

Jasser Auda's System Approach in The Rules of Marriage Dispensation in Indonesia (Review of Maqashid Syariah)

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Abstrak: This article discusses the view of maqashid sharia with the theory of the Jasser Auda system approach to the implementation of the rules regarding marriage dispensation that apply in Indonesia. CATAHU (Annual Notes) Komnas Perempuan in 2020 notes that the dispensation of marriage (child marriage) is another thing that has an extreme threefold increase based on BADILAG data, namely from 23,126 cases in 2019, a sharp increase of 64,211 cases in 2020. This is because among others, of a pandemic situation such as the intensity of the use of gadgets and family economic problems as well as the amendment to the Marriage Law which increases the age of marriage to 19 years for women. The research method used is qualitative research methods, with the type of library research, data collection techniques through observation of secondary and primary data. Based on the results of the research conducted by the author, it can be concluded that the rules regarding the granting of permission for marriage compensation need to be reviewed so that it does not appear to facilitate the legalization of marriage, especially for child marriage.

Keyword: "Maqashid Syariah", "Dispensation of Marriage", "Family Law Reform"

Introduction

The mandate of the Republic of Indonesia Marriage Law No. 1 of 1974 states that marriage is a marriage between a man and a woman as husband and wife, intending to form a happy and eternal family (household) based on the Supreme Divinity. A valid marriage is a marriage that is under the religion or belief of each couple and is then registered by the state following the applicable laws and rules. When implementing marriage, the Marriage Act states that the condition for marriage must first give the consent of both candidates to the marriage

and, for couples under the age of 21, requires the consent of the parents or guardians. The principles of marriage include the need for maturity or maturity of the bride and groom in the sense that they had physical and mental maturity.¹ Therefore, the age of a person who hold a marriage is very influential on the harmony of the household. Age factors affect a person's mindset, as immature age also leads to an immature mindset. Mature age will be able to overcome all family problems. Conversely, immature age often overcomes emotional problems that lead to unwanted things like domestic violence.²

In addition, in terms of determining who can make the contract or commitment. The jurisprudence as the starting point of the majority of the Muslim population in Indonesia (before the enactment of Presidential Decree No. 1 of 1991 on the composition of Islamic law) does not set the age limit of a man or woman who can perform a marriage contract. The Qur'an does not explicitly explain the age limit of a person to be able to hold a marriage. But in the Quran an-Nisa verse 6 is mentioned:

"And test the orphans until they are old enough to get married. If you think they were intelligent (good at caring for treasures), then leave it to them their wealth..."

If the verse is seen from the point of view of marriage, especially about the age sufficient to marry, then the verse does not contain in detail the number of age groups that are considered sufficient to marry. But quality it is mentioned that a person old enough to marry is a person who seemed ready to build a household and has the willingness to become a husband to be a leader in the household, which is evidenced by the ability to maintain and manage his wealth. With this instruction, lawyers and jurists make a provision that after a person's puberty, he has the freedom to determine the path of his life and to be responsible for his actions.³

The conditions contained in the jurisprudence literature for both parties that will be in the act are "*Ahliyyah al-Tasharruf*" or have the ability to act. But the action here is also the ability to act in relation to the

¹ Maimunah, "Dipensasi Nikah Anak Perempuan : Suatu Fenomena Masyarakat Modern Dalam Konteks Agama Dan Negara," *Syakhsia, Jurnal Hukum Perdata Islam* 21, no. 2 (2020): 209–230.

² Arifki Budia Warman, "KDRT Dan Hukum Keluarga : Peran Hukum Keluarga Islam Dalam Menghindari KDRT," *Ijtihad* 36, no. 2 (2020): 67–75.

