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## PROTECTION OF CHILDREN AS A PHILOSOPHICAL AND SOCIOLOGICAL BASE FOR THE AGE LIMIT: MAQĀSĪD SHARĪ'A VERSION OF JASSER AUDA

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### Abstract

*This study examines how Jasser Auda's maqāṣid sharia view on child protection as the basis for determining the age limit for marriage and how Jasser Auda's maqāṣid sharia view on the philosophical and sociological foundations contained in the marriage age limit. This study uses a qualitative study with a descriptive analytical method with a philosophical and sociological approach. The results of this study indicate that, First, Jasser Auda's maqāṣid sharia view on child protection as the basis for determining the age limit for marriage, namely that Jasser Auda's maqāṣid asy-syarī'ah theory shows that the goal of equalizing the marriage age limit contained in Law Number 16 The year 2019 refers to the concept of child protection as regulated in concerning Child Protection which includes the basic rights of children, the right to protection from violence and discrimination and full justice for children. Second, Jasser Auda's maqāṣid sharia view of the philosophical and sociological foundations contained in the marriage age limit in using six features of the system theory that Jasser Auda optimized the results according to Cognitive, Openness, Wholeness, Interrelated Hierarchy, Multi Dimensionality and Purposefulness is accordance with maqāṣid sharia, realizing the goal of eliminating discrimination against women accordance with the global era by reforming maqāṣid to words Human Rights, creating equality between men and women, refers to the environment of society, nation and state, such as upholding justice and tolerance, achieving a harmonious family.*

**Keywords:** Child Protection; Age Limit; Maqāṣid Sharī'a; Jasser Audah

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### INTRODUCTION

The philosophical foundation is the consideration or reason that the articles of association were formed with the life, awareness, and legal ideals of the Indonesian

nation in mind, including the spiritual atmosphere and philosophy derived from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. The state guarantees everyone's rights and is obligated to safeguard, promote, and implement these rights while avoiding discriminatory behaviors. This assurance demonstrates the state's commitment to achieving a state and nation life free of discrimination, including the age of marriage for men and women.<sup>1</sup>

Marriage is a voluntary union between a man and an adult woman. Both men and women have rights and responsibilities in marriage to carry out their respective responsibilities in order to construct an eternally happy and wealthy family based on fairness, equality, and the rule of law. In order to accomplish the objective of marriage, the state must ensure justice, equality, and legal clarity in the organization of marriage institutions.<sup>2</sup>

The sociological justification is a concept or justification that regulations are developed to address the diverse requirements of the community. Indeed, the sociological foundation is founded on concrete facts regarding the evolution of social and national problems and requirements. Regarding child marriage in Indonesia, it is a persistent problem; there are instances of young women marrying young men and underage marriages being neglected, which results in violence and sexual exploitation.

Today, underage marriage is widespread in Indonesia. Underage marriages occur for a variety of reasons, including economic hardship, low levels of education, cultural awareness and values of specific religious principles, and births outside of marriage (unintentional marriages). Along with societal complications, underage marriage might result in legal complications.<sup>3</sup> The variables listed above have a significant impact on the development of underage marriage customs. Child marriage is accomplished in a variety of ways by families. For instance, data on the ages of children under the age of 16 who are purposely "adulterated" is modified for the aim of arranging marriages, and documents are created to enable the child to be married off and receive a marriage certificate. Although minor marriages are prohibited, Soepomo notes that in this instance, Law Number 1 of 1974 Governing Marriage allows for a deviation from Article 7

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<sup>1</sup>Koalisi Perempuan Indonesia, "Naskah Akademik Perubahan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan" (Jakarta, 2019).

<sup>2</sup>Kementerian Hukum dan Hak Asasi Manusia, "Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (Badan Pembinaan Hukum Nasional, 2019).

<sup>3</sup>Sonny Dewi Judiasih, *Perkawinan Bawah Umur Di Indonesia Beserta Perbandingan Usia Perkawinan Dan Praktik Perkawinan Bawah Umur Di Beberapa Negara* (Bandung: Refika Aditama, 2018).

paragraph (2), particularly by offering immunity from court to individuals who do not fulfill the minimum age requirement.<sup>4</sup>

The Marriage Law, as well as the development of community, community, and cultural legislation, are undoubtedly in need of modification. Improvements are accomplished by taking into account unmet expectations in the execution of marriage that were not addressed in the Marriage Law's development. This can be seen in the gap in the age of marriage between men and women, as well as the lack of protection and legal certainty regarding the status and rights of children born. As a result, the marriage legislation must be strengthened.<sup>5</sup>

There are no age limits for marriage in fiqh discourse; rather, *jumhur fuqaha* (fiqh experts) who allow underage marriage argue that if it is coupled with processing, it will result in *dharar* (risk), prohibiting underage marriage and maturing. According to fiqh, individuals of any age are permitted to marry. Prophet Muhammad married Ayesha when she was six years old and began bullying her at the age of nine,<sup>6</sup> whereas the Qur'an and Hadith make no mention of a minimum marriage age.

Prior to the adoption of Law No. 16 of 2019 concerning Marriage, the most recent positive law in Indonesia, the law governing marriage was regulated by Law No. 1 of 1974, which states in Article 7 Paragraph (1) that "Marriage is permitted only when the man reaches the age of 19 (nineteen) years and the woman reaches the age of 16 (sixteen) years."<sup>7</sup> Referring to the definition of child maturity as defined in Law No. 23 of 2002 on Child Protection, a "child" is defined as "anyone under the age of 18 (eighteen) years, including children still in the womb",<sup>8</sup> As a result, the adult provision under this Law is 18 years.

Not only is setting a separate minimum age for marriage for men and women discriminatory in terms of preserving the right to family formation, but also in terms of protecting and fulfilling children's rights. Thus, when women's minimum marriage age is lower than men's, legally women can begin families earlier, resulting in underage weddings or early marriages, as they do not achieve the legal marriage age, which is referred to as the age of marriage. 23 refers to child protection. When a marriage is performed, the term "minor marriage" is used. As a result, the purpose of renewing Law No. 1 of 1974 is to promote marriage and to prevent child marriage.

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<sup>4</sup>Soepomo, *Hukum Adat Di Indonesia* (Jakarta: Pradnya Paramita, 1986).

<sup>5</sup>Kementrian Hukum dan Hak Asasi Manusia, "Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

<sup>6</sup>Yusuf Hanafi, *Kontroversi Perkawinan Anak Di Bawah Umur* (Bandung: Mandar Maju, 2011).

<sup>7</sup>*Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*.

<sup>8</sup>"Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak".

