CONTEXTUALIZATION OF **MAŠLAḤAH**
**JASSER AUDA’S THOUGHT**
**IN ISLAMIC ECONOMY**

Achmad Fageh
Universitas Islam Negeri Sunan Ampel Surabaya
ach.fageh@uinsyby.ac.id

Abstract
Maslahah based on the purpose of his day divided into two levels, namely: Maslahah the world and the Hereafter." Maslahah the world is the obligation or rule of Shara' related to the laws of Muamalah instead (social and economic interactions). While Maslahah Hereafter is the obligation or restriction of Shara' about the rules of Aqidah (Tauhid) and Worship. Yasser Auda divided the Maslahah on the aspect of the need into three categories: (a) Maslahah al-Dlaruriyyah (primary benefit), (b) Maslahah al-Hajiyyah (secondary benefit) and (c) Maslahah al-Taḥsiniyyah (benefit Tertiary). The concept of Maqāṣid offered by Auda is identical with Maslahah and the view of the Ulama about Maslahah and all type. Jasser Auda defines maqāṣid in four meanings, first, the wisdom behind a law. Second, a good end goal that the Law was trying to achieve. Third, the divine purpose group and the moral concept are the basis of Law. Fourth, mašālih. In the maqāṣid idea offered by Auda, values and humanitarian principles are the most important. Auda also tried to reconstruct the old maqāṣid concept, which is protection and preservation in the direction of the maqāṣid theory, which refers to development and rights. The implications of the application of maqāṣid al-shari'ah. Using the mašlahah instrument in the context of the Islamic economy in Indonesia are used to fulfil the needs of sharia policies in the economic sector which do not only revolve around Islamic banking matters.

**Keywords:** Maslahah of Jasser Auda’ Thought and Islamic Economy
INTRODUCTION

Science *uṣūl fiqh* appeared and developed along with the emergence and development of Fiqh itself. It's just that the bookkeeping of Fiqh became an independent science ahead of the bookkeeping of science *uṣūl fiqh*. Although in practice, the birth of Fiqh was actually through several processes. And this process is called *uṣūl fiqh*. So *uṣūl fiqh* has existed since the time of Companions (after the Prophet), where they use the media *ijtiha>d* and *ra'y* in establishing some legal problems that The researchers will not identify in the Qur'ān and al-Sunnah. But their *ijtihād* are not based on standard rules or specific methods, but instead based on the understanding of the spirit or meaning of *tashrī'> which they obtained during approximately 23 years with the Prophet (Arfan, 2008).

The understanding of the spirit of *tashrī'> is a gift and their advantage. Because they live with the Prophet SAW, get guidance and education from the Prophet directly, live when the Quran is still revealed, know the causes of the revelation of the Quran, and others. All of which form a complete and powerful *dhuʾq* (instinct) in understanding *asrār al-Tashrī'> (secrets or Ḥikmah-Ḥikmah Sharʾāt) that will not be possessed by the generations after them quickly (al-Dawalibi, 1965).

For example, *ijtihād* Ali ibn Abi Thalib in determining the punishment of drunks, he said;

"Surely the intoxicator when he drinks and gets drunk, then it will be inconsequential, and when it is inconsequential it will lie, then the limit (punishment) is like the limits of a liar (oath or false accusation)."

If examined, the determination of punishment outlined Ali is the same as the method *māl* (Revert or refer) or *sad al-Dharāʾi*, which is one of the several methods *uṣūl fiqh*. In essence, (al-Andalusi, 1997) *ijtihād* is based on several methods, it's just that they do not give their name, term, and methodology to the *ijtihādi*.

Then after the time of companions, *ijtihād* continued to overgrow with the birth of several mujtahids at some time, different places and generations to form *dhaʾūq* or
Contextualization of Maslahah

 instinct against *asrär al-Shari‘ah* into several other methods in processing, formulating and establishing some problems of Islamic Law. And this triggered the emergence of discussion, friction, and scientific debate in the materials of Islamic Law. The farther and greater the space and time of the mujtahid with the revelation, the more distant and more significant the differences exist. This triggers and motivates some mujtahid figures to make and set rules in *ijtihād* so that discussions and debates remain based on science rather than lust. And finally, the rules are known by the name ¹ *uşūl fiqh*. The first paper to discuss the science of *uşūl fiqh* ideally is *al-Risālah* his Imam Shāfi‘ī.