³ Achmad Bahroni, "Dispensasi Kawin Dalam Tinjauan Undang-Undang Nomor 23 Tahun 2002 Jo Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak," *Jurnal Transparasni Hukum* (2014): 33–63.

implementation of the treaty, both for oneself and for others, which is characterized or can distinguish by the nature of "*al-Tamyiz*". Persons who do not belong to *al-Tamyiz*; children who are not yet 7 years old and crazy, they cannot hold a marriage contract and lead to the fact that the marriage is invalid, because if the people who were not *al-Tamyiz*, it means that they do not have the right will and the right intentions and are taken into account by Sharia.⁴

Then, over time, several regulations appeared that apply in Indonesia regarding the age limit for marriage. Among them are:

- a. Article 6 (2) of Act No. 1 of 1974 on Marriage states: "To maintain a marriage, a person who has not yet reached the age of 21 (twenty-one) must obtain the permission of both parents." Marriage licenses are granted to men and women who are 19 (nineteen) years old. Following Article 7 paragraph 1 of Law No. 16 of 2019 on amendments to Law No. 1 of 1974 on marriage, which states in Article 7 paragraph 1 that the permissible marriage is a man aged 19 (nineteen) years and a woman aged 16 (sixteen) years old.⁵
- b. Presidential Decree No. 1 of 1991 on the Compilation of Islamic Law (KHI) Article 15 paragraphs (1) and (2), which follows the marriage age rule in Act No. 1 of 1974 on marriage Article 7 paragraph (1), which was later amended in Law No. 16 of 2019 Article 7 paragraph (1), which is 19 (nineteen) years old. But in accordance with the jurisprudence that requires that the condition of the person with the act is the ability to act, the compilation of Islamic law in Article 98 paragraph (1) states that the age limit of the child, who can stand alone or is said to have been an adult, is a child who has reached the age of 21 (twenty-one) years, while the child has no physical or mental history or has not yet married.⁶

If it is connected with the question of parental consent in the previous marriage law, it can be concluded that in Indonesia, when a child is 21 years old, it can be said that he was able to stand alone and has full rights over himself in the act.

With these clear provisions, but the reality on the ground revealed that in 2018 and 2019, the marriage dispensation application was the

⁴ Wahbah Al-Zuhaily, *Fiqh Al-Islam Wa Adillatuhu* (Damaskus: Dar al-Fikr, 1986).

⁵ Undang-Undang Perkawinan, "UU Nomor 16 Tahun 2019," 2019, 1–8.

⁶ Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam* (Bandung, 2008).

fourth largest case in the first level of the religious court after the divorce case, divorce staaq and Isbat Nikah. Data from the Religious Justice Agency (BADILAG) found that there were 15.574 cases of marriage dispensation in 2018 and increased significantly in 2019 with the registration of 29.359 cases of marriage dispensation.⁷ The high rate of Marriage cannot be separated from the problems that occur in it. One of them is the phenomenon of child marriage. UNICEF (United et al.'s Fund) shows that 30% of women in Southeast Asia are married under 18.⁸ The Annual Data Set (CATAHU) of the National Commission against Violence against Women in 2020 also includes cases of marriage dismissal (child marriage) as data on violence against women, which have increased threefold since 2019, namely 64.211 cases in 2020. This is due to pandemic situations such as the intensity of device use and family economic problems and changes to the marriage law that raise the age of marriage for women to 19 (nineteen) years old.⁹ Last but not least, the peak of the number of marriage dispensation cases is also a study for the Indonesian Child Protection Commission (KPAI). Recorded in the 2020 Performance Report press release, KPAI conducted a review of the implementation of Supreme Court Regulation No. 5 of 2019 on Guidelines for Deciding on Marriage Dispensation Requests and Marriage Law in Religious and District Courts. The application for a high marriage release should be part of the fulfilment of the rights of the child. KPAI even pushed for the establishment of a task force to prevent and treat child marriage.¹⁰

The rules regarding underage marriage are not only regulated in Indonesia, but also regulated in several other countries. In the Marriage Law of Malaysia there is a provision that in a marriage that is carried out must avoid marriage under the minimum age permitted to marry. The minimum age permitted to marry in Malaysia is 18 years for men and 16 years for women. Any deviation from the minimum age permitted for marriage must obtain permission from the court or the Sharia Court¹¹,

⁷ Simtalak.badilag.net, *Bank Data Perkara Peradilan Agama*, 2020.

