waterloo, Canada in the field of System Analysis in 2006. His Master's degree has a focus on the field of Islamic Jurisprudence on *maqāṣīdal-syarī'ah* obtained from the Islamic American University Michigan in 2004. A Bachelor of Arts (BA) degree was obtained from the Islamic Studies major at the Islamic American University, USA, in 2001 and a BSc was obtained from Engineering Cairo University, Egypt Course Av., in 1998. He memorized

the Koran and receive lessons on traditional Islamic knowledge from the Cairo Mosque in Egypt.

He is active in the “Maqāṣīd Research Center” in the field of Islamic Legal Philosophy in England. In addition, he teaches at several universities in a number of countries. He is a lecturer in Islamic law, philosophy, and materials related to Muslim minority issues and policies in several countries around the world. He is a contributor to policy reports relating to Muslim minorities and Islamic education to the Ministry of Society and the UK Higher Education Funding Council and has written a number of books, most recently in English and in discussion of this paper entitled *Maqāṣīdal-Syarī'abas* Philosophy of Islamic Law: A Systems Approach, London: IIIT, 2008. Auda's real role is that he has applied system-based interpretation with *tafsīr maqāṣīdi* (Aqraminas, 2018, p. 125).

Studying Auda's brief biography above, it can be said that his academic career is closely related to the intellectual background he already has. So when he put forward systems theory and *maqāṣīd* theory, for example, it was a manifestation of his understanding of the sciences he had previously studied. The combination of these two intellectual basics then forms a professionalism in him (www.maqasid.net).

The disclosure here is something related to the intellectual unrest that has engulfed him regarding the understanding, thought, stipulation and implementation of Islamic law in the daily life of Muslims in many countries. The countries he occupies are Muslim minority countries. So that the nuances of Islamic law that are built will be different when living in a Muslim majority. According to him, so far Islamic law (understanding of *'ulamā'ūṣūl*) is very rigid, so that when dealing with various realities at different loci, Islamic law seems to be unable to provide any solutions other than black and white answers, may or may not, *halāl-harām* (binner opposition). In fact, a law is stipulated with the aim of providing comfort, security and welfare for individual and social life. Citing the United Nations Development Program (UNDP) annual report on the

Human Development Index (HDI), for example, he found that the lowest position is occupied by a predominantly Muslim country. This means that Muslims are still lagging behind in areas such as literacy, education, political participation, economic participation, justice, equality of opportunity and women's empowerment. Not to mention the inhuman and irresponsible actions of a group of people in the name of religion (violation of human rights) which adds to the gloomy face of modern Islam which is already dark (www.jasserauda.net).

Then where is the effect of the establishment of Islamic law so far? These problems are what tickle his humanity and intellectuality. This factor is also what made him choose the two disciplines mentioned above to be pursued. The problems identified above arise because the Islamic law that has been stipulated so far is less grounded, less up to date, and less contextual. In other words, Islamic jurists have not translated the substance of the law (*maqāṣid*) which is contained in *adillah al-syar'iyah* (source of law). According to Auda, the understanding that the door to *ijtihad* has been closed and errors in positioning *syar'iyah*, *fiqh*, and *fatwa*, including *Ijma'*, have resulted in the marginalization of Islamic law against current international law (Ghani, 2019, p. 2).

Herein lies the importance of Auda's thought, namely an attempt to synchronize human thought based on sociological reality with God's will which is textual-theological-formalistic in nuances. Auda also felt an intellectual anxiety when finding the reality of Islamic law seemed to be lacking in solutions to the Islamic community in general. The anxieties here are not related to the material in Islamic law but to the understanding, thought, determination and implementation of Islamic law in the daily lives of Muslims in various countries (Supriadi, 2017, p. 219).

