The Contextualization Of The Māqāṣid Āl-Šyāriāh Jasser Auda Theory In The Concept And Practice Of Islamic Family Law

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ARTICLE INFO	ABSTRACT
  	This study aims to explain how the contextualization of Jasser Auda's māqāṣid āl-šyāriāh theory is used in the Islamic family law paradigm approach. This issue is important to be discussed for some reasons. First, the approach used in the paradigm of Islamic family law in Indonesia is still not based on maqasid. Second, the concept of maqashid al-syariah has a major contribution to develop the paradigm of Islamic law, including in the field of Islamic family law. Third, the concept of maqashid Auda refreshes the discourse of renewing approaches in Islamic family law. This study uses a qualitative approach with implementing a combination study, which is a combination of literature review and social contextualization. The findings showed that the concept of māqāṣid āl-šyāriāh Jasser Auda contributed greatly to the development of a paradigm in the Islamic family law study approach. The concept of māqāṣid āl-šyāriāh Jasser Auda emphasizes the value of guarding and protection towards development and rights, thus family law which has been oriented towards safeguards, can be changed towards family development. Furthermore,

Auda's philosophy system approach can be used as an alternative approach in the study of family law. The implication is that the approach offered by Jasser Auda in family law will be in line with the achievement of the Human Development Index indicators in the United Nations Development Program (UNDP).

A. Introduction

This study aims to explain how the contextualization of Jasser Auda's māqāṣid āl-šyāriāh theory is used in the Islamic legal approach in the field of Islamic family law, or what we often know as *āhwāl šāḥsīyyāḥ* by Jasser Auda. A development report from the United Nations Development Program (UNDP) states that countries with a predominantly Muslim population are at the lowest level than developed countries in terms of the Human Development Index (HDI). For this reason, Islamic law must be able to provide solutions but not override the principles of Islamic law itself. The law is elastic which can adjust to the existing situation and conditions[1].

Therefore, the interpretation and exploration of existing meanings need renewal in terms of ideas[2]. One of them is Jasser Auda's thoughts. By relating to Jasser Auda's system approach, it is able to provide a fresh discourse in reconstructing *māqāṣid āl-šyāriāh*. According to Auda, the reform of Islamic law is not only limited to revising the opinion of the *ulama'* or *ulama's fatwa*, but must also include renewal of the methodology, logic, and framework of Islamic legal thinking. Meanwhile, according to Abdullah Saed, the renewal must be holistic, complex and integrative.

The purpose of *māqāṣid āl-šyāriāh* is none other than for the benefit of humans on this earth[3]. One of the concerns of māqāṣid āl-šyāriāh is family life. According to Ibnu Asyur the functioning of the family is the strength of human civilization and an integration factor of the social order. Maintaining offspring in the context of the old *māqāṣid* is indeed a special concern so that it is included in the five principles of protecting human benefit. But seeing the

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[1]Jasser Auda, 2008, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, International Institute of Islamic Thought (IIIT), p. 229.

[2]Amin Abdullah, 2012, *Islamic Studies; Pendekatan Integratif-Interkonektif*, Pustaka Pelajar, Yogyakarta, p. 135.

[3]Abu Ishaq Al-Syatibi, 2003, *Al-Muwafaqat Fi Ushul Al-Syari'ah*, Vol. II, Dar Al Kutub Al Ilmiyah, Tt, Beirut, p. 5.

development of māqāṣid carried out by contemporary Muslim scholars, as attempted by Jasser Auda with a systems philosophy approach[4], has implications for changing the orientation of *māqāṣid*.

There are differences in the orientation of the change in the traditional māqāṣid paradigm to the contemporary māqāṣid. The difference lies in the value orientation that traditional māqāṣid emphasizes preservation and protection, whereas contemporary māqāagaanid theory emphasizes development and rights[5].

The implication of this paradigm also changes the concept of *hifḏū āl-nāṣl* which we have known so far has only been limited to keeping offspring shifting to the development of family institutions. This theory emphasizes more on caring about family institutions and protecting the family. From this context, this paper intends to offer Jasser Auda's ideas in reforming Islamic family law, especially the study of the concept of *māqāṣid sharia*.