⁸ Ernawati Ernawati, Abdul Gani Abdullah, and Zaitunah Subhan, "Child Participation in Marriage Dispensation in Southeast Asian Muslim Countries from The Perspective of the Convention on the Rights of the Child," *Journal of World Science* 2, no. 8 (2023): 1137–1148.

⁹ Komnas Perempuan, "Catatan Tahunan Komnas Perempuan Tahun 2020," 2021.

¹⁰ KPAI, "Siaran Pers: Laporan Kinerja Tahun 2020 Komisi Perlindungan Anak Indonesia," in *Kpai*, 2020, <https://www.kpai.go.id/files/2021/02/MEDIA-RELEASE-LAPORAN-AKHIR-TAHUN-2020-1.pdf>.

¹¹ Edi Yuhermansyah and Mohd Hakim Bin Mohd Akhir, "Implementasi Batas Umur

regarding the provision that the court's permission is fully submitted to the court. As a comparison with Turkey, the legal provisions for marriage in Turkey are related to the provisions on the minimum age limit for marriage, in Turkish law (The Ottomann Law Of Family Rights 1917 "capacity to marry" act 4-8) stipulates that the minimum age someone who wants to carry out marriage is 18 years for men and 17 years for women. Courts can also allow marriage at the age of 15 for boys and 14 for girls after obtaining parental and guardian consent. However, even though couples who get this exemption get dispensation from the Court, they still have to be over 15 years old for prospective grooms and 14 years for prospective brides. In France state that marriages carried out at the age of less than 25 years for men and 21 years for women must obtain permission from their parents. Meanwhile, the age limit for marriage is 18 years for men and 15 years for women. Against deviations in the age of marriage, the government is given the freedom to grant a dispensation accompanied by strong reasons.¹² In Brunei, it does not clearly state the minimum marriage limit, but there is a requirement for marriages under 18 years of age to obtain permission from parents or guardians.¹³

These reports about how much the problem with marriage dispensation is certainly an important note for us. Given that if the state regulates in this way over the limits of the ability and licensing to hold a marriage, it turns out that there are still many applications for marriage dispensation that appear. For this reason, this study aims to examine the extent of the benefits of marriage dispensation rules in Indonesia when considered with the theory of Jasser Auda's Maqashid Sharia systems approach.

Research Methods

This study is a literature review that takes sources with documentation techniques from regulations and laws related to marriage dispensation cases in Indonesia and will then be studied with the theory of Maqashid Syariah with a System Approach by Jasser Auda. This study

Pernikahan (Studi Kasus Di Mahkamah Rendah Syari'ah Bukit Mertajam Pulau Pinang)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 2 (2019): 485–501.

¹² Sriono Sriono et al., "Reconstruction of Marriage Dispensation Regulations in the Perspective of Human Rights Based on the Value of Justice," *Scholars International Journal of Law, Crime and Justice* 6 (2023): 225–233.

¹³ Amy Young et al., "Children in Brunei Darussalam: Their Educational, Legal and Social Protections," *International Journal of Islamic Thought* 11, no. 1 (2017): 6–16.

material is studied in order to find the form of *mashlahah* that is related to the case of marriage dispensation in Indonesia in the study of the theory of Maqashid Syariah Approach to the Jasser Auda System.

Jasser Auda's System Approach in The Rules of Marriage Dispensation in Indonesia (Review of Maqashid Syariah)