Taking into mind the provisions of Law No. 16 of 2019 amending Article 7 (1) of Law No. 1 of 1974, the state protects citizens' rights to form families and progress with legal marriages, as well as children's rights in continuing life. Grows and develops in line with the Law of the Republic of Indonesia from 1945, and has the right to protection against violence and discrimination. Child marriage is detrimental to children's development and prevents the fulfillment of children's fundamental rights, including the right to be protected from violence and discrimination, children's civil rights, health rights, education rights, and children's social rights. And that, in order to implement the Constitutional Court of the Republic of Indonesia's judgment No. 22/PUU-XV/2017, the provisions of Article 7 governing marriage must be amended. The protection of all children is mobilized to a tolerable level so that each kid can exercise his or her rights and responsibilities for physical, mental, and social development and growth. Childhood protection is an expression of social justice; it is fostered in a variety of sectors of life and states of society.<sup>9</sup>

The advantage is obtained by raising the marriage age in addition to preventing early marriage, and by the fact that the government has also ratified a reform of the age limit law to protect children's rights. The age restriction for marriage in question indicates that the individual's body and soul have developed sufficiently to fulfill the aim of marriage, which is *Sakinah Mawaddah Warahmah* without intimacy or divorce.<sup>10</sup> The review of Law No. 16 of 2019 should reflect the protection of childhood and also raise the marriage age for women, to (nineteen), thereby lowering the risk of maternal and child mortality and optimizing growth and development. included assisting parents and ensuring that children receive the best education possible.

The Qur'an and hadith, as well as rational sources such as *qiyas* and *Maqāṣid Asy-Syarī'ah*, must be used to restore realization. As a result, *Maqāṣid Asy-Syarī'ah*, particularly *maslahah* and *muarat* against minor marriages and discrimination against women, has been established. The benefit is that Islamic sharia (*Maqāṣid Asy-Syarī'ah*) is achieved by assurances for primary (*al-darūriyyah*), secondary (*al-hajiyyah*), and tertiary (*al-tahsîniyyâh*) necessities.

According to Jasser Auda, the use of *Maqāṣid Asy-Syarī'ah* is modern protection; conservation results in development, human rights, and freedoms. *Maqāṣid Asy-Syarī'ah* is a critical component of the marriage age limit for child protection considerations. As a result, *Maqāṣid Asy-Syarī'ah* has developed into a form of *ijtihad* and a source of Islamic legal law, attempting to establish sharia law in legal issues based on benefits consistent

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<sup>9</sup>Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Pidana Anak Di Indonesia* (Bandung: Refika Aditama, 2014).

<sup>10</sup>*Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan*.

with the shari'a's purposes, but not specifically mentioned by the text, and if it is done, it will garner notice..

## **METHOD**

This research study makes reference to library studies in the form of library research, i.e. data gathered from literature holding connections to the investigated topics, such as books, articles, journals, and other scientific works.

The purpose of this study is to examine the consequences of child protection as the philosophical and sociological basis for the marriage age limit in Law No. 16 of 2019 from Maqāṣid Asy-Syarī'ah Jasser Auda. This is a qualitative study using a descriptive analytic method. In the sense of presenting a picture of philosophical and social reality in relation to the impact of changes in the marital age on childhood protection following the legal reform. Analyzing rules and literature pertinent to the issues examined, as well as sociological causes that demonstrate the necessity for improvement in Law No. 1 of 1974. In other words, analytical descriptive research tackles a problem or focuses on a problem and then treats and analyzes the study findings to draw conclusions.

This research is similar to other prior studies that examined the idea of Maqāṣid Asy-Syarī'ah in relation to the protection of age restrictions on minors. However, the author takes a sociological philosophical perspective in his approach. There are major disparities in the main section; there is no research focusing on child protection as the philosophical and sociological underpinnings of the marriage age limit Law No. 16 of 2019 Maqāṣid Asy-Syarī'ah. Jasser Auda's point of view. Additionally, the author will examine the question through the lens of Jasser Auda's Maqāṣid Asy-Syarī'ah theory. It is about getting specific explanations for things that are not addressed in the Qur'an or Sunnah, taking into account the benefits or interests of human existence and examining them using or in conjunction with normative legal studies pertaining to the philosophical foundations. from the perspective of Law No. 16 of 2019 and the sociological foundations of marriage under the minimum period of marriage age, as well as how the provisions of the marriage age restriction have been observed in Jasser Auda's Maqāṣid Asy-Syarī'ah concept following the renewal of child protection.

## **RESULT AND DISCUSSION**

### **1. Overview of Age Limits for Marriage and Child Protection**

It is critical to establish an age limit for marriage. Because marriage requires biological and psychological development. As a result, a general explanation of 1974's Law No. 1 on marriage is provided. The future man and woman must be mature in their

spirits in order to actualize marriage effectively, avoid divorce, and produce excellent and healthy offspring.<sup>11</sup>

According to Marriage Law No. 1 of 1974, anyone under the age of 21 (twenty one) years must first acquire consent from both parents before marrying. 16-year-old females The age limit provisions in the Compilation of Islamic Law (KHI) article 15 paragraph (1) are based on considerations of family and marital household advantage. And in paragraph (2), it is indicated that potential brides and grooms under the age of 21 must get a permit in accordance with the provisions of Article 6 paragraph (2), (3), (4), and (5) of Law No. 1 of 1974 about Marriage.<sup>12</sup> This is consistent with the ideas established by Law No. 1 of 1974 regarding marriage, which state that husband and wife must mature their souls in order to effectively accomplish the purpose of marriage without ending divorce and producing healthy offspring. As a result, underage marriage between husband and wife should be prohibited.

Explicitly, the Qur'an and hadith acknowledge the critical role of maturity in marriage. In fiqh, maturity is defined by bodily indicators, specifically baligh signals, specifically ihtilam for males and menstruation for women.<sup>13</sup> It is feasible for a person to marry if they meet the baligh conditions.<sup>14</sup> As a result, in Islam, a person's maturity is frequently referred to as baligh.

While the age of marriage is regulated by Islamic fiqh, customary law often does not. This means that under customary law, marriage is permitted at any age. It is likely to result in rigidity with regard to the conditions for parental agreement for underage weddings (as specified in the 1974 Marriage Act). This is because indigenous peoples' capacity structures are distinct from those of other peoples. Some follow matrilineal, patrilineal, or paternal systems, among others.<sup>15</sup>

In the lack of a mature age limit, common law is identical to Islamic fiqh. Indigenous peoples historically relied on physical measures, such as asking a youngster to reach for his left ear with his right hand through his skull. If it works, it demonstrates that the individuals involved are maturing. Signs also serve as a barometer of maturity in customary law. If a girl gets menstruation (menstruation) together with a larger chest and a wider waist, she is an adult. Changes in the vocal cords and posture, sperm secretion, and sexual drive are all indicators for boys. Thus, the arrival time of marriage is not

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<sup>11</sup>Ummi Rabiah Syafi'i, *Membangun Keluarga Islam Sejak Dini* (Jakarta: Alita Media, 2009).