Jasser Auda, who aims to restore the understanding of the spirit of tashrī‘ such as the time of Companions of the Prophet Muhammad SAW as a method of istinbāṭ Islamic Law through the door that he called *al-Maqāṣid al-Shari‘yyah* or *Maqāṣide al-Shari‘ah*. This term may be familiar to Islamic Law scholars with its figures such as al-Shāfi‘ī, al-Juwaynī, al-Ṭūfī, al-Izz Abd. Greetings and others, but in sparing the author of the concept *maqāṣid* offered Auda more broadly, elastic, moderate, and courageous to attract the author's interest to more in analyzing and discussing it in this simple paper.

**RESEARCH METHOD**

This type of research in writing is a qualitative type of research. Data collection techniques use literature (library research to trace books written by Jasser Auda and analyses that have been done related to Jasser Auda Thought, especially on Contextualization of *Mašlaḥah* in Islamic economy. The data analysis techniques used by researchers in this study is a qualitative descriptive analysis using technical analysis miles and Huberman with the stages of such as data collection (*data* collection), presentation of

---

¹A mujtahid who is considered as the basic laying of knowledge *Uṣūl fiqh* is Imam Muhammad al-Baqir bin Ali Zaenul Abidin bin Husen bin Ali bin Abu Tholib, then continued by his son, namely Imam Ja'far al-Shodik. Abu Haneefah (Imam Hanafi) had studied and taught from both (al-Baqir & al-Shodik) is considered as the first to compose and write the science of *Uṣūl fiqh* in kita"bhis "al-*Rayu*" which was then continued and developed by two famous disciples; Qodli al-Quqlot-Imam Abu Yusuf ya'qub bin Ibrohim al-Anshori (he was the first to use the name *Uṣūl fiqh* in his work "al-*Tawhid*") and Imamal-Royani-Muhammad bin Hasan al-Shay ban. As for Imam Shafi‘ī who had taught to the two disciples Imam Hanafi wrote us the very famous "al-*Risālah*", when he was in Baghdad and perfected in Egypt. And *al-Risālah* this is a *usb* *Uṣūl fiqh* the most perfect and sitematic in his time, so majority of scholars argue that Imam Shafi‘ī was the first to write and book the sciense of *Uṣūl fiqh*. 

Contextualization of Mašlaḥah.....
data (data display), reduction of data (data reduction), data analysis (data analysis) and the last conclusions (data conclusion). The study aims to describe or describe the problem objectively in this research method. And for data collection (data collection) (Miles, 1994) the author uses library search (library research). After the data is collected, the researchers present or present the data to reduce, select and sort the data that suits the research needs. Furthermore, after being reduced, the researchers analyzed the data of Jasser Auda's Islamic economy Thought. And the last is to conclude the results of the study.

RESULTS AND DISCUSSION

Biography of Jasser Auda

Jasser Auda is Founding Director of Al-Maqaṣīd Research Centre in the philosophy of Islamic Law, Al-Furqan Foundation, London, UK., since 2005, a scholarship recipient from the International Institute of Advanced Systems Research, Canada, a founding member of the International Union for Muslim Scholars, based in Dublin, a member of the Academic Council of the International Institute of Islamic Thought, U.K., a member of the Board of Commissioners of the Global Civilizations Study Centre, U.K., consultant for Islam on linear, Executive Board member of the Association of Muslim Social Scientists, U.K., and a lecturer at the Islamic Institute in Toronto-Canada, Alexandria University Faculty of Egyptian Law, and The Islamic Fiqh Academy in India. He has a multidisciplinary academic background. He earned PhDs from two Universities with the Philosophy of Islamic Law dissertation at the University of Wales; the U.K., and System Analysis at the University of Waterloo-Canada. And here is a chart of explanations of higher education that have been studied:
He wrote many books and articles in Arabic and English that revolved around the
current Fiqh consolidation, especially in the study of Maqāṣid al-Shari‘ah. His latest
book is Maqāṣid al-Shari‘ah as The Philosophy of Islamic Law: A System Approach,
IIIT, 2007, which became the main study in this paper.\(^2\)

In his website autobiography, Jasser did not mention his place and date of birth. But in the
author’s guess, he was born in Egypt because his name and facial expression indicate that.
Then turn 360 degrees in the direction of his education to Islamic studies while studying
in the West. But while studying mechanical engineering in Cairo attended weekly lessons
at halaqah al-Azhar Mosque under the care of Shaykh Isma‘il Shadiq al-Adawi between

---

\(^2\)In addition to the parent book above as the main reference in studying Jasser Auda's thoughts on the
concept of Maqāṣid, the author also studied other works of Auda that are still one theme such as some
arabic-language articles titled Maqāṣid al-Ahkām al-Shar‘īyyah wa Ilaluha, Madkhal Maqāṣidī li al-Ijīthād,
and others.
1984-1990 in the field of primary studies, such as Hadîth, Ulum al-Hadîth, Fiqh madhhab Shâfi‘î and Usûl Fiqh with comparison madhhab, even he has also finished memorizing 30 juz al-Qur‘ân between those years with the history of Imam Hafez.