Marriage dispensation rulings can be given to someone who is not old enough but wants to hold a marriage based on consideration of reasons that can make an applicant arrive at the purpose of marriage. The method of establishing the law of *maslahah mursalah* is the motto of extracting the law which is based on the goodness it contains but has no legal basis of the Qur'an and Sunnah.¹⁴ In sharia it is explained, that the purpose of marriage is so that humans can live peacefully and accompanied by affection between each other. Man has a duty as caliph in the world in carrying out Allah's mission on earth based on the rules outlined in the Qur'an and Sunnah. However, this general rule certainly requires a specific explanation, especially the rapid and growing human life with various complex problems. These supporting rules are obtained in the form of *Mashlahah Mursalah*.¹⁵ In that regard, policy makers in Indonesia established several laws that regulate more specifically with the aim of kindness and reject madarat, including in the matter of marriage. This is proven by the birth of Law Number 1 of 1974 which then changed to Law No. 16 of 2019, Compilation of Islamic Law, and so on. Imam Al-Syatibi stated that if there is a rule or law that leads to good, then the rule should be used as a handle if it meets the following criteria; *first*, it does not contradict the Maqashid Shari'ah; *second*, it is acceptable to reason (rational); And *third*, eliminate the difficulty.¹⁶

Marriage dispensation is considered to be a solution for young couples who are not yet 19 years old to hold a legal marriage under the Marriage Act and Islamic Law. Because, if the step is not immediately done, it will lead the couple to greater damage (*mafsadah*) such as adultery. The purpose is, when the young couple who are not yet old

¹⁴ Agung Barok Pratama, "Konstruksi Hukum Pengabulan Istbat Nikah Di Bawah Umur," *The Indonesian Journal of Islamic Law and Civil Law* 5, no. 1 (2024): 109–127.

¹⁵ Ah. Soni Irawan, "MaqaShid al-Shari'ah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporer", *The Indonesian Journal of Islamic Law and Civil Law*, Vol. 3, No.1, (April 2022), <https://ejournal.iainutuban.ac.id/index.php/jaksya/article/view/192>

¹⁶ Sulastris Caniago, "PENCATATAN NIKAH DALAM PENDEKATAN MASLAHAH," *JURIS, Jurnal Ilmiah Syariah* 14, no. 2 (2015): 75–87.

enough and need to get married immediately, then this step will result in the benefit of bringing Mawaddah wa Rahmah to the Sakina family. Therefore, Maslahah Mursalah can be a theory when it comes to examining the determination of marriage admission.¹⁷

According to Fiqh experts, this is an important topic, that is related to underage marriage. The factor of the presence or absence of benefit, along with the presence or absence of concern, that it leads to sexual relationships that are not allowed by Islam is an important thing to consider. The marriage between man and woman serves to preserve honor (*Hifz al-Hurmah*), so that the couple does not fall into forbidden acts. In addition, it aims also to maintain the offspring or survival of humans (*Hifz al-Nasl*) who are healthy, build a household full of love and compassion, and aim to help each other to get good together. Islamic Sharia aims to create benefits for mankind and avoid danger. The substance of the concept of Maqashid Sharia is the benefit as stated by Ibn Qayyim al-Jauziyah which is to prevent damage to humans and bring the maslahah to them, control the world with truth, justice and virtue and explain the path that must be taken before human reason.¹⁸

The establishment of Islamic Law prioritizes prevention against something that leads to destruction. In accordance with the rules:

درأ المفساد مقدم على جلب المصالح

"Rejecting harm should come first than putting welfare first."

Islamic law has fiqh rules that give authority to a power holder Prohibit something that was originally allowed to be forbidden because it is feared that it will cause damage (*mafsadah*).¹⁹ This rule is called *Sadd al-Zari'ah* and is a form of prevention to avoid harm. One form of prevention in Indonesia is the ban on marriage for those who are not yet old enough (19 years old). In essence, the law of marriage is Sunnah but since there is a clause that is not old enough this marriage is prevented. This is because there is a fear that harm will occur because the marriage is entered into at a very young age, such as divorce. The age limit for marriage, as set out in

¹⁷ Ahmad Zainal Fanani, *Menggugat Stagnasi Pembaruan Hukum Islam Di Indonesia*, 2016.

¹⁸ Ainul Yakin, "Urgensi Teori Maqashid Al-Syari'ah Dalam Penetapan Hukum Islam Dengan Pendekatan Maslahah Mursalah," *At-Turast* 2, no. 1 (2015): 25-44.