Some scholars have already conducted the research on Jasser Auda's thoughts. As has been done by Zaprulkhan[6], in his research on Jasser Auda, he revealed that a methodological reconstruction is needed in ushul fiqh not only at the jurisprudential level. Through the reconstruction of the methodological level of *māqāṣid sharia* with a six-feature approach in the philosophical system, Islamic law will be able to accommodate the various problems faced by Muslims today. The research with the same results was also conducted by Muhammad Faisol[7], Ilham Mashuri[8] who argue that reform is needed in the methodological scope, namely at the level of *māqāṣid āl-šyāriāh* with a philosophical system approach.

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[4]Jasser Auda, 2015, *Membumikan Hukum Islam Melalui Maqasid Syariah*, Terj, *Rosidin Dan 'Ali 'Abd El-Mun'im*, Mizan, Bandung, p. 11.

[5]Jasser Auda, 2007, *Maqasid AL-Shariah as Philosophy of Islamic Law: A Systems Approach*, The International Institute of Islamic Thought, p. 45.

[6]Zaprulkhan Zaprulkhan, "Maqāṣid Al-Shariah in the Contemporary Islamic Legal Discourse: Perspective of Jasser Auda", *Walisongo: Jurnal Penelitian Sosial Keagamaan*, Vol. 26, No. 2, 2018, p. 445 – 72.

[7]Muhammad Faisol, "Pendekatan Sistem Jasser Auda Terhadap Hukum Islam: Ke Arah Fiqh Post-Postmodernisme", *Kalam*, Vol. 6, No. 1, Juni 2012, p. 39–64.

[8]Ilham Mashuri, "Pendekatan Sistem Dalam Teori Hukum Islam (Perspektif Jasser Auda)", *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman*, Vol. 5, No. 1, Juni 2019, p. 11–28.

The same thing was also expressed by Ainol Yaqin[9]. In his research, he revealed that the ijtihad carried out by Jasser Auda was oriented to live up to the values of Islamic law which have the values of love, freedom, civility, equality, justice, human rights, brotherhood, tolerance, maintenance, humanity, and justice. Thus, it will be able to improve and build Human Resources (HR), especially Muslims in order to encourage the advancement of world civilization.

In contrast to what was studied by Salahuddin[10], he argues that in applying māqāṣid āl-šyāriāh must be aligned with *maqāṣid āl-mūkāllāf*, so that Islamic syar'iat can manifest its humanism in accordance with its mission as *raḥmah li al-'alamīn*.

From the literature review, most of his research scholars only focus on the methodological offered by Jasser Auda in developing the new concept of *māqāṣid āl-šyāriāh*, so that no one has paid special attention to the development of each *hifḏū*, especially to *hifḏū āl-nāṣl*. Therefore this research is the first research discussed about the concept of māqāṣid āl-šyāriāh Jasser Auda because no previous research has touched on this topic and its contribution to the legal approach within the scope of Islamic family law.

To explain deeper arguments from this research, this paper will discuss the first, arguments about the shift in meaning and concept of *māqāṣid āl-šyāriāh*. Second, the arguments related to the contemporaryization of the meaning of māqāṣid āl-šyāriāh. Third, the arguments related to the thought of *māqāṣid āl-šyāriāh* Jasser Auda. Fourth, the argument related to improving the range of dimensions of māqāṣid āl-šyāriāh. Fifth, the argumentation of the *māqāṣid āl-šyāriāh* philosophical system approach. Last, the contextualization of Jasser Auda's *māqāṣid āl-šyāriāh* theory in the approach of Islamic family law.

B. Discussion

1. *Māqāṣid Āl-Šyāriāh* Jasser Auda's Thoughts

Jasser Auda is a contemporary māqāṣid thinker who was born in Egypt, and he is actively involved in the Associate Professor at the Qatar

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[9]Ainol Yaqin, "Rekonstruksi Maqâshid Al-Syarîah Dalam Pengembangan Metodologi Hukum Islam (Kajian Eksploratif Pemikiran Jasser Auda)", *MADANIA: JURNAL KAJIAN KEISLAMAN*, Vol. 22, No. 1, Juni 2018, p. 63–82.