<sup>12</sup>Nuansa Aulia, *Kompilasi Hukum Islam: Hukum Perkawinan, Hukum Kewarisan, Hukum Perwakafan* (Bandung: Nuansa Aulia, 2008).

<sup>13</sup>Salim bin Samir Hardramy, *Safinah An-Najah* (Surabaya: Dar Al-Abidin).

<sup>14</sup>Amir Syarifuddin, *Ushul Fiqh* (Jakarta: Kencana Prenada Media, 2008).

<sup>15</sup>Hanafi, *Kontroversi Perkawinan Anak Di Bawah Umur*.



determined by age, as the majority of parents do not record their children's birth dates due to their illiteracy.<sup>16</sup>

Along with physical stature, the maturity phase is frequently noticed in terms of a child's economic independence. Someone who is capable of meeting their own requirements, particularly those who contribute to the family economy, is recognized an adult, which is permissible under customary law because marriage is not limited to the union of two family parents. According to him, the presence of underage weddings or child marriages does not pose an issue under customary law because both husband and wife will continue to be directed by their families, which have merged into two families, and so real custom does not forbid child marriage.<sup>17</sup>

Child protection refers to the efforts and activities of all levels of society in a variety of positions and functions that contribute to the country's future importance of children.<sup>18</sup> In the explanation of Law No. 23 of 2002 on the preservation of childhood, it is stated in broad terms: "Children are a mandate and a gift from Allah Almighty that must always be protected in order to maintain human dignity as a human being. Children's human rights are enshrined in the 1945 Constitution and the United Nations Convention on the Rights of the Child as a subset of human rights. Children are the nation's future and the next generation of the nation's principles, thus each child has the right to survive, grow, and develop, to participate in and be protected from acts of violence and discrimination, as well as civil rights and freedoms."

Childhood protection is any endeavor to establish conditions that enable each child to exercise his or her rights and responsibilities for physical, mental, and social development and growth. The preservation of childhood is an expression of social justice, just as the protection of children is tested in numerous spheres of state and societal life. Child protection accuracy has legal ramifications, both in terms of codified and unwritten law.<sup>19</sup>

Children's protection cannot be carried out excessively and must take into account the influence on the surroundings and the child himself, in order for the protective measures to have a beneficial effect. Childhood protection is conducted rationally, responsibly, and advantageously, demonstrating a successful and efficient effort. Child protection efforts should not suffocate initiative, inventiveness, and other characteristics that contribute to reliance on others and uncontrollable conduct, leaving youngsters incapable and unwilling to exercise their rights and perform their obligations.

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<sup>16</sup>Hanafi.

<sup>17</sup>Judiasih, *Perkawinan Bawah Umur Di Indonesia Beserta Perbandingan Usia Perkawinan Dan Praktik Perkawinan Bawah Umur Di Beberapa Negara*.

<sup>18</sup>Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Pidana Anak Di Indonesia*.

<sup>19</sup>Gultom.

Additionally, child protection can be interpreted. Because every effort is made to prevent, rehabilitate, and empower children who do not engage in unethical behavior, exploitation, or neglect, and to safeguard children's physical, mental, and social survival and development.<sup>20</sup>

## 2. Jasser Auda Concept of *Maqāṣid asy-Syarī'ah*

*Maqāṣid* is the plural version of the Arabic phrase '*Maqsad*,' which refers to an objective, goal, significance, or ultimate goal. This term is comparable to the English term "extract," the Greek term "telos," the French term "final," or the German term Zweck.<sup>21</sup> *Al-Maqāṣid* can have a variety of meanings in Islamic Law, including *Al-Hadaf* (Objective), *Al-Garads* (Target), *Al-Matlub* (interested), or *Al-Gayah* (final matlamat). ash-syarah *Maqāṣid* The Act's mission or purpose is to uphold Islamic law. Unless otherwise indicated, there is no law stipulated in the Qur'an or hadith.

Regarding Islamic sharia, Jasser Auda's stance summarizes Syamsal-Din Ibn Al-opinion Qayyim's in the book *Islam Muwaqqi'in*, which is more precisely defined by Islamic Law as sharia. Than Ibn Al-Qayyim is founded on wisdom and an unwavering commitment to the wellbeing of man throughout the world. Sharia is based on the principles of justice, kindness, wisdom, and goodness. Therefore, if a legal resolution substitutes justice for injustice, mercy for hatred, and good for evil, the regulation is not founded on sharia, even if it is consistent with certain interpretations.<sup>22</sup>

According to Jasser Auda, in the realm of Islamic law, the judgment (fatwa) disregards the *Maqāṣid Asy-Syarī'ah* element, resulting in the realization of a law that is humane. The accurate fatwa is one that is founded on reliable sources and upholds human welfare and the principle or aim (maqashid ash-syarah) of Islamic law.<sup>23</sup>

As Ibn Asyur did not constitute *maqāṣid ash-syarī'ah* part of *uṣūl fiqh*, on the grounds that *maqāṣid ash-syarī'ah* has a separate content from *uṣūl fiqh*. According to Jasser Auda, the science of *ul fiqh* is more concerned with the external look of the text, whereas *Maqāṣid Asy-Syarī'ah* is more concerned with the text's meaning.<sup>24</sup> As a result, Jasser Auda sees *Maqāṣid Asy-Syarī'ah* as values and meanings that are employed as

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<sup>20</sup>Konvensi, *Media Advokasi Dan Penegakan Hak-Hak Anak* (Medan: Lembaga Advokasi Anak Indonesia, 1998).

<sup>21</sup>Jasser 'Audah, in *Al-Maqāṣid Untuk Pemula* (Yogyakarta: Suka Press, 2013).

<sup>22</sup>'Audah.

<sup>23</sup>Khusniati Rofiah, "Teori Sistem Sebagai Filosofis Dan Metodologi Analisis Hukum IIslam Yang Berorientasi Maqāṣid Al-Syariah (Telaah Atas Pemikiran Jasser Auda)," *Istinbath* 15, no. 1 (n.d.): 83-106.

<sup>24</sup>M.Arfa dan Abdul Wahid Hasan Muammar, *Studi Islam Perspektif Insider/Outsider* (Yogyakarta: RCiSoD.

objectives for syar'i in the process of establishing sharia and law through mujtahid research on sharia books.<sup>25</sup>

Jasser Auda makes an attempt to duplicate the concept of *Maqāṣid Asy-Syarī'ah* and to preserve the theory of *Maqāṣid Asy-Syarī'ah*, which is concerned with development and human rights. The maqsid notion of the maqsid ash-syarah hierarchy evolved significantly throughout the tenth century. Modern theory criticizes the classification of needs (needs) above for the following reasons: a) the theory of the scope of cendre-syarah *Maqāṣid* encompasses all Islamic law; b) it is more subjective; c) it omits the most universal and fundamental values, such as justice and liberty. (liberty); and d) it is derived from fiqh literature studies, omitting original sources/scripts.