¹⁹ Isniyatin Faizah, Alantama Prafastara Winindra, Dewi Niswatin Khoiroh, "Implementasi kaidah dar'ul mafasid muqaddamun 'ala jalbil mashalih terhadap pencatatan perkawinan di Indonesia", *As-Sakinah: Jurnal Hukum Keluarga Islam*, Vol. 2, No. 1, (Februari 2024), <https://www.lp3mzh.id/index.php/jhki/article/view/333>

the law in the previous discussion, is important in determining whether or not it is a marriage to minors. The age limit is one of the quantitative assessment instruments that have an impact on the legal certainty of those affected.²⁰

According to Jasser Auda, the application of Sharia (Islamic Law) in any contemporary context or profession requires a methodology that reflects the universality and flexibility of Sharia law in changing circumstances. Without the appropriate components of Sharia law to account for different environments and cultures, historical dimensions, and the geography of people, politics will be counterproductive and will produce nothing. This will certainly jeopardize the value system which is very important in Sharia law, namely justice, wisdom, compassion, and the common good.²¹

With his Contemporary Maqashid concept, Jasser Auda wants to highlight how the Maqasid Al-Shari'ah used in traditional terminology can be applied today. While some fakihs oppose maqasid contemporaneity, it is a necessity and an important thing. While some fakihs oppose maqasid contemporaneity, it is a necessity and an important thing. Because of the above, it is necessary to develop a method for developing problems in people's lives. Jasser Auda's reinterpretation of Maqashid can be seen in the following section:

- a. *Hifz al-Din*. Forms of religious protection in traditional terminology can take the form of combating apostasy or punishing people who abandon true religious beliefs. But at this point, Hifz al-Din can be interpreted as freedom of belief or freedom of religion or belief. The basis of this development is of course the al-Quran, in which it says "there is no compulsion in religion".
- b. *Hifz al-Nasl*. The original concept of inheritance protection is further interpreted, namely that of the protection of the family. This is reinterpreted as Maqashid by Ibn 'Asyur, that Maqashid is developed as family-oriented and moral values in Islam.
- c. *Hifz al-'Aql*. The application of spiritual protection, which in traditional terms is identical to the prohibition on drinking anything intoxicating, developed in the form of efforts to develop scientific

²⁰ Fanani, *Mengugat Stagnasi Pembaruan Hukum Islam Di Indonesia*.

²¹ Jasser Auda, "A Maqasid - Based Approach for New Independent Legal Reasoning (Ijtihad)," *Islamic Perspective on The Principles of Biomedical Ethics*, no. ii (n.d.): 69–87.

thinking, travel to study, fight Taqlid and prevent the outflow of experts abroad.

- d. *Hifz al-Mal*. The form of property protection, originally known as punishing thieves and protecting "money" in the private sphere, was later developed for socio-economic purposes. This manifests itself in the form of social assistance, economic development, money distribution, a prosperous society, and the reduction of the differences between socio-economic classes.
- e. *Hifz al-'Irdh* which is often coupled with *Hifz al-Nafsi*. The hadith of the Prophet SAW declares that the blood, property, and honor of every Muslim are haram, which must not be violated. Until recently, the expression of protection of honor in Islamic law was gradually replaced by the "protection of human rights" as a maqashid in Islamic law.²²

The system approach is a holistic approach that regards each entity as a unified system consisting of several sub-systems. Because of this, several system characteristics affect the system analysis of its subsystem components and relates to how patterns between subsystems interact with each other and interact with external components.²³ According to Jasser Auda, the systemic approach in Islamic law requires the view that Islamic law is a system. Therefore, the application of the "cognitive character of the system" feature will lead to what is probably the correct legal conclusion and legal opinions differing therefrom are valid statements of truth. In his system approach analysis, Jasser Auda has six characteristics, namely cognitive natural systems, wholeness, openness, coherent hierarchy, multidimensionality and determination. The author will use these six characteristics to review the rules of marriage in Indonesia in Jasser Auda's contemporary Sharia maqashid theory, which uses a systemic approach.