[10]Muh Salahuddin, "Hukum Inkusif Pemikiran Jasser Auda," *Ulumuna*, Vol. 16, No. 1, Juni 2012, p. 103 – 24.

Faculty of Islamic Studies (QFIS) with a focus on public policy studies in the Islamic Studies Program. In 1998, he received his education on the Koran and Islamic scholarship at the Al-Azhar Mosque, Cairo. Then in 2001 a BA degree was obtained from the Department of Islamic Studies at Islamic American University, USA and in the same year a BSc was obtained from Engineering Cairo University, Egypt Course Av. The following year 2004 a Master of Fiqh was obtained from the American Islamic University, Michigan, on the objectives of Islamic law *(māqāṣid āl-šyāriāh)*. He obtained his PhD degree from two campuses at the University of Waterloo, Canada, with a study of systems analysis in 2006 and the University of Wales, UK, in the concentration of Islamic Law Philosophy in 2008.

According to Auda, there are four meanings of māqāṣid. First, *māqāṣid* is the wisdom behind a law. *Māqāṣid* is a shari'a which has the value of justice, all of which contain wisdom, and all contain grace. Meanwhile, deviations from the values of *maslahat*, mercy, justice, and wisdom are definitely not provisions of the Shari'ah. Second, the end goal of a law is a good end. Third, the basis of law is a group of moral concepts and divine aims. Fourth, *mashalih* is the essence of *māqāṣid*. This has become a benchmark in the development of *māqāṣid* by offering human principles.[11]

Jasser Auda's understanding of *māqāṣid āl-šyāriāh* departed from his anxiety in understanding traditional *ūṣūl āl-fiqh*. There are three reasons why Jasser Auda wanted to reconstruct the concept of traditional *ūṣūl āl-fiqh*.

1. The traditional of *ūṣūl āl-fiqh* looks literally and overrides the purpose of the text. This textualistic and literalistic reading is an effect of the strength of the language aspect which is the focus of the fiqh study.
2. The categorization in the theory of *ushul fiqh* which only lead to dichotomous logic. For example, the distribution of the arguments for *qat'i* and *dhanni*, 'am and *khas*, *mutlaq* and *muqayyad* and others.
3. Reductionist and atomistic in analyzing *ūṣūl āl-fiqh*, instead of comprehensive and holistic characteristics. This partial and reductionist analysis departs from the strong influence of the logic of causality in

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[11]Galuh Nasrullah Kartika MR and Hasni Noor, "Konsep Māqāṣid āl-šyāriāh Dalam Menentukan Hukum Islam (Perspektif Al-Syatibi Dan Jasser Auda)", *Al Iqtishadiyah Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah*, Vol. 1, No. 1, 2014, p. 50–69.

ūṣūl āl-fiqh. This reductionistic and atomistic approach is used very dominantly in some *ūṣūl āl-fiqh* theories.[12]

Apart from giving a critical note of the *ushul fiqh* Jasser Auda also criticized the theory of *māqāṣid* which was renewed in the classical era. According to his view, there are four weaknesses in the old *māqāṣid*. These weaknesses are as follows[13];

1. In traditional *māqāṣid* theory, the scope of detailed chapters is not specifically studied so that if there are detailed questions about classical theory, it cannot be answered. For example, the family chapter in fiqh is not included in the theme of traditional *māqāṣid* studies.

2. The orientation of the traditional *māqāṣid* theory does not lead to the benefit of humans in general, but rather to the benefit of an individual nature so that it is only oriented towards protecting the mind, self / soul, and individual assets. For example is the prohibition of adultery, stealing or killing and others.

3. Justice and freedom of expression do not become the main principle in traditional *māqāṣid* theory. For example is gender justice.

4. Determination of traditional *māqāṣid* does not extract directly from the texts of the Qur'an and Hadith but through the fiqh literature and ulama's *'madzab-madzab'*. For example is the early mujtahids.