3. *Maqāṣid Al-Syari'ah* in The Jasser Auda Perspective

Jasser Auda offers a modern *fiqh* concept based on *maqāṣid al-syari'ah*. Islam is a religion that upholds human values and provides solutions for human life to

be harmonious and balanced. This is what Jasser Auda tries to raise, a system concept that can regulate the lives of Muslims to run according to the rules and provide benefits to humans. In *maqāṣīdal-syarī'ah* as Philosophy of Law: A system Approach Jasser Auda defines *maqāṣīd* in four meanings, namely: the wisdom behind a law, a good end goal that is to be achieved by law, the *ilāhīyah* objective group and the moral concept that is the basis of law and *maṣālib* (Auda, 2008, p. 1). For the purpose of reconstructing *maqāṣīd al-shariah* fundamentally, Auda uses a philosophical approach that is multidisciplinary as well as open with various other relevant disciplines as a methodological framework for reforming the study of *uṣul al-fiqh* and Islamic law (Zaprul Khan, 2018, p. 445). Through system approach, Jasser Auda tries to develop a new frame of mind for the development of Islamic law in this era. There are six concepts of Auda system approach; Cognition, Wholeness, Openness, Interrelated-Hierarchy, Multidimensionality and Purposefulness (Prihantoro, 2017, p. 120).

In the *maqāṣīd* concept offered by Jasser Auda, the values and principles of humanity are the main focus. The *maqāṣīd* theory which is hierarchical has experienced developments, especially in the 20th century. Modern theory criticizes the above classification of necessities for the following reasons: the scope of *maqāṣīd* theory includes all Islamic law, is more individual, does not include the most universal and basic values, such as justice and freedom, and deduced from review of *fiqh* literature, not referring to the original source or script (Auda, 2008, p. 4). The following are some of the offers of *maqāṣīdal-syarī'ah* concepts offered by Jasser Auda, namely:

a. Levels of *maqāṣīdal-syarī'ah*

Contemporary scholars' divide *maqāṣīd* into three levels, namely *maqāṣīdāmmah* (general *maqāṣīd* or general objectives), *maqāṣīdkebāṣṣah* (specific *maqāṣīd* or specific goals) and *maqāṣīd juz'īyah* (partial *maqāṣīd* or partial goals). *Maqāṣīd'āmmah* are general values and meanings that exist under all *tasyrī*

conditions or in most of them, such as justice, freedom, justice and convenience. *Maqāṣidkhabāṣṣah* are *maslahāt* and values that want to be realized in a special chapter in sharia, such as the goal of not degrading and endangering women in the family system, frightening society and the deterrent effect of giving punishment, eliminating *gharar* (obscurity) in *mu'amalāt*, and others. While *maqāṣidjuḥ'iyah* is the goal and value to be realized in certain legal requirements, such as the purpose of honesty and memorization in the provisions of the testimony of more than one person, eliminating the difficulty of the law, whether to not fast for people who are unable to fast because of illness, traveling or other.

The classical scholars arranged *maqāṣidal-syari'ah* in pyramidal levels, starting from *maqāṣid'āmmahas* the center and then branching into *maqāṣidkhabāṣṣah* and finally *maqāṣidjuḥ'iyah*. Then from the other side starting from *al-darūriyah*, *ḥājīyah* then *tahsīniyah*. They arrange an order of priority if there is a conflict between *maqāṣids* one another, then a stronger priority is given, namely prioritizing the protection of religion over the soul, mind and so on. Although this theory seems simple, it turns out that the application of this theory in reality is very difficult and complicated. Because of that, there emerged other views among contemporary scholars such as Jamaludin 'Atiyah and also Jasser Auda which differed from the aforementioned classical arrangements. They argue that *maqāṣidal-syari'ah* with all its levels is not a pyramidal structure, in which the *maqāṣid* is divided between the top and the bottom, but it is a circle that meets and intersects (*dawair mutadākhiblah wa mutaqa'ī'ah*), whose relationships are related to one another (Auda, 2008, p. 7). As shown below:

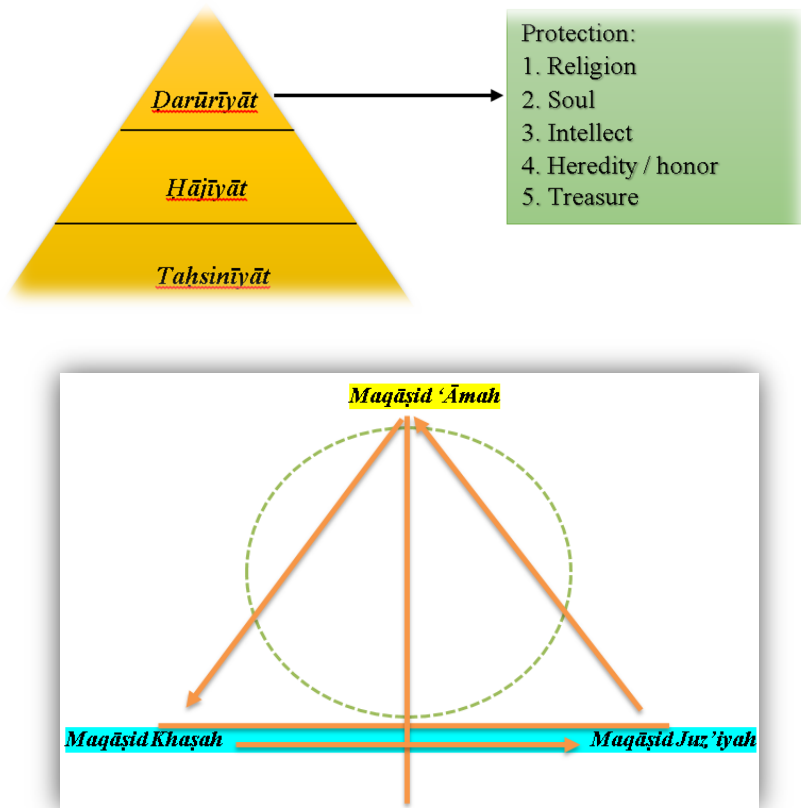


Figure 1. Levels of maqāṣid al-syarī'ah

b. *Al-'illat* and *maqāṣid al-syarī'ah*

Al-'illat in the study of the proposal of *fiqh* is a characteristic used by *al-Syārī*, (sharia maker) as a manāṭ (link, benchmark) for predictive legal rulings as a means of realizing the objectives of Sharia (*maqāṣidal-syarī'ah*) in establishing law.

Making *maqāṣidal-syarī'ah* as 'illat as above, according to Jasser Auda is not quite right. This is because *maqāṣidal-syarī'ah* and hikmah are different from 'illat as defined by the scholars. Even though 'illat is a representation of *maqāṣid* and wisdom, specifically, classical scholars' require 'illat with four conditions, namely:

- a) The attribute should appear (*zāhir*),
- b) Measured (*munḍabit*),

- c) Can be applied to reality or other things, does not apply specifically (*muta'addiy*),
- d) *Mu'tabarab* in the sense that there is no text which indicates that this attribute is not used.

These conditions are not fulfilled in *maqāṣid* and wisdom *al-syarī'ah*. Because of that Auda emphasized the importance of using *maqāṣidal-syarī'ah* as law *manāṭ* as *'illat*. He proposed an alternative to the new rule as a substitute for the old one (Auda, 2008, p. 45), namely:

تدور الأحكام الشرعية العملية مع مقاصدها وجودا و عندما كما تدور مع علتها وجودا و عندما
 “Shara laws which are amaliyah along with the *maqāṣhid* (goals) as it is with its *'illat*, either exist or do not exist”.