1) *Cognitive Nature Systems*

This trait says that some people mistakenly believe that fiqh is viewed as a divine choice, while fiqh is a product of human knowledge of divine revelation and is outside of divine knowledge (fiqh is the result of ijtihad,

²² Jasser Auda, *Membumikan Hukum Islam Melalui Maqashid Syariah*, Terj (Bandung: Mizan, 2015).

²³ Retna Gumanti, "Maqashid Al-Syariah Menurut Jasser Auda," *Jurnal Al-Himayah* 2, no. 1 (2018): 106.

not revelation). One of the examples of Jasser Auda regarding the mistake of this feature is the assumption that *ijma* takes the same position as the Quran and Hadith of the Prophet SAW as the source of the law. Whereas *ijma* is a consultation mechanism of certain groups in researching a law in response to new events.

In addition, concerning the rules of marriage in the sense of the cognitive character approach, this has fulfilled the components, because as a product of *Ijtihad* this ordinance on liberation from marriage has changed, as a manifestation that the regulation on liberation from marriage in Indonesia, and Act No. 34 of 2014 amending Act No. 23 of 2004 on child protection and Act No. 16 of 2019 amending Act No. 1 of 1974 on marriage. Because apart from no explicit argument about the age limit for getting married, changes (changes) are necessary to react to developments in society. From this it can be concluded that the setting of the age of marriage, combined with the provision of a marriage decree, is a cognitive reaction of the authorities (cognitive character of the system) and not a divine belief.

2) *Wholeness*

With this approach, Jasser Auda notes that the components of legislation are not separate parts, but are interconnected. At the same time, Amin Abdullah stated that this holistic way of thinking must be included in the understanding of Islamic law, so that the mindset has evolved from where it was originally just about cause and effect, it is now being expanded to include things that have never been thought of outside of the cause and effect process. This principle is also important in the current legal reform. At present, the *Maqashid Sharia* should no longer be seen as protection for each individual, but to realize the general benefit.²⁴

The rules regarding marriage in Indonesia have generally of course met the criteria of the classic *Maqashid Shariah*, namely to receive offspring and honor. In today's *maqashid*, however, this rule was not able to sustain and protect the family. This can be seen in the efforts of parents to make applications for exemption from marriage for minors so easy to submit to the court (supported by only administrative rules).

3) *Openness*

According to Jasser Auda, a system must retain a certain degree of openness and self-renewal to survive. The view that the door of *ijtihad* is

²⁴ Gumanti, "Maqashid Al-Syariah Menurut Jasser Auda."

locked certainly makes the development of Islamic law rigid and undeveloped. This feature offers two mechanisms of openness and self-renewal that are expected in Islamic law. First, the cognitive character of a faqih is exposed to the worldview around it. When a faqih tries to explore the meaning of the law (*maqashid shari'ah*), it is in some ways the result of his perspective on the outside world or the environment. This is not intended to limit the Faqih to its views on 'urf only in the Arabian Peninsula, even though the Qur'an was revealed around it. Second, openness to philosophical thinking. Islamic law can renew itself through openness to other components, one of which is philosophy. Many previous scholars have interacted with it. Since *ushul fiqh* is one of the philosophies of Islamic law, it is open to philosophical investigation. A legal expert must therefore have external insights to be able to deal with current (contemporary) issues from different scientific perspectives. At the very least, this approach minimizes rigidity and tends to prioritize literalism in legislation and open the Islamic legal system to the advancement of science.

This is also evident in the declaration of exemption from marriage in Indonesia. However, unlike the previous two features, which tend to be the same, the author sees that this third feature is less implemented. The judge in the decision still seems to have granted the application because he follows the *ushul* rule: "The rejection of damage must take precedence over the prioritization of the benefit.". So that other factors that become children's rights are neglected, from the right to an education to parents' obligations to prevent children from marrying minors. It would be nice if the judge also commented on the Child Protection Act in his decision, which contains the rights and obligations of children and parents, not just based on the rules of *ushul fiqh*. As Jasser Auda implements, it is time that *maqashid Shariah* (the purpose of passing a law) was seen generally (*maqashid 'ammah*), not just individual *maqashid*. *Hifz al-Nasl* is no longer considered rigid to preserve the sanctity of the descendants so that the underage couple "absolutely" has to marry. Meanwhile, there are *hifz al-aql*, which also have to be developed, especially when it comes to age couples who are still subject to compulsory schooling. Preventive efforts must of course be carried out collectively by the family, rather than choosing a way out and firing, the couple must get married.