Derived from the results of this reflection, Jasser Auda provided an alternative discourse by becoming *māqāṣid* as a basis for doing *ijtihad* so that universal problems and contemporary problems can be resolved with Islamic law. This discourse will be discussed in the next chapter.

2. *Towards* the Contemplation of the Meaning of *Māqāṣid Āl-Šyāriāh*

The implication of the expansion of the meaning of māqāṣid has shifted the concept from what was originally just a principle of protection and safeguards that led to the development of human beings and human rights as follows;

Hifḏū āl-dīn

Borrowing the terminology of Al-Ghazali and Al-Syatibi, the meaning of *hifḏū āl-dīn* (religious guardianship) has traditionally been

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[12] Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)", *Jurnal Al Himayah*, Vol. 2, No. 1, Maret 2018, p. 97 – 118.

[13] Jasser Auda, op.cit, p. 3 – 4.

interpreted as punishment for apostasy or punishment for neglecting correct beliefs according to Al-Amiri which is often used as a reference in classical fiqh regarding the context of religious protection. However, Ibn Aysur[14] redefined the meaning of *hifḏū āl-dīn* as freedom of faith, in a contemporary context it is called the right to freedom of belief. This view is based on the argument in the Al-Qur'an Chapter Al-Baqarah verse 256 "there is no compulsion in Islam" as a fundamental principle in *māqāṣid āl-šyāriāh*.

Hifḏū āl-nāfs dan Hifḏū āl-Ird

In the classical terminology *hifḏū āl-nāfs* (guarding the soul) and *hifḏū āl-Ird* (guarding of honor) are in a level of necessity according to Al-Syatibi and Al-Ghazali, while according to Al-Amiri *hifḏū āl-nāfs* and *hifḏū āl-Ird* are punishments for honor breakers, while Al-Juwaini called it the honor guard. However, in the contemporary context, the term protection of honor extends to the protection of human dignity and also protection of human rights which is part of the objectives of Islamic law or *māqāṣid āl-šyāriāh*. Thus, the principle of *māqāṣid āl-šyāriāh* is in line with the principle of universal human rights.

Hifḏū āl-āql

The meaning of *hifḏū āl-āql* (protection of the mind) is still interpreted as being limited to the prohibition of intoxicating drinks such as liquor with the intention of safeguarding human common sense. Whereas in the contemporary context, the meaning of *hifḏū āl-āql* develops into the development of science by respecting scientific thought and work, further studies in studying knowledge, preventing claims of work or plagiarism, against the mentality of imitation, and protecting intellectual property rights.[15]

Hifḏū āl- māl

According to Al-Amiri's terminology, the meaning of *Hifḏū āl-māl* (protection of property) is interpreted as a punishment for the crime of theft, while Al-Juwaini means protection of money. However, in today's

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[14]Muhammad Tahir Ibnu 'Asyur, 2006, *Maqasid As-Syariah*, Darul Salam, Kaherah, p. 292.

[15]Jasser Auda, op.cit, p. 57.

contemporary context, this meaning develops into economic development, distribution of wealth / property, social welfare, reduction of economic inequality. According to Jasser, this renewal leads to the use of māqāṣid to encourage the economic development of society which is needed in Muslim countries today.[16]

Hifḏū āl-nāṣl

In traditional terminology, one of the inevitable purposes of Islamic law is *hifḏū āl-nāṣl* (protection of heredity). Previously, Al-Amiri interpreted *hifḏū āl-nāṣl* as a theory of *māqāṣid* needs by giving the meaning of punishment for immoral crimes. This concept was then developed again by Al-Juwaini from a concept that is criminal law theory *(mazajir)* to a concept the theory of custody *(ismah)* which is called *hifḏū āl-furuj* (pubic guarding).[17] While the term *hifḏū āl-nāṣl* itself was put forward by Al-Ghazali as *māqāṣid* of Islamic law at the level of necessity.[18]

In a contemporary context, the meaning of hifḏū āl-nāṣl has significantly shifted from hereditary protection developing to a theory oriented towards family development. Ibnu Asyur[19] in his book *Usul al-Nizam al-Ijtima'I fi al-Islam* makes the concept of family care in Islamic law *māqāṣid* by elaborating family-oriented māqāṣid with moral values in Islamic law.