Jasser Auda's methodology for doing this research is based on two theories: the *Maqāṣid Asy-Syarī'ah* theory and the systems approach.

a. *Maqāṣid asy-syarī'ah* (the purpose of Islamic law)

*Maqāṣid* is positioned as a basic philosophical and methodological framework for evaluating traditional and contemporary legal conceptions about Islamic law. Thus, because *Maqāṣid Asy-Syarī'ah* has been positioned as the concept of Islamic law, determining Islamic law must truly be founded on *Maqāṣid* as the primary objective.

b. System approach

The term "system" is derived from the Latin word "systema" and the Greek word "connection," which refers to a unit composed of components that cooperate to enable the movement of information, materials, or energy in order to accomplish a purpose.<sup>26</sup> Meanwhile, the term "system" is defined in the large Indonesian dictionary as an elementary mechanism that is interdependent on a regular basis in order to produce a totality.<sup>27</sup> Auda's systems approach is based on six interconnected characteristics: the cognitive nature of the system, its overall openness, its interdependent hierarchies, its multidimensionality, and its purposefulness (intentional).<sup>28</sup> As a result, it is legal, as a system must possess six features.

1. *Cognitive Nature*

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<sup>25</sup>Moh Anas Kholish dan Nor Salam, *Epistemologi Hukum Islam Transformatif Sebuah Tawaran Metodologis Dalam Pembacaan Kontemporer* (Malang: UIN Maliki, 2015).

<sup>26</sup>“<https://id.wikipedia.org/wiki/Sistem>,”

<sup>27</sup>“<https://kbbi.web.id/sistem>,”

<sup>28</sup>Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: the International Institut of Islamic Thought, 2007).

Cognitive understanding is the foundation of the Islamic legal system. Islamic law is determined by faqih understanding of literature that serve as legal references. Unpacking the validation of all cognition (textual knowledge), Jasser Auda underlines the critical distinction between the text (Al-Qur'an and Sunnah) and people's comprehension of the text. A distinction must be made between sharia, fiqh, and fatwa. With this perspective, Islamic sharia is the ideal revelation (Al-Qur'an and Sunnah), and its perfection is contingent on ongoing attempts to adapt to changing social conditions and direct human existence. Because the majority of Muslims regard fiqh as Allah's governance, it's unsurprising that society has always regarded it as a set of rules that should not be adjusted or developed. While fiqh is a product of law or the outcome of human reasoning (ijtihad) on na, it varies according to location and time. Thus, fiqh can be altered over time.<sup>29</sup>

## 2. Wholeness

Totality is predicated on the interdependence of its constituents or parts. Regarding one of the grounds that inspired Jasser Auda to analyze this component, this component is a follower of the trend among some scholars of Islamic law to confine the approach to reflection to reductionist and atomistic ways that are frequently utilized in fiqh.<sup>30</sup> In essence, Jasser Auda asserts that holistic concepts and methodologies are required under ul fiqh since they can be applied to contemporary issues and thus be employed as permanent principles in Islamic law. Jasser Auda's system aims to bring and develop *Maqāṣid Asy-Syarī'ah* from an individual to a universal dimension, so that society's issues of justice and freedom can be accepted by a large number of individuals.

## 3. Openness

According to systems theory, a live system must be an open system. The ability of a system to be unlocked is contingent upon its capacity to accomplish its objectives under a variety of scenarios. Conditions that affect a system's ability to accomplish an objective. An open system is one that is always in contact with external factors and the environment.<sup>31</sup> Thus, a legal expert with a broad viewpoint (opening) is crucial in resolving contemporary issues. The opening must be accomplished through altering the cognitive culture's method of opening. A person's intellect is inextricably linked to his or her worldview. The worldview is a perspective on the universe or a comprehension of reality in its whole, as well as a broad vision of the cosmos. It encompasses the systems,

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<sup>29</sup>Jasser Auda, *Maqāṣid Asy-Syarī'ah As Philosophy of Islamic Law, a System Approach* (London: The International Institute of Islami Thought, 2008).

<sup>30</sup>M.Amin Abdullah, "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi," *Asy-Syir'ah* 46, no. II (2012): 15–68.

<sup>31</sup>Muammar, *Studi Islam Perspektif Insider/Outsider*.

concepts, values, and beliefs that guide its individual and social activities. Thus, cognitive culture refers to the conceptual framework and perception of reality through which an individual interacts with the external environment. Changing cognitive culture entails altering one's perspective, frame of mind, or worldview.<sup>32</sup>

#### 4. *Interrelated Hierarchy*

This system is hierarchical in nature, meaning that it is constructed from smaller subsystems. Interrelationships dictate the objectives and functions to be accomplished. Dividing an entire system into smaller components is a method of separating the differences and similarities between the numerous components. The smallest component symbolizes numerous others, and vice versa. The category of *Maqāṣid Asy-Syarī'ah* must be viewed holistically, not in compartmentalized and hierarchical fashion as in traditional *Maqāṣid Asy-Syarī'ah* thought. *Maqāṣid Asy-Syarī'ah* must be apparent in its entirety in a broader spectrum or dimension. This is an update entry to resolve a context issue that occurred today.<sup>33</sup>

#### 5. *Multi-Dimensionallity*

This system is not a monolithic entity, but rather consists of multiple interrelated components. There is a consistent structure in systems since they are composed of relatively complicated components with non-simple dimensions. This is likewise true in Islamic law. Islamic law is a multifaceted system. Due to the system's units comprising multiple interconnected subsystems and the fact that Islamic law is a descending system, determining Islamic law requires a multidimensional approach. In this regard, we have chastised ushul and traditional fiqh academics for their erroneous belief that it is merely one- or two-dimensional.

#### 6. *Porposefulness*

The objective of a system is to be as simple as possible. It is a system established to accomplish particular objectives, as well as Islamic law. In this scenario, *Maqāṣid*, or the cause for which Islamic law appears, is the essence of Islamic law. Islamic law entails the five traits mentioned previously, namely cognition, integrity, openness, level, and multi-dimensional features. Thus, the six qualities of the systems approach are interconnected, with the goal of being interdependent. This is because the functionality is ordered in the resection in such a way that it accomplishes the objective.

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<sup>32</sup>Retna Gumanti, “Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam),” *Al-Himayah* 2, no. 1 (2018): 97–118.