4) *Interrelated Hierarchy*

In discussing the classical maqashid, three maqashid levels are found, one on top of the other, namely the Dharuriyah, Hajiyyah, and Tahsiniyah levels. This hierarchy was later changed by Jasser Auda so that each other is not above and below, precedes and ends, but is related to each other. There are two types of changes that Jasser Auda made, namely dividing the dimensions of maqashid into three hierarchies and improving the scope of maqashid. Jasser Auda's three maqashid hierarchies, as follows:

- a) *Maqashid al-'Ammah* (regarding the universal Tasyri behavior such as justice, tolerance, equality, convenience, including aspects of Maqashid Dharuriyah in classical Maqashid).
- b) *Maqashid Khashah*; Regarding the maslahah, which is to a certain extent, it is forbidden in the family area to injure a woman or in the muamalah it is forbidden to commit fraudsters.
- c) *Maqashid Juziyyah*, the core and main maslahah in a law that can also be called wisdom. As with testimony, one must be honest and have a strong memory so that perhaps in modern criminal cases one person's testimony will be sufficient because the witness is honest and has valid data.

With this hierarchy, it must be viewed holistically and not separated so that it can react to the renewal of today's problems.²⁵

The second hierarchical renewal that Jasser Auda carried out was to improve the reach of Maslahat in the Shari'a Maqashid, which in the classical Maqashid tends to reach Maslahat, which aims to discourage individuals from the Mafsada but Jasser Auda believes that benefits and the public will be reached. No longer thinking of the good individually, but how to make the good tangible in public. As described in the previous section, there is a renewal of the reach of utility in the Dharuriyah al-Khamsah offered by Jasser Auda.

The granting of a marriage permit, viewed holistically, and, in the author's opinion, seemingly lame regulations, does not find a single problem. Also, as already mentioned, Article 7 Paragraph (2) of Law No. 16 of 2019 on amendments to Law No. 1 of 1974 about marriage itself has become a door that opens the problems that lead to many marriages of minors without syar'i reasons. On average, the reason for requests for exemption is in the social area if the spouse is still of school age. However,

²⁵ Gumanti, "Maqashid Al-Syariah Menurut Jasser Auda."

since they dropped out of school and parents feared they would not be able to monitor their children's interactions, marriage was the ultimate solution. While in Article 26 of Law No. 24 of 2014 on point of child protection it is clearly stated that it is the duty and responsibility of parents to prevent child marriage. Therefore, the use of the rule:

دراً المفساد مقدم على جلب المصالح

"*Rejecting harm must have priority over benefit*"

as a form of Sadd al-Zariah must be expanded again. Because at this age children still have rights that their parents are not allowed to fulfill, neither relationally nor legally.

5) *Multi-Dimensionality*

This approach is intended by Jasser Auda in such a way that in studying Maqashid Shariah it should be viewed from a scientific discipline that requires other disciplines so that Islamic law is not always in the traditional area of classical literature in the development of today's life. This feature criticizes the binary opposition option in the study of Islamic law, which sees another argument as contradicting another argument. This feature thus offers a universal compromise in the arguments found to be contradicting (ta'arrud al-adillah) in connection with the extraction of the arguments of Mujtahid.²⁶

There are six strategies lawyers can use in resolving disputes between arguments:

- (a) *Al-jam'u*. This method requires a Fakih to examine the conditions and context of the conflicting statements and then interpret them.
- (b) *Al-Naskh*. This method emphasizes that the arguments that came last must override the arguments that came earlier in chronological order.
- (c) *Al-Tarjih*. This method validates the most authentic statements and eliminates others.
- (d) *Al-tawaqquf*. In this way, the mujtahid is advised not to do anything until one of the three methods above is proven.
- (e) *Al-tasaqut*. This method encourages mujtahids to ignore both arguments because of the uncertainty in both.
- (f) Choice (al-tahyir). This method enables the mujtahid to choose what is deemed appropriate for the particular situation.