According to Ibn Asyur's terminology, the development of the concept of *māqāṣid* opens opportunities for modern scholars to update theories in new ways. So that *māqāṣid* is not only oriented towards criminal law theory *(mazajir)* like the Al-Amiri method or Al-Ghazali's version of the concept of guarding, but is oriented towards the concept of value and system.[20]

In addition to reconstructing the meaning of *māqāṣid āl-šyāriāh* in a contemporary context by shifting the meaning of protection and protection to the meaning of development and human rights, Jasser added that human resource development is the principle of contemporary māqāṣid. This

[16]Jasser Auda, op.cit, p. 59.
[17]Abi al-Ma'ali Juwaini-al and Abdul Malik bin Abdullah bin Yusuf, *Al-Burhan Fi Ushul Al-Fiqh, Juz 2*, Dar Al-Kutub, Tt, n.d., Beirut, p. 747.
[18]Ahmbmmat Al-Ghazali and Muhammad al-Tusi, 1993, *Al-Mustasfa, Investigation: Mohammad Abdus Salam Abdus Shafi. E* 1, p. 258.
[19]Ibnu 'Asyur, op.cit, p. 206.
[20]Jasser Auda, op.cit, p. 57.

argument is based on the UN Development Program (UNDP) report which states that in the Human Development Index (HDI) the countries with the most Muslim population are at the lowest level compared to developed countries[21].

According to his argument above, Jasser suggests that the development of HR (Human Resources) becomes the central point of discussion for the benefit of the public in the present era. Human resource development must be the main objective principle of *māqāṣid* which is embodied in Islamic law. Thus the elaboration between human resource development and Islamic law *māqāṣid* provides a solid foundation in the realization of human resource development in the Islamic world.[22]

3. The *Improvement* of Scope and Dimensions of *Māqāṣid Āl-šyāriāh*

Auda gave an explanation regarding the scope improvements of *māqāṣid* from the four dimensions. First, it is about the levels of necessity according to the traditional classification. This classification divides *māqāṣid* into three levels of necessity for *dharuriyat, hajiyat, and tahsiniyat*. The need for *dharuriyat* is further divided into five protections namely *hifḏū āl-dīn* (religious protection), *hifḏū āl-māl* (protection of property), *hifḏū āl-nāfs* (protection of the soul), *hifḏū āl-nāṣl* (protection of descent), *hifḏū al-aql* (protection sense). Moreover, *Dharuriyat* itself is considered an essential thing in human life so that it becomes a common agreement that this necessity is the target behind every divine law. Second, the scope of the aims of the law in reaching *māqāṣid*. Third, the reach of people covered by *māqāṣid* and the last is the levels of generality of *māqāṣid*.

In order to correct the deficiencies of the traditional *māqāsid*, Auda and other scholars offer an improvement on the dimensions of 1) the scope of *māqāṣid* 2) the scope of people containing *māqāṣid* and 3) the source of *māqāṣid* induction and the generality of *māqāṣid*. The improvements to the scope of *māqāṣid* include first; general *māqāṣid (māqāṣid al-ammah)* with an emphasis on need / necessity by adding the concept of convenience and justice. Second, a special *māqāṣid (al-māqāṣid al-Khassah)* which can be

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[21]United Nations Development Programme, 2004, *Bureau for Crisis Prevention, Reducing Disaster Risk: A Challenge for Development-a Global Report*, United Nations.
[22]*Ibid.*

developed into all chapters of Islamic law such as protection from crime, improving child welfare in family law; and protection from income monopolies in economic law. Third, partial *māqāṣid (al-māqāṣid al-juzziyyah)*, this *māqāṣid* is has special intentions behind a particular verse or law.[23]

The second improvement is the improvement of the scope of the person who contains the *māqāṣid* element. The scope of the classical *māqāṣid* is only oriented to the individual which includes the life, self-respect, and individual possessions. Meanwhile, in contemporary *māqāṣid*, improvements are made to a wider range, such as covering the life of society, the life of the nation, and even the life of mankind at large. Thus, *māqāṣid* is not only for individual interests but for the public interest by placing the interests of the nation, human rights, and women's rights and so on.