c. Problems and their development

According to al-Syaṭībī, the benefit of humans will be realized if the five basic elements of human life can be realized and maintained, namely religion or belief, soul, reason, descent and property. As al-Syatibi divides the order and priority scale of the *maṣlahāt* into three rank sequences, namely *ḍarūrīyāt*, *ḥājīyāt*, and *tahsinīyāt*, from the results of his in-depth study al-Syatibi concluded that the linkages between the levels of *al-maqāṣid* can be described as follows: *Maqāṣidḍarūrīyāt* is the basis for *maqāṣidḥājīyāt* and *maqāṣidtahsinīyāt*. Damage to *maqāṣidḍarūrīyāt* will also bring damage to *maqāṣidḥājīyāt* and *maqāṣidtahsinīyāt*. On the other hand, damage to *maqāṣidḥājīyāt* and *maqāṣidtahsinīyāt* cannot damage *maqāṣidḍarūrīyāt*. Damage to the absolute *maqāṣidḥājīyāt* and *maqāṣidtahsinīyāt* can sometimes damage the *maqāṣidḍarūrīyāt*. Protection of *maqāṣidḥājīyāt* and *maqāṣidtahsinīyāt* is necessary for proper protection of *maqāṣidḍarūrīyāt* (Madjid, et al., 2004, p. 11). Thus, if we pay attention, we cannot separate the three levels of *al-maqāṣid* from one another. The *ḥājīyāt* level is a refinement of the *ḍarūrīyāt* level, the *tahsinīyāt* level is a refinement for the *ḥājīyāt* level, while *ḍarūrīyāt* is the subject of *ḥājīyāt* and *tahsinīyāt*.

Seeing this consideration, then *al-uṣūl al-khamsah* (five types of *ḍarūrīyāt*) must be positioned at the level of *al-qiyām al-akhlāqīyah al-'ulyā* (the highest moral values). It seems that the inspiration of some *uṣūlīs*, especially al-Syaṭībī with *al-sabgab al-akhlāqīyah* (ethical character) towards *al-ma'āni al-khamsah*, led them to argue that all religions agree to protect the five elements in *ḍarūrīyāt* with the claim that these five meanings is eternal and recognized by healthy human nature. The actual types of *al-maṣālib*, cannot be limited to the five elements, and cannot be separated from moral values (*al-qiyām al-akhlāqīyah*), besides that *makārim al-akhlāq* also enters all levels of *al-maṣālib* requiring new construction in *al-maṣālib* classification.

The *al-maṣālib* classification that is relevant to the current social situation and conditions of society must meet the following criteria:

- a) *Qiyām al-nafi wa al-ḍarar* (values of benefit and *maḍarāt*). The values (*al-qiyām*) that fall into this criterion are benefits related to life, health, descent, and property.
- b) *Qiyām al-husn wa al-qubb* (good and bad values) or can be called *al-maṣālibal'aqlīyah*. This means that *al-ma'āni al-akhlāqīyah* can uphold various virtues and evils (*al-mahāsīn wa al-maqābil*) which includes all mental and intellectual constructs. The benefits included in *al-ma'āni* are not limited, including a sense of security and freedom, work, safety, culture, and dialogue.
- c) *Qiyām as-salah wa al-fasad* (repair and damage) or called *al-maṣālib al-rūḥīyah*. This means that *al-ma'āni al-akhlāqīyah* can uphold all *al-maṣālib* and *al-mafāsīd* and cover all spiritual and moral potential. Included in this section is religion from the spiritual aspect of religion, such as *al-ihāsān*, *al-rahmah*, *al-mahabbah*, *khushūʿ*, and *tawādu'* (Asmuni, 2005, p. 175).

d. Systems theory

Every Islamic law prescribed should be tucked with sharia objectives, which is expedient in the sense of broad sense that must be preserved or harm that should be rejected. *Maqāṣīd al-syarī'ah* is the result of the understanding, thought and cognition of scholars, both classical and contemporary scholars towards some Islamic law so that it is not patent, stagnant and permanent. Jasser Auda endeavors to rearrange, reconstruct and integrate *maqāṣīd al-syarī'ah* with all theories of Islamic legal methodology in order to respond to the complexity of the problems that engage Muslims (Yaqin, 2018, p. 63).

a. Cognitive Nature

The perspective of Islamic theology views *fiqh* as the result of human thought and reflection (*ijtihad*) on *naṣṣ* (holy book text), as an attempt to explain the hidden meaning and implications of its practical level. Thus *fiqh* is the result of human reasoning, understanding, and interpretation and is more than just a literal manifestation of God's commands. So that the product of *fiqh* is no longer a sacred item that is untouched by the dimensions of humanity, space and time, but is always in dialogue with the development and progress of human science (Wendry and Syafruddin, 2020, p. 49).