According of this study, it is hoped that marriage for minors should not be viewed as mere "halal" worship so that the requests for exemption

²⁶ Gumanti, "Maqashid Al-Syariah Menurut Jasser Auda."

from marriage are increasing day by day, but it should be seen that there is also a social dimension.

6) *Purposefulness*

Goals are the most important thing in a system. In this case, the maqashid of Islamic law is the core of Islamic law itself. According to Jasser Auda, the goals of Islamic law include the five characteristics of the Islamic legal system, there are integrity, openness, cognitive nature, interrelationships, and multidimensionality. Jasser Auda offers a new way of reading this Al-Maqashidiyyah, or feature of convenience, in primary narratives, namely the Quran and Hadith, and also the Aqliyah sources, namely Istihsan, Qiyas, and others. An example of this characteristic is that the Qur'an is examined with a holistic approach for verses that discuss the faith, the life story of the prophets, and the arguments telling about the universe and the afterlife can be read completely and thoroughly so that it plays a role in law education.²⁷

In addition, Jasser Auda identifies the Maqashid Sharia as the fundamental methodology that can be used in researching contemporary Islamic law. Since the effectiveness of a system is measured by whether or not goals are achieved, the achievement of Maqashid Shariah becomes the measure of the effectiveness of Islamic law or not. In addition, it is also seen whether the law can be a problem-solving and problem-solving solution for mankind and whether it can bring benefits. To explore maqashid, of course, by referring to the main arguments of the Quran and the hadith of the Prophet SAW, not the opinion of Mujtahid or Fakih.²⁸ Therefore, the achievement of Maqashid (purpose) is important, without referring it to a particular school. And through the features of this systematic approach, it is hoped that mujtahids can enact laws that are beneficial to the general public and those around them.

Conclusion

The effectiveness of the law, seen from the achievement of the purpose of the law or not. The marriage exemption is a solution for young couples who are not yet 19 years old to have a legal marriage according to marriage law and Islamic law. Because if this step is not taken

²⁷ Moh. Farid Fad, "Kontekstualisasi Maqashid Shari ' Ah Dalam Sustainable Development Goals," *Jurnal Iqtishad: Reconstruction of Justice and Welfare for Indonesia* 6, no. 2 (2019): 130–155.

²⁸ Gumanti, "Maqashid Al-Syariah Menurut Jasser Auda."

immediately, it will lead the couple to greater harm (mafsada), such as adultery. However, Jasser Auda, known as the Maqashid Shariah reformer, offers six features to reinterpret the achievement of the intent of law using a method known as the systems approach. The system requires a component to be linked to other components. The six characteristics of the system approach are cognitive nature systems, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness.

The analysis that the author carries out is to read whether the regulations on the exemption from marriage in the regulations of Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage, as well as Law No. 34 of 2014 regarding amendments to Law No. 23 of 2004 Concerning child protection, it turns out that the judge did not achieve the desired goal of this modern Sharia Maqashid method when deciding on the application for exemption from marriage. The goal of preventing child marriages was not implemented because the Child Protection Act was not enacted, taking into account the judicial decision. In addition, the judge has not confirmed the duties and responsibilities of parents in fulfilling children's rights, so it becomes a ushul rule only as a yardstick for determining the right. It is to be hoped that there is a need to examine holistically how this systemic approach method offers it to see that, as the country's successor there are still many children's rights that must be fulfilled at a young age and it is necessary to reaffirm and guarantee the implementation of parental responsibility both concerning the fulfillment of the upbringing and concerning the prevention of child marriage under the law itself.

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