The third improvement is the refinement of the source of *māqāṣid* induction and the general level of *māqāṣid*. This improvement is done by changing the method/method of exploring the meaning of general *māqāṣid* from classical fiqh literature in fiqh *madzab* to a new way, namely by directly digging from the text. In this way, it is possible to explore the meaning in presenting the values and general principles of *Nash* so that it can go beyond the historicity of classical fiqh decision.

Some contemporary Muslim scholars have also explored the meaning of *māqāṣid* directly from *Nash*. Rasyid Ridla (d 1354H) analyzed the Qur'an by identifying *māqāṣid* which included reforms of the pillars of faith, reason, knowledge, awareness that Islam is the religion of nature, wisdom, socio-political and economic reform, and women's rights. This was also done by Ibn Asyur in his book *māqāṣid āl-šyāriāh*[24] and find the meaning that the general *māqāṣid* of Islamic law is maintaining order, freedom, equality, fitrah, and ease. Meanwhile, the tracing of Muhammad Al-Ghazali (d. 1416H) states that justice is the cause of the progress of the triumph of Islam while injustice is the cause of decline, therefore Al-Ghazali the value of "justice and freedom" is included in *māqāṣid* at the dharuriyat level[25].

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[23]Jasser Auda, op.cit, p. 36-37.
[24]Ibnu'Asyur, op.cit, p. 138.
[25]Jamal Attiyah, Nahwa Taf'il Maqasid al-Syari'ah, p. 49.

In contrast to what Yusuf Qardawi explores in exploring the meaning of *māqāṣid* in the Qur'an, he concludes that common *māqāṣid* include preserving true beliefs, maintaining human dignity and rights, inviting worship to Allah SWT, cleansing the soul, building a family, sakinah, improve morale, and provide justice to women, build a strong Muslim[26].

4. Systems Philosophy Approach in *Māqāṣid* Development.

The systems philosophy approach proposed by Auda is one of the rational "post-modernism" philosophies that is not oriented to Europe and is an anti-thesis form of modernist and post-modernist philosophy. System philosophy is proposed as an idea in the study of Islamic philosophy by taking the benefits and criticisms of Islamic-based versions of modernism. The systems approach is a holistic approach in which any entity is seen as a single system consisting of sub-systems. There are a number of system features that can affect the analysis of a system against several components of its sub-systems and also determine how these subsystems interact with each other.

There are 6 features in the system philosophy approach used by Auda which are interrelated, namely the cognitive nature of the system, wholeness, openness, interrelated hierarchy, multidimensionality, and also purposefulness. This purpose is the core feature of the Islamic legal system.[27]

5. Contextualization of Jasser Auda's *Māqāṣid Āl-Šyāriāh* Theory in the Renewal of Islamic Family Law Approaches.

The implications of the concept of māqāṣid āl-šyāriāh in the Islamic family law approach can be translated into various problems and issues. Sharif Maula gives three examples of problems that can be applied by *māqāṣid āl-šyāriāh* in reforming family law. First, marriage to the scribes, testimony in divorce, and the compulsory testament[28].

Meanwhile, according to the *māqāṣid āl-šyāriāh* approach, it is representative enough to be applied in all materials in Islamic family law,

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[26]Yusuf Qardhawi, 1999, *Kaifa Nata 'Amal Ma'a Al-Qur'an Al-Adzim*, Dar Al, Kairo.

[27]Jasser Auda, op.cit, p. 250.

[28]Bani Syarif Maula, "Kajian Al-Ahwal Al-Syakhsiyyah Dengan Pendekatan Maqasid Al-Syari'ah," *Al-Manahij: Jurnal Kajian Hukum Islam*, Vol. 8, No. 2, Desember 2014, p. 233–46.

such as the division of male and female inheritance, female guardianship, the concept of *nuzus*, livelihood obligations after divorce, and so on[29]. In agreement with the above researcher, Daud who specifically examines the reform of family law in the field of inheritance also argues the need for the reconstruction of *māqāṣid āl-šyāriāh* in the field of Islamic inheritance law[30]. Seeing the urgency of using *māqāṣid āl-šyāriāh*, and so that *māqāṣid āl-šyāriāh* can be accepted as a flow of renewal, Auda has offered improvements to the concept of māqāṣid.

There are three implications of the concept of *māqāṣid āl-šyāriāh* Jasser Auda for the renewal of the Islamic family law approach.

1. In the context of the traditional *māqāṣid* classification, it only divides into three levels; *dharuriyat, hajiyat, and tahsiniyat* which covers all Islamic law. However, the scholars' efforts in initiating this traditional *māqāṣid* did not include the specific purpose of a group of *nash*/laws covering certain fiqh topics. It is from this context that the position of family law is not included yet in the category of traditional *māqāṣid* and does not occupy the *dharuriyat* position, because traditional *māqāsid* emphasizes more protection and guarding / preservation. Meanwhile, with the improvement of the scope of *māqāṣid* offered by Auda, by dividing the classification of contemporary *māqāṣid* into three levels 1) general *māqāṣid*, 2) specific *māqāṣid*, 3) partial *māqāṣid*. In this context, it implies the position of family law or special topics regarding the family covered by special *māqāṣid*. Thus, the discussion of family law is covered by *māqāṣid*. Because this *māqāṣid* can be observed throughout certain chapters of Islamic law, such as the welfare of children in family law, protection from crimes under criminal law, and so on.

2. Auda improved traditional *māqāsid* which was more oriented to individual interests to become interests that were oriented towards family, society and mankind. Thus, in family law is not only oriented to individual needs or care and/or already covers the area of the family itself.

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[29]Ilham Tohari and Moh Anas Kholish, "Ijtihad Berbasis Maqashid Syari'ah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia", *Jurnal Hukum & Pembangunan*, Vol. 50, No. 2, Juni 2020, p. 462–75.

[30]Zakiul Fuady Muhammad Daud and Raihanah Bt Azahari, "Menyoal Rekontruksi Maqashid Dalam Pembaharuan Hukum Kewarisan Islam", *Jurnal Ilmiah Islam Futura*, Vol. 18, No. 1, 2019, p. 1–33.

3. The contemporary of *māqāṣid* developed by Auda emphasizes the development of values, as well as human rights. Thus, the concept of *hifḏū āl-nāṣl* in the context of traditional *māqāṣid* is only understood with the meaning of prevention, so that in some traditional fiqh literature it only discusses the prohibition of adultery, the prohibition of sibling marriage, the prohibition of *muhrim* marriage. So, contemporary *māqāṣid* has implications for the development of family law by prioritizing development values and rights, so that the problems related to the development of family institutions such as justice in the family, child welfare, family economic welfare, children's rights, and the rights of wives are included in priority discussion of *māqāṣid*.

C.   Conclusions

Jasser Auda's argument in updating Islamic Law from a methodological point of view is that Islamic law can answer several contemporary problems which can be measured by the Human Development Index (HDI) of the United Nations Development Program (UNDP), so reformation is needed in the methodological field, by updating *māqāṣid āl-šyāriāh*. Therefore, the renewal of *māqāṣid āl-šyāriāh* carried out by Jasser Auda can also be used in updating the approach of Islamic law in the family field.

In the field of family law, there is the concept of *hifdz al-Nasl* contained in the *māqāṣid āl-šyāriāh* which has been reconstructed by Jasser Auda which has implications for reform efforts in Islamic family law perspective. So that the concept of *hifdz al-Nasl* which is understood as the preservation of offspring shifts to the development of family institutions, such as justice in the family, child welfare, family economic welfare, children's rights, and wife's rights.

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