**Jasser Auda’s Modern Thinking on the Concept of Maqāṣid and Its Analysis**

All traditions (madhhab) of Law in Islam agreed that the problem that is not found the answer in the Qur‘ân, al-Sunnah, and Ijmâ‘, is resolved through Ijtihād. The difference between these streams is only how the methods are used, or some of the streams use specific techniques, but others do not use them (Kābah, 1999).

Methodology (description of methods), according to some experts, is interpreted as a discussion of theoretical concepts of various methods related to a knowledge system. If Islamic Law is seen as a science system, then what is meant by the methodology of Islamic Law is discussing the basic concepts of Islamic Law (Al-Qur‘ân, Sunnah, Ijmâ‘), and how Islamic Law is reviewed and formulated. In harmony with the above understanding, there is a writer (Fazlur Rahman) titled *Islamic Methodology in History* in a work that discusses the historical evolution of the basic principles of Islamic Thought, namely the Qur‘an, Sunnah and Ijmâ‘. With this understanding, the methodology of Islamic Law is no different from the understanding of usûl fiqh, which according to experts, is interpreted as something on which Islamic Law is built or the evidence on which Islamic Law is made. And some writers, such as Wael B.Hallaq termed (A.Maṣādi, 1998) Usûl fiqh with the theory of Islamic Law (Islamic legal theory). At the same time, in his book, Auda prefers to mention (Auda, 2007) Usûl fiqh in his English-language book with the term *Fundamentals of Islamic Law*. (Auda, 2007) As for Indonesia, some writers in this field call Usûl fiqh with the term Philosophy of Islamic Law. (Djamil, 1999)And Maqāṣid or Maṣlaḥah, which became the primary study of Auda in his book, is one of the
areas of discussion in science ışul  Fiqh. Even Auda strongly agreed with Shaykh al-
Tahir Ibn 'Ashūr who criticized the establishment of science  Ușul  Fiqh as3 a science that
has neglected Maqāṣid al-Shari'ah by relying only on al-fāḍh (text--text) outwardly
Shari'at and the meanings of the text through specific rules in istinbāt Islamic law and
look in the eye at the Maqāṣid stored in every legal text whereas Maqāṣid is the primary
purpose and objective of Fiqh. In other words, the author likens Maqāṣid as a nut to be
eaten, while the texts outwardly only its means skin (smooth) that is sometimes discarded
by some people. (Auda.net, 2009)

Terma Maqāṣid is derived from Arabic, which is the plural form of the word intent,
which means a plan, objective, principle, intention, purpose, the end goal. Maqāṣid
Islamic Law is the targets or intentions behind the Law. For some Islamic law theorists,
maqaṣid is an alternative statement for maṣālih or meaning benefit. (Auda Y. , 2007)

Auda more agreed with the proposal ibn 'Ashūr who proposed that Maqāṣid stand
alone as "science Maqāṣidal-Shari'ah" by still allowing science Ușul  Fiqh as a science that
undermines the evidence fiqh. (Auda Y. , 2007)

And the concept of Maqāṣid developed by Jasser Auda is outlined in his book
entitled  Maqāṣidal-Shariah as Philosophy of Islamic Law a systems Approach (Maqāṣid
Shari'ah as The Philosophy of Islamic Law as a System Approach). The book covers three
main subjects, namely: (a). Methodology, (b). Analysis and (c) Development of theory.
The three subjects above are described in 7 (seven) chapters, namely: (a). Maqāside al-
Shari'ah (Auda Y. , 2007) in a contemporary perspective, (b). The system as philosophy
and methodology of analysis, (c). Islamic Law (Fiqh), Imam mujtahid and Madhhab: a
historical observation, (d). Classical theories of Islamic Law(Ușul  Fiqh), (e).
Contemporary ideas of Islamic Law, (f). A system of approach to the theory of Islamic
Law and (g). Conclusion.