<sup>33</sup>Muhammad Faisal, “Pendekatan Sistem Jasser Auda Terhadap Hukum Islam : Ke Arah Fiqh Post-Postmodernisme,” *Kalam* 6 (n.d.): 39–64.

In systems theory, the objective is divided into two components: the purpose (purpose) and the goal (goal) (intention). The system will generate a purpose (goal) if it is capable of generating its own objectives in a variety of ways and in the same way, or of generating multiple purposes and in a variety of conditions. Except when it is in a constant and more mechanical state, a system can only give birth to a purpose. In this context, *Maqāṣid Asy-Syarī'ah* is non-monolithic and mechanical in nature, but varies according to the scenario and circumstances.<sup>34</sup>

Essentially, the approach outlined above is an attempt to achieve *Maqāṣid Asy-Syarī'ah* in order to accomplish the primary purposes of Islamic law. Jasser Auda has realized reformation in the sacred concept of the sacred *Maqāṣid Asy-Syarī'ah* through the six properties of the approach, but has not forgotten to update the *Maqāṣid* concept to make it more modern and relevant for today's problems that are effective in responding to dynamic contemporary problems. The systemic approach to Islamic law reform aims to develop the classical *Maqāṣid Asy-Syarī'ah* theory for current *Maqāṣid Asy-Syarī'ah*. The concept of ensuring and protecting the development and human rights concepts.

Jasser Auda's revision of *Maqāṣid Asy-Syarī'ah*, the philosophy of Islamic law, was motivated by his previously published hypotheses in *Maqāṣid Asy-Syarī'ah*, especially Ash-Syatibi and others. Irrelevant to humanity's current state, because the times are changing, it is necessary to reorient and revise *Maqāṣid Asy-Syarī'ah*. According to him, *Maqāṣid Asy-Syarī'ah* is not a holistic application, but rather a more specialized one that emphasizes the literal dimensions of morality; only deconstruction is higher than reconstruction.<sup>35</sup> Jasser Auda's hypothesis is most emphatically not a ridiculous one. Of course, there was a compelling rationale for them to begin with.

The goal of law (*Maqāṣid Asy-Syarī'ah*) implementation in Islam is an intriguing study in the discipline of ul fiqh. This study is a significant contribution to Islamic legal theory in its evolution. This is referred to as the *Maqāṣid Asy-Syarī'ah*, which is the philosophy of law and the aim of its proclamation. The theory of *Maqāṣid Asy-Syarī'ah* is gaining traction as a subset of the science of ul fiqh and has developed into a distinct field. It is used to underline quality, especially in relation to larger issues. For additional information, please see the following table:<sup>36</sup>

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<sup>34</sup>Muammar, *Studi Islam Perspektif Insider/Outsider*.

<sup>35</sup>Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

<sup>36</sup>Abdullah, "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi," 2012.

No.	Classical Maqāṣid Theory	Contemporary Maqāṣid Theory
1.	Maintaining Religion (Ḥifẓ al-dīn)	Safeguard, protect and respect freedom of religion and belief.
2.	Maintaining the Soul and Honor (Ḥifẓ al-nafs)	Maintain and protect human dignity and human rights.
3.	Maintaining Intellect (Ḥifẓ al-'aql)	Multiply the mindset and scientific research.
4.	Maintaining Descendants (Ḥifẓ al-nasl)	More concern for the protection of the family institution.
5.	Maintaining Assets (Ḥifẓ al-mal)	Prioritizing social care, paying attention to economic development and human welfare.

**Table of Changes from Classical Maqāṣid to Contemporary Maqāṣid**

According to the table above, the paradigm shifts from the old to the new *Maqāṣid* at the second point. For protection (protection) and perspective (reserve/preservation), press the old *Maqāṣid* points. While the new *Maqāṣid* places a premium on growth (development) and law (rights).<sup>37</sup> This distinguishes Jasser Auda's current *Maqāṣid* notion from that of past Muslim scholars.

If the classical *Maqāṣid* is more preventative in nature, the contemporary Jasser *Maqāṣid* is more developed and protects human rights, in accordance with the demands and difficulties of Muslims at the time. Thus, whereas classical *Maqāṣid* is more focused on the individual, contemporary *Maqāṣid* is more concerned with the social components of society.

This is required by Islamic law in order to avoid infractions, but without adequate human resources, efforts will be ineffective or even pointless. Especially if he is confronted with the emergence of a more modern era in which there is no distinction between technology and information technology that affects humanity's sociocultural life. As a result, the law, particularly Islamic law, must adapt to the times while maintaining the established standards of Islamic law. For instance, one of Islamic law's measures to preserve Islamic law is the law of cutting or hand punishment.

There has been a paradigm shift between classical and contemporary *Maqāṣid Asy-Syarī'ah*. The traditional *Maqāṣid* placed a greater emphasis on protection (protection) and perspective (guarding / resilience), including Al-idea Syatibi's of *Maqāṣid Asy-Syarī'ah*. Although the new *Maqāṣid* is more prominent in development (development) and rights

<sup>37</sup> M.Amin Abdullah, "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi," *Asy-Syarī'ah* 46, no. II (2012): 15-68.

(right), it is the *Maqāṣid Asy-Syarī'ah* concept developed by Jasser Auda with his systems approach that is the new *Maqāṣid*. Jasser Auda's concept of *Maqāṣid Asy-Syarī'ah* establishes a new paradigm for comprehending the concept of *Maqāṣid Asy-Syarī'ah* in Islamic law philosophy.<sup>38</sup>

Because the classical theory of Islamic law as articulated by Auda is considered irrelevant at the present time, Auda asserts that it is important to develop a theory of Islamic law (*Maqāṣid Asy-Syarī'ah*) that is both relevant and capable of keeping up with the times. It is expected that, in the future, the product of Islamic law (Shari'ah) based on *Maqāṣid Asy-Syarī'ah* will remain relevant and applicable worldwide, owing to the fact that the source of law is the Qur'an.<sup>39</sup>

Jasser Auda does not reject or disregard the classical *Maqāṣid Asy-Syarī'ah*, a constant critic, in order to become a more universal, holistic, humanistic, and systematic maker whose essence comprises the classical *Maqāṣid*, but rather emphasizes the qualities he believes are superior.

### **3. The View of *Maqāṣid Asy-Syarī'ah* Jasser Auda on Child Protection as a Basis for Determining the Marriage Age Limit**

Previously, a number of groups evaluated the protection in the Marriage Law as a deteriorating regulation, establishing a minimum age for marriage that is not only related to the differences between men and women prior to the 1974 Law's Number 1, but also mentions age limitations, such as the preamble, another opportunity to perform underage marriages through marriage dispensation. Prior to the revision of the marital life restrictions triggering the occurrence of underage marriages, namely in Article 7 paragraph (1) of Law No. 1 of 1974 and its explanation, it was not indicated the grounds for receiving dispensation, so that everyone could easily obtain it.<sup>40</sup>

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<sup>38</sup>Muhammad Luthfi Hakim, "Pergeseran Paradigma Maqāṣid Asy-Syarī'ah Dari Klasik Sampai Kontemporer," *Al-Manahij* X, no. 1 (2016): 1-16.