b. Wholeness (integrity)

Systems analysis always looks at a problem holistically-thoroughly. This is different from the atomistic approach which always views a problem using "horse glasses", without color and without spectrum. The theoretical implication of such a view is that the atomistic approach always views things in a causal position. Meanwhile, the systems approach views that every cause and effect is related as one part of the whole. The stressing points here are group relations (between sections). So that if there is a disturbance in one part, surely the other parts will feel the disturbance too.

c. Openness

Systems theory distinguishes between open and closed systems. Living systems must be open systems. Open systems have the ability to achieve the same target from different conditions through correct and balanced alternatives from the environment. Thus an open system works with an environment that is outside the system. In contrast to a closed system that is isolated from the environment.

The Islamic legal system is an open system. Even so, there are still some jurisprudence who think that the door to *ijtihad* is closed at the *uṣūl* level, thus causing Islamic law to be in a closed system which causes Islamic law to die. However, the Islamic Law *Madzāhib* and the majority of jurisprudence throughout the centuries believe that *ijtihad* is necessary for Islamic Law because *naṣṣ* is limited, while events / incidents are not limited.

Thus, the methodology of Islamic Law basically develops certain mechanisms related to new events, or in system theory terminology it is called “interaction with the environment.” Examples are *qiyās*, *maṣlaḥah*, and *i’tibār al-’urf*. This shows that this mechanism needs more development in order to provide flexibility to Islamic law, so that it can keep up with the changes that are happening now. The mechanism and level of openness will be the characteristics used in developing and critical analysis of *uṣūl* systems and sub-systems.

d. Interrelated Hierarchy

This section refers to the theory of categorization in cognitive science. Categorization is the process of eliminating differences in entities and dispersions, towards a multi-dimensional ‘spatial feature’. Categorization is a very basic cognitive activity, in which humans understand the information they receive, make generalizations and predictions, give names and assess various ideas and items. Based on cognitive science, there are two alternative explanations of categorization theory which represent two alternative categorization methods: “feature similarity” and “mental concept.”

The first categorization attempts to find natural similarities and differences between entities measured by how much they match and differ. While the second

categorization is based on mental concepts. The mental concept is a theory that emphasizes the perceptions of the classifier. A concept is a multi-dimensional group of criteria, which can create a number of simultaneous categorizations for the same number of entities. The categorization that Auda agreed on was the second, so that the analysis would not only stop at the ‘tree of structure’ hierarchy, but would also be extended to analyze the interrelationships between the resulting sub-concepts.

e. Multi-Dimensionality

Dimensionality in system terminology has two dimensions, namely rank and level. Rank is the number of dimensions in space. While the level is the possible number of levels in one dimension. Phenomena and even ideas with ‘opposing tendencies’ are usually seen as one factor only, and appear more ‘contradictory’ than ‘complementary’, and are analyzed as ‘zero-sum games’ rather than ‘win-win games’. Thus, phenomena and ideas are always expressed as dichotomous and always appear to be opposites. The dichotomy represents one-dimensional thinking only one level, where consideration is only given to one factor, even though the pair can actually appear “complementary” to other factors.

f. Purposefulness

Goal orientation is a general feature of systems theory. Quoting Gharajedaghi and Ackoff’s opinion, Auda said that an entity is said to aim when it can produce (1) the same outcome in different ways in the same environment, (2) different outcomes in the same or different environments. Auda considers the objectives of Islamic Law (*maqāṣid*) to be the fundamental basis of principles and methodology in systems-based analysis. The effectiveness of a system is measured based on the fulfillment of (human) goals. The effectiveness of the Islamic legal system is judged based on the fulfillment of its objectives or law (Auda, 2008, p. 55).

4. *Maqāṣid Al-Syari’ah* in The Determination of Law

Regarding the verity of *maṣlahāt* in the perspective of *uṣūl* and *fuqahā* scholars, there are two things that should be underlined:

- 1) All scholars agree to accept *maṣlahāt* judgments as long as their existence has the support of *naṣṣ* (*maṣlahah mu'tabarāt*).
- 2) The difference of scholars in responding to *maṣlahāt* only occurred when they discussed the veracity of *maṣlahāt mursalah* and when there was a conflict (*ta'arūḍ*) between *maṣlahāt* and *naṣṣ syāra*^(Halim, 2007, p. 39).

On the other hand, the study of *maṣlahāt* can actually be approached from two different approaches. *Maṣlahāt* as the goal of *syāra* and *maṣlahāt* as an independent legal proposition. All scholars agree that *maṣlahāt* is the goal of *syāra*, but they have different opinions on its existence as a legal argument. Therefore, there is a dialectic between *naṣṣ*, reality and benefit. *Naṣṣ* itself in the view of the *uṣūl* scholars based on its *dalālah* is divided into *dalālah qaṭ'iyah* and *dalālah ḍannīyah*. There is no arguing that these many *naṣṣ* are intended for the benefit of humans.

The next problem arises when there is a conflict between *maṣlahāt* in the view of *naṣṣ* and *maṣlahāt* in the human perspective in the two perspectives above. The answer to this problem can be classified into two categories: First, if *maṣlahāt* contradicts *naṣṣ* which is *qaṭ'i al-dilālah*, then the *jumbur* scholars (except al-Ṭufi) agree to prioritize *naṣṣ*. However, if the conflict occurs with *naṣṣ* yang *ḍannī al-dilālah*, then in this case there are several opinions of scholars.

First, the opinion that gives priority to *naṣṣ* absolutely. For them *naṣṣ* occupies the highest rank in the hierarchy of sources of Islamic law. So that if there is any source of law that conflicts with *naṣṣ*, then *naṣṣ* takes precedence. Supporters of this opinion are *Syāfi'iyah* and *Hanābilah*. Second, the opinion that prioritizes *maṣlahāt* over *naṣṣ*, if *maṣlahāt* is *ḍarurīyah*, *qaṭ'iyah*, and *kullīyah*. Al-Ghazali gave an example that it was permissible to kill Muslims who were used as life shields by the enemy with the aim of saving the threatened country and

society. Third, the opinion that prioritizes *maṣlahāt* than *naṣṣ*. This opinion can be classified again into two groups. First, the opinion of *Mālikīyyah* and *Hanafīyyah*. They practice *maṣlahāt* more than *naṣṣ*, if the *naṣṣ* is *ḍannī*, both *dilālah* and *ṣubūt*, while the *maṣlahāt* is *qaṭ'ī*. Second, al-Ṭufī who argues that it is permissible to practice *maṣlahāt* before *naṣṣ*, both *naṣṣ* are *qaṭ'ī* and *ḍannī*. It's just that the coverage area is in the *mu'amalāt* field.

5. Contextualization *Maṣlahah* in Islamic Economy

Islamic economics as part of Islamic science, has emerged as a new social science discipline that has gained recognition from various higher education institutions in the contemporary Muslim world. Various sources of Islamic knowledge have contributed significantly in shaping its evolution and development. However, Islamic law seems to have received less attention in the context of its contextualization in current economic thought. Using this *maqāṣid al-syarī'ah* approach to assess its relevance to Islamic economic practice and its contextualization in space and time. It is known that *maqāṣid al-syarī'ah* makes a significant contribution to the understanding of Islamic economics as a discipline in Islamic higher education. *Maqāṣid al-syarī'ah* helps to understand certain economic theories from the perspective of Islamic law. Therefore, it can be concluded that if Muslim social scientists, especially Muslim economists, such as Jaser Auda try to embrace and pursue this branch of *fiqh* with great care and commitment, this can better facilitate the development of economic theories from an Islamic perspective. The implications of the application of *maqāṣid al-syarī'ah* in Islamic economic practice have an impact to the point of having to use the *maṣlahah* instrument (goodness and greater interest or benefit for society) considering that Islam does not harm the individual (Mustafa, et al, 2016, p. 5).

The recent economic recession after the Covid-19 pandemic in Indonesia and around the world has increased discussion about the contribution of the Islamic economy in overcoming it. Experts are increasingly demanding that

Islamic economic institutions re-instill the philosophy of *maṣlahah* in carrying out their operations. The flexibility of Islamic law is required to include the substance of the *maṣlahah* in the economic system. The findings of this study suggest the role of Islamic economists in making new policy breakthroughs and solutions. In determining the sharia compliance of Islamic economic policies in Indonesia, Islamic economists and scholars can concentrate on flexible technical Islamic law by adapting the *maqāṣid al-syari'ah* doctrine through the *maṣlahah* instrument. The *maqāṣid al-syari'ah* approach in the context of Islamic economics is taken to meet the needs of the economic sector in Indonesia (Shaharuddin, 2010, p. 129).

At present the practice of Islamic economics in practicing *maqāṣid al-syari'ah* through the *maṣlahah* instrument can be explained that the foundations of Islamic economics are based on the concept of economic welfare, universal brotherhood, justice, fair income distribution, and individual freedom in the context of social welfare. It is intended that every individual and organization is committed to always being fair, to encourage a balanced life between the life in the hereafter and the world. Thus this development could only be achieved in conformity with the *maqāṣid al-syari'ah* through the *maṣlahah* instrument. This implies the necessity for Islamic economic actors to develop products based on overall welfare and a larger perspective from the *maṣlahah* framework, and not just focusing on normative legal forms.

With careful analysis, it can be seen that current Islamic economic practices are, in most cases, not up to the standards required by sharia. For example, many Muslim economists prefer equity-based instruments and place greater responsibility for social welfare and religious commitment, in order to realize *maqāṣid al-syari'ah* for equitable distribution of wealth and promote economic development and growth, whereas most of the Islamic economic policies in Indonesia only revolves around Islamic banking. Therefore, currently, one of the biggest challenges in producing Islamic economic policies that are solutive and

in accordance with sharia is *maqāṣīd al-syari'ah* (Al-Mubarak and Osmani, 2020, p. 7).

For example in conceptual framework of *waqf*, it is found that in the classical *waqf* literature, two most disputed aspects of *waqf* jurisprudence constituted the requirements for completion of a *waqf* and its ownership status (Abdullah, 2020, p. 1). That's why legal principles such as *maṣlaḥah*, was an important legal tool that Muslim reformers invoked in their efforts to work out a comprehensive methodology to bridge the gap between the past and the present on the one hand and legal theory and practice on the other (Barzegar, 2019, p. 42).

6. Conclusion

Between *ijtihād* and *maqāṣīd al-syari'ah* cannot be separated. *Ijtihād* in essence is an effort to explore *syara'* law optimally. The effort to explore *syara'* law is successful if a *mujtabid* can understand *maqāṣīd al-syari'ah*. Therefore, knowledge of *maqāṣīd al-syari'ah* is one of the requirements of a *mujtabid*. Jasser Auda tried to offer a modern *fiqh* concept based on *maqāṣīd al-syari'ah*. In Jasser Auda's view, Islam is a religion that upholds human values, Islam is also a concept religion that seeks to provide solutions for human life to be harmonious and balanced. This is what Jasser tries to raise how a system concept can regulate the lives of Muslims so that they run according to the rules and provide benefits to humans. Jasser Auda defines *maqāṣīd* in four meanings, first, wisdom behind a law. Second, a good end goal which the Law was trying to achieve. Third, the divine purpose group and the moral concept which are the basis of law. Fourth, *maṣālib*. In the *maqāṣīd* concept offered by Auda, values and humanitarian principles are the most important. Auda also tried to reconstruct the old *maqāṣīd* concept which is protection and preservation in the direction of the *maqāṣīd* theory which refers to development and rights. The implications of the application of *maqāṣīd al-syari'ah* using the *maṣlaḥah* instrument in the context of the Islamic economy in

Indonesia are used to fulfill the needs of sharia policies in the economic sector which do not only revolve around Islamic banking matters.

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