3In general, the idea of Ibn 'Ashūr is almost the same as the discourse offered by al-Shathibi, only he has
been instrumental in developing the discipline of Maqāṣid shari'ah and making it as a new discipline separate
from the science of Ușul  Fiqh, he was dubbed as the 'second teacher' after al-Shathibi was dubbed the 'first
teacher'. He has succeeded in developing the theory of Maqāṣid which previously only focused on the study
of juz'iyah and kulliyah became wider, namely by widening the discussion of Maqāṣid into 'Maqāṣid sharia
specifically about muamalat' in which to explore various issues of Maqāṣid about Maqāṣid family law,
Maqāṣid use of property, Maqāṣid law and testimony andothers.
In developing the concept of *Maqāṣid*, then in chapter one, before explaining *Maqāṣid al-Shari'ah* in a contemporary perspective, Auda departed from the concept of *maqāṣid* classical (traditional) by quoting and exposing some scholars' opinions about the definition and level of *Maqāṣid*. He criticized some of the views of classical scholars about the concept of *Maqāṣid*, and he also praised some of the classical opinions.

Auda began to define *Maqāṣid* from the view of language science (etymology) first; linguistically, *Maqāṣid*, which is the plural form of *maqāṣid* means *mašlaḥah*, objectives, principles, intentions, objectives, end goals, etc. Then in terms (terminology), *Maqāṣid* (Auda Y. , 2007) can be defined by "the meanings (understanding) desired by *Sharī'ah* (God and His Messenger) to be realized through *tashri'h* and the determination of the laws that are in-*istinbāt* (take) by the mujtahid through the texts of *Sharī'ah*." And al-Juwayni— (Auda Y. , Madkhal Maqāṣid li al-Iḥtiḥād), which by Auda is called the first cleric who has offered the concept of *Maqāṣid*— it sometimes mentions *Maqāṣid al-Shari'ah* with the term *mašlaḥah 'amah* (public benefit). While al-Ghazālī looked at *Maqāṣide* is *al-Maṣāliḥ al-Mursalah* with three levels, namely: primer /necessities (darūrāt), under/needs (hājiyyāt) and tertiary/luxuries (tahsiniyyāt) and the opinions of other scholars, such as al-Tufi, al-Qarāfī which although different editorial staff but the purpose and purpose are the same. Therefore, Auda also claims that between *Maqāṣid* and *Mašlaḥah* is the same. (Auda Y. , 2007)

Auda more agreed with the opinion of scholars who divide *Maqāṣid* into three main parts, namely general (*'ammah*/general), specific (khāṣṣah†), and partial (juziyyah/partial). *Maqāṣid* is a general-purpose (principle) that exists in all aspects of *Sharī'at* or as a whole, such as the principle of tolerance, ease, justice, and freedom. So *Mašlaḥah* the primary -which includes the obligation to keep religion, soul, reason, *naṣab*, wealth, and honour- it is included in this section *maqāṣid* general. As for *Maqāṣid* special is some of the purposes of *Sharī'at* which is in one chapter/part of some chapters *Sharī'at*, such as the sanctions/punishment in the chapter *jinayāt* (criminal) there aims to create a deterrent. While *maqāṣid partial id* is sometimes a law or *asrār* (secret) referred to by *Sharī'at* directly against a partial law, such as the purpose of *rukhṣah* (lightening) not fasting for the incapable is to eliminate difficulties (Auda Y. , 2007).
Of the three categories, *maqāsid* above, indeed the scholars have made a sequence of virtues (hierarchy) starting from *Maqāsid primary* as the first and foremost order, then the *secondary* and last *tertiary*. Similarly, in *Maqāsid primary*, there is a sequence of hierarchy that has been made al-Ghazali and follow the subsequent scholars in the following order: *Hifz* (keeping); religion, soul, reason, descendants, and property are in the last order. The hierarchy illustrated with the *mahrām* form (pyramid) as follows:

---

**Figure 1**

**Hierarchy of *Mahrām* Form**

---

The hierarchy serves as a determinant in case of two or more *Mašlaḫah* facing each other, as an option that should take precedence between the two. As it is permissible for a person to drink *khamr* by force even if it is contrary to the obligation to keep the mind (by not drinking khamr) because keeping the soul (so as not to be killed for refusing the compulsion to drink khamr) is in the second hierarchy while keeping sense is in the third order. Auda's view, al-Ghazali has violated the hierarchy when al-Ghazali still prohibits adultery by coercion (rape), it means to have prioritized keeping the *nasal* (descendants) from the soul, when the order of the soul is at number two, while *nas* number four. The complexity of the use of this hierarchy which in Auda's view resulted in some scholars, such as al-Shaṭībī, al-Rāzī, al-Qarāfī, al-Baidawi and Ibn Taimiyah refused to use this hierarchy as a solution in determining options. And Auda agrees more with modern
opinion, namely the opinion of Shaykh Muhammad al-Ghazali who no longer describes *Maqāṣid* with pyramids but with parallel circles and filling each other as the following illustration: (Auda Y., 2007)

![Diagram of three overlapping circles](image)

Auda bases the concept of *Maqāṣid* his on Hadith *ṣahīh* Bukārī-Muslim and others the following:

"IbnUmar ra said: The Prophet Muhammad (PBUH) said on the day of the war al-Ahzab: ("Do not one of you pray 'aṣr except in the Jewish village of Bani Qurayḍah"). So some of the companions of the Prophet (s) had found the time 'aṣr in the street (before reaching the Banu Qurayḍah), then some friends said: We will not pray before we achieve, and others say: we will still pray in the street. Then he pitted the matter on the Prophet SAW, and the Prophet did not blame or justify anyone."

Auda argues that Hadith above as clear evidence that it is permissible to observe the Law of *Shariah* taken from al-žan *al-Ghālib* (strong perception), may even establish a law 'amalī; (practical) based on the concept of *Maqāṣid* taken through an understanding that is even contrary to the Allah (cause) that appears textually. Because some of the companions who have *ijtihād* and understand that the purpose of the Prophet's words is to hasten to the destination (Bani Qurayḍah) and not the command to pray 'aṣr in Bani Qurayḍah, then those who continue to pray in the street means it has been contrary to the outward orders of the Prophet SAW. And *taqārīr*-his Prophet SAW
by silence both groups is proof that the Prophet SAW justifies both methods. (Auda Y., 2007)

And Auda also argued with some ijtihād Umar which is contrary to the outward text of Hadith by only guided by the understanding of the concept of maṣlahāḥ or Maqāṣid, such as The Decree of Umar ibn Khattab with the withdrawal of taxes from the conquered lands of Iraq and Egypt and not sharing it as a spoil of war (Auda Y., 2007)

However, Auda, before discussing with complete and clear the concept of Maqāṣid and its relationship with Alloh law as has been understood companions of the Prophet SAW as a system of approach in English Islamic law issues. So in chapter two, he first explains philosophically about what and how is it?, what is a philosophical system?, and what is its correlation to Islam and what modern philosophy is the intelligent Islamic system? what is its relationship to Islam and modern philosophy? What is the approach of the system? Also, discuss the cognitive nature of the Islamic legal system that is easy to understand, thorough, open, gradual, multi-dimensional, and maṣlahāḥ. Besides, at the end of chapter two, Auda also raised the three groups of scholars' differences about "Does God have a purpose behind His Shar'iat? And is it possible for a man to judge good and evil without the help of information about God's revelation or the Prophet's words? That is between the opinions of Mu'tazilah and Syi'ah, Asya'irah and Maturidiyyah (Auda Y., 2007).

In chapter three in telling the history of the birth of madhhab-madhhab Fiqh, which began from two main strongholds, namely: madrasah Hijaz (ahl al-Hadith) and madrasah kufah (Ahl al-Ra'y), until the emergence of various madhhab schools in istinbāt law, Auda also criticized that most of the sect did not understand the concept of Maqāṣid well like the companions of the Prophet SAW in establishing Law. Auda's criticism can be read clearly in the chart he created as follows: (Auda Y., 2007).

As for chapter five, Auda discusses contemporary traditions in the theory of Islamic Law. It was starting from the traditionalist tradition that in this century gave birth to neo-traditionalists and neo-literalists. The emergence of modernist traditions that covet reform by carrying essential agendas such as text reinterpretation, the orientation of the theory Maṣlahah, revision uṣūl fiqh and others with the discussion of modernist figures,
such as Muhammad 'Abduh, Rashid Riḍ an al-Tahir ibn Ashūr, Muhammad al-Ghazālī, Hasan al-Turābī, Fazlur Rahman, Fathi Uthman, and others. And until the birth of the postmodernist movement that brought the theory of deconstruction Jacques Derrida which also gave rise to the flow of post-structuralist and historicist with its characters, such as M. Arkun, Naṣr Hamid Abu Zayd, Hasan Ḥanafī, al-Ṭahir al-Haddād and others (Auda Y., 2007)

In chapter six, Auda discussed in detail the development of the concept of *Maqāṣide* that he researched. The summary of this chapter he has written in two Arabic-language articles entitled *Maqāṣid al-ʿAḥkām al-Sharʿiyyah was Ilaaluha and Madkhal Maqāṣid li al-Ijtihād*. Which is then perfected in his Arabic-language book also published The International Institute of Islamic Thought (IIIT), London-UK with the title *Fiqh al-Maqāṣid; Inathat al-ʿAḥkām al-Sharʿiyyah bi Maqāṣid* And in this sixth chapter Auda also elaborates on the various traditions of post-modernism Islam and also how they influenced some twentieth-century Islamic studies.

By referring to Hadith Ibn Umar above, Auda argues that ijtihād friend