<sup>39</sup>Siti dan Muh Mutholingah Rodhi Zamzami, "Relevansi Pemikiran Maqāṣid Asy-Syarī'ah Jasser Auda Terhadap Sistem Pendidikan Islam Multidisipliner," *Ta'limuna* 7, no. 2 (2018): 90-112.

<sup>40</sup>Djoko Prakoso dan Ketut Murtika, *Azas-Azas Hukum Perkawinan Di Indonesia* (Jakarta: Bina Aksara, 1987).



paragraph (1) of Law No. 1 of 1974 and its explanation, it was not indicated the grounds for receiving dispensation, so that everyone could easily obtain it.<sup>41</sup>

In *Maqāshid Asy-Syarī'ah*, Jasser Auda attempts to reconstruct the earlier notion of *Maqāshid*, which is the protection and preservation of *Maqāshid* theory, which is concerned with development and rights.

The implementation of *Maqāshid Asy-Syarī'ah* is positively correlated with the passage of Law No. 16 of 2019 amending Law No. 1 of 1974 regulating Marriage. By ensuring that the conditions of 19 years of marriage are capable of ensuring physical and psychological maturity for both men and women, the primary needs for realizing *Maqāshid* Ash-Syar'ah in marriage must unquestionably be owned by each of the bride's partners. Because a partner's life is determined not only by the role of the husband, but also by the role of the woman. As a married couple, the two of them must assist one another and work together to navigate a happy and eternal domestic life, as mandated by Article 1 of Law No. 1 of 1974 Governing Marriage.

*Maqāshid Asy-Syarī'ah* contemporary developments are increasingly undergoing specifications, particularly in the family and marriage chapters. In this chapter, Jamaluddin Atiyyah, an expert on *Maqāshid Asy-Syarī'ah*, discusses the specifics of *Maqāshid Asy-Syarī'ah* marriage as a means of child protection and the purpose of marriage. In comprehending and interpreting the Qur'an and Sunnah texts on marriage, as well as continuing the *Maqāshid* opinion of previous scholars. According to Jamaluddin Atiyyah, *Maqāshid Asy-Syarī'ah* marriage through promoting male-female relationships. Second, safeguard the progeny. Thirdly, the Sakinah, Mawaddah, and Warahmah families must be recognized. Fourthly, maintain the bloodline. Fifth, reside in close proximity to family. Sixth, foster positive family relationships. Seventh, manage the family's financial situation.<sup>42</sup>

According to *Maqāshid Asy-Syarī'ah* Jasser Auda, the appropriate age limit for marriage is To begin, to preserve and safeguard human dignity and rights (including the preservation of the soul and honor, or hif al-nafs). Second, multiplying mindsets and scientific research (especially in the area of rationality, or hif al-'aql). Thirdly, a greater emphasis on the protection of family institutions (including offspring or hif al-nasl). *Maqāshid Asy-Syarī'ah* analysis of the marriage age limit provisions aims to apply aspects of child protection by equalizing the minimum marriage age limit of 19 years for men and women in Law No. 16 of 2019. This is a solution for creating a *Maqāshid Asy-Syarī'ah*

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<sup>41</sup>Teguh Anshori, "Analisis Usia Deal Perkawinan Dalam Perspektif Maqasid Syarī'ah," *Al-Syakhsyiyah* 1, no. 1 (2019): 1-16.

<sup>42</sup>Holilur Rohman, "Batas Usia Deal Pernikahan Perspektif Maqasid Syariah," *Islamic Studies and Humanities* 1, no. 1 (2016): 67-92.

family that is beneficial, namely regulating the relationship between men and women, preserving offspring, establishing a *sakinah mawaddah* and *warahmah* family, preserving

The establishment of *Maqāṣid Asy-Syarī'ah* on the marriage age limit, as mentioned in Law No. 16 of 2019, is a proactive or preventive policy aimed at mitigating the detrimental impact of underage marriage and preserving the soul, mind, and offspring at the *arriyyah* and *arriyyah* levels. *ājiyyah*. If left unchecked, it will have a detrimental effect on husband and wife and children physically, psychologically, and sociologically, resulting in societal difficulties that would eventually develop into a disease in society and threaten the country's stability. According to Jasser Auda's *Maqāṣid Asy-Syarī'ah* theory, the objective of marriage limits in Law No. 16 of 2019 is to protect children in accordance with the provisions of Law No. 23 of 2002 on child protection. Which includes children's fundamental rights, the right to be protected from abuse and discrimination, and the right to full justice for children.

#### **4. The thoughts of *Maqāṣid Asy-Syarī'ah* Jasser Auda on the Philosophical and Sociological Foundations of the Marriage Age Limit in Law No. 16 of 2019.**

According to Jasser Auda's *Maqāṣid Asy-Syarī'ah* on the philosophical and sociological justifications for lowering the marriage age in Law No. 16 of 2019, there are six characteristics of system theory that Jasser Auda has optimized as an analytical knife as follows:

##### **1. Cognitive nature of Islamic law**

Jasser proposes a framework for the Islamic legal system based on the separation of revelation and cognition in this characteristic. Referring to the first cognitive mechanism established as a result of *ijtihad*, *fiqh* is regarded as the result of humans possessing the ability to investigate the Qur'an and Hadith. The scholars of *kalam* and the scholars of jurisprudence agree that Allah SWT should not be positioned as a *fakih*, as Allah knows everything directly, whereas laws must pass through revelations contained in the Qur'an and hadith.

Thus, Law No. 16 of 2019 regarding the minimum age limit for marriage is consistent with the *Maqāṣid Asy-Syarī'ah* theory, which was revised, and which was previously associated with the minimum marriage limit in Article 7 (1) of Law No. 1 of 1974 regarding marriage, which states that the minimum age limit for marriage is 16 years for women and 19 years for men, taking into account that these provisions or human legal products can change depending on the situation.

## 2. According to the principle of transparency

The openness feature is the ability to sustain an open and self-renewing state. This characteristic provides two possibilities for the openness and self-renewal that Islamic law requires. In the first instance, legal reforms examine a *fakih's* worldview and cognitive abilities. Second, Islamic law makes use of the philosophical openness as a way of self-renewal.

According to Jasser, the world vision is the German version of the Japanese term "weltanschauung," which translates as "one hundred years," and is indeed a significant "image of the globe." While a worldview is defined as "a collection of assumptions," we believe in the fundamental preparation of the world as a guide for human experience and belief systems. As such, this worldview is a product of the numerous influences that influence human "cognition" of the world. Every one of us has an impact on the world picture, whether it is through religion, self-concept, geography and environment, politics, culture, economy, or language. In a broad sense of the term "culture," the world view embodies "cognitive culture" (cognitive culture) or cognitive culture. Cognitive culture is the mental structure and environment reality through which an individual perceives and interacts with the outer world.<sup>43</sup>

Jasser Auda attempts to respond to the challenges and needs of the modern day by reforming *Maqāṣid* to *Maqāṣid* who are likewise confident in *Maqāṣid Asy-Syari'ah*. To accomplish the aforementioned aims, it must accept the notion of the treaty's or United Nations' target size, which in this case removes discrimination. With regards to the concept, the necessary legal action to rectify the fact that it is out of step with the times and, unlike social standards, is amendable, does not depart from the philosophical ideals and legal basis itself. Marriage law, particularly as it relates to marital limits, is one of the laws that are regarded unsuitable for application today due to discriminatory behaviors, particularly against women. It is critical, therefore, to resort to a systems approach with a global perspective, particularly in terms of human rights.

## 3. Pursuant to Wholeness (Complete)

The overall goal is to mitigate the flaws and shortcomings of classical *fiqh* proposals, which frequently employ reductionist and atomistic techniques. Jasser's criticism is not specific, and the postulate frequently relies on naive reasoning to characterize the problem as the difficulty he faces, independent of argument and na-na. The answer proposed by system theory is to utilize the principle of mining (holism), which is no

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<sup>43</sup> Holilur Rohman, "Batas Usia Deal Pernikahan Perspektif Maqasid Syariah," *Islamic Studies and Humanities* 1, no. 1 (2016): 67-92.

longer confined to legal verses but encompasses all verses of the Qur'an in deciding Islamic law concerns.<sup>44</sup>

That men and women were created by Allah SWT to fulfill their function as Caliphs on Earth through Hhdhis Nabi Saq. Equality in mutual care and aid, in social security alignment, and in the capacity to love one another and to love.

#### 4. Hierarchical Relationships

While the previous *Maqāṣid* was more individualistic, the culminating dimension of current *Maqāṣid* emphasizes the hierarchical aspects of interdependence. The idea is that *Maqāṣid* extends to the international community and even to humanity. Additionally, when confronted with difficulties involving individually patterned *Maqāṣid*, the public has been prioritized. To evaluate the characteristics of the first interdependent hierarchical hierarchy, specifically the expansion of the *Maqāṣid* range, the researcher divides the *Maqāṣid* into many *Maqāṣid* ammah, *Maqāṣid* charismatic, and *Maqāṣid* juz'iyah.

*Maqāṣid* Ammah is a *Maqāṣid* who believes that all masses achieved by sharia, like as justice, equality, tolerance, and convenience, are all facets of arriyyah. Due to the fact that they are in the traditional *Maqāṣid*. According to the academics, enforcing the minimum age limit in Article 7 paragraph (1) of the Marriage Law on this day would negate the objective of marriage, which is to retain offspring and perpetuate religion. Because these rules contain discrimination against women, marriage will be difficult to be harmonious within the family, affecting women's reproductive ability, making it impossible to have children and maintain the integrity of family structures. Additionally, marriage attempts to improve the quality of our worship by diverting sexual urges in halal venues and preserving and expanding the view of adultery.

*Maqāṣid* Khassah is a *Maqāṣid* that incorporates Mmslahah into specific issues within the science chapter, in this case for the outcome of a harmonious marriage. Meanwhile, Article 7 paragraph (1) of the marriage rules, which specifies that the minimum age for marriage is 16 for women and 19 for men, has advocated for early marriage in situations where family harmony and peace will be difficult to accomplish.

The third *Maqāṣid* is *Maqāṣid* juz'iyah, which is related with maslahah, or textual wisdom applied to a legal situation. This maslahah is frequently referred to as "knowledge" or "secret". In this case, the issue is with the most recent law, namely Law

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<sup>44</sup> Holilur Rohman, "Batas Usia Deal Pernikahan Perspektif Maqasid Syariah," *Islamic Studies and Humanities* 1, no. 1 (2016): 67-92.

No. 16 of 2019, which is currently being considered by the Constitutional Court and which prohibits discrimination, particularly against women.

#### 5. Multi-dimensional Islamic law

In systems theory, the theory is a collection of related dimensions that must be carried out in order for the system to operate efficiently. Jasser proposes two aspects as a way of legal adjustment in this multidimensional area, the first by expanding the scope of the term of qath'i. And the second is to assess the conflicting arguments using *Maqāṣid* as the primary reference point.<sup>45</sup>

The first notion that follows multi-dimensionality is the expansion of the range of qath'i in accordance with judges' legal views, with the primary focus on discrimination in various circumstances, particularly against women. According to academics, Article 7 paragraph (1) of the marriage law, which pertains to the minimum age of marriage, is utilized by the judge to evaluate so that the judge makes the appropriate request. Consider the preceding postulates on completeness, which demonstrate the equality of men and women in a variety of ways; in other words, there is no distinction between the two rights of women and men.

According to multi-dimensional theory, the second concept is to study the opposition. Thus, if there is a discrepancy in the Prophet's hadith's argument. Dhahir opposes every hadith contrasted for the purpose of developing *Maqāṣid*. The distinction in hadith concerning 'urf must be weighed against the international universality of *Maqāṣid* and 'urf, and the existence of na is regarded as a stage in violation of the law.

Regarding this judge's consideration, the primary charge of judicial consideration is the existence of discrimination in Article 7 paragraph (1), which is supported by numerous Qur'anic proposals and, more importantly, international 'urf and human rights regulations prohibiting discrimination against women. And this is entirely consistent with Jasser's definition of *Maqāṣid Asy-Syari'ah* in Law Number 16 of 2019.

#### 6. The Purpose of Islamic Law

Piety, or *Maqāṣid*, must return to the Qur'an and Hadith values and be derived from reasonable sources such as qiyas and maslahah mursalah. There is no requirement to adhere to the text generated by ijihad fakih. The validity of ijihad's outcomes is viewed as a manifestation of *Maqāṣid* inside it. Thus, *Maqāṣid* in marriage, including the benefits and drawbacks of underage marriage and prejudice against women in particular.

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<sup>45</sup> Holilur Rohman, "Batas Usia Deal Pernikahan Perspektif Maqasid Syariah," *Islamic Studies and Humanities* 1, no. 1 (2016)

According to the assumptions and claims made above, it is appropriate to include women's reproductive rights, including civil and family rights, as an inherent and significant component of universal human rights concerns. Underage marriage is a serious matter. Consider that this is the beginning point for all negative possibilities. Thus, discrimination exists in the item that is the primary subject of the judge's consideration, namely for the benefit of the benefit and *Maqāṣid* in marriage.

## CONCLUSION

According to Jasser Auda's *Maqāṣid Asy-Syarī'ah*, the purpose of the marriage age limit contained in Law Number 16 of 2019 is to refer to the concept of child protection as defined in Law No. 23 of 2002 concerning child protection, which includes basic children's rights, laws to protect children from violence and discrimination, and justice for children. The marital boundary No. 16 of 2019 reflects Jasser Auda's *Maqāṣid* ash-philosophical syarah's and sociological foundations, as it employs the six features of system theory optimized by Jasser Auda, in accordance with cognitive law, which is appropriate and consistent with *Maqāṣid Asy-Syarī'ah*. According to Openess, accomplishing the goal of eradicating gender discrimination is consistent with the global age of changing *Maqāṣid* in accordance with human rights. According to completeness, the establishment of gender equality. According to the Interrelated hierarchy, contemporary *Maqāṣid* must address issues pertaining to the environment, nation, and state, such as the protection of justice and tolerance, as well as the establishment of a harmonious family and the eradication of prejudice against women. According to multidimensionality, this theory is extremely consistent with Jasser Auda's *Maqāṣid Asy-Syarī'ah* concept in Law No. 16 of 2019, as it has been able to eliminate discrimination in Article 7 paragraph (1) of Law No. 1 Marriage of 1974, as supported by various arguments, including the Qur'an and hadith, as well as human rights regulations regarding the elimination of discrimination. According to purposefulness, emphasizing the purpose or *Maqāṣid* on the value of the Qur'an and hadith in relation to the boundaries of marriage and the protection of children, particularly the benefits and drawbacks of underage marriage and the aspects of gender discrimination.

## REFERENCES

- Abdullah, M. Amin. "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi." *Asy-Syir'ah* 46, no. II (2012): 15-68.
- — —. "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi." *Asy-Syir'ah* 46, no. II (2012): 315-68.
- Anshori, Teguh. "Analisis Usia Deal Perkawinan Dalam Perspektif Maqasid Syari'ah." *Al-Syakhsiyah* 1, no. 1 (2019): 1-16.

- Auda, Jasser. *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: the International Institut of Islamic Thought, 2007.
- — —. *Maqāṣid Asy-Syarī‘ah As Philosophy of Islamic Law, a System Approach*. London: The International Institute of Islami Thought, 2008.
- ’Audah, Jasser. In *Al-Maqāṣid Untuk Pemula*. Yogyakarta: Suka Press, 2013.
- Aulia, Nuansa. *Kompilasi Hukum Islam: Hukum Perkawinan, Hukum Kewarisan, Hukum Perwakafan*. Bandung: Nuansa Aulia, 2008.
- Faisol, Muhammad. “Pendekatan Sistem Jasser Auda Terhadap Hukum Islam : Ke Arah Fiqh Post-Postmodernisme.” *Kalam* 6 (n.d.): 39–64.
- Fathurrahman, Djamil. *Filsafat Hukum Islam*. Jakarta: Logos Wacana Ilmu.
- Gultom, Maidin. *Perlindungan Hukum Terhadap Anak Dalam Sistem Pidana Anak Di Indonesia*. Bandung: Refika Aditama, 2014.
- Gumanti, Retna. “Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam).” *Al-Himayah* 2, no. 1 (2018): 97–118.
- Hadikusuma, Hilman. *Hukum Perkawinan Di Indonesia Menurut Hukum Adat Dan Undang-Undang Nomor 1 Tahun 1974*. Jakarta: Pradnya Paramita, 1995.
- Hakim, Muhammad Luthfi. “Pergeseran Paradigma Maqāṣid Asy-Syarī‘ah Dari Klasik Sampai Kontemporer.” *Al-Manahij* X, no. 1 (2016): 1–16.
- Hanafi, Yusuf. *Kontroversi Perkawinan Anak Di Bawah Umur*. Bandung: Mandar Maju, 2011.
- Hardramy, Salim bin Samir. *Safinah An-Najah*. Surabaya: Dar Al-Abidin.
- “<https://id.wikipedia.org/wiki/Sistem>”.
- “<https://kbbi.web.id/sistem>”.
- Judiasih, Sonny Dewi. *Perkawinan Bawah Umur Di Indonesia Beserta Perbandingan Usia Perkawinan Dan Praktik Perkawinan Bawah Umur Di Beberapa Negara*. Bandung: Refika Aditama, 2018.
- Kementrian Hukum dan Hak Asasi Manusia. “Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.” Badan Pembinaan Hukum Nasional, 2019.
- Kholish, Moh Anas, dan Nor Salam. *Epistemologi Hukum Islam Transformatif Sebuah Tawaran Metodologis Dalam Pembacaan Kontemporer*. Malang: UIN Maliki, 2015.
- Koalisi Perempuan Indonesia. “Naskah Akademik Perubahan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan.” Jakarta, 2019.
- Konvensi. *Media Advokasi Dan Penegakan Hak-Hak Anak*. Medan: Lembaga Advokasi Anak Indonesia, 1998.

- Muammar, M.Arfan dan Abdul Wahid Hasan. *Studi Islam Perspektif Insider/Outsider*. Yogyakarta: RCiSoD.
- Mutholingah, Siti dan Muh, Rodhi Zamzami. "Relevansi Pemikiran Maqāṣid Asy-Syari'ah Jasser Auda Terhadap Sistem Pendidikan Islam Multidisipliner." *Ta'limuna* 7, no. 2 (2018): 90-112.
- Prakoso, Djoko, dan Ketut Murtika. *Azas-Azas Hukum Perkawinan Di Indonesia*. Jakarta: Bina Aksara, 1987.
- Rofiah, Khusniati. "Teori Sistem Sebagai Filosofis Dan Metodologi Analisis Hukum Islam Yang Berorientasi Maqāṣid Al-Syariah (Telaah Atas Pemikiran Jasser Auda)." *Istinbath* 15, no. 1 (n.d.): 83-106.
- Rohman, Holilur. "Batas Usia Deal Pernikahan Perspektif Maqasid Syariah." *Islamic Studies and Humanities* 1, no. 1 (2016): 67-92.
- Soepomo. *Hukum Adat Di Indonesia*. Jakarta: Pradnya Paramita, 1986.
- Syafi'i, Ummi Rabiah. *Membangun Keluarga Islam Sejak Dini*. Jakarta: Alita Media, 2009.
- Syarifuddin, Amir. *Ushul Fiqh*. Jakarta: Kencana Prenada Media, 2008.
- Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*.
- Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan*.
- "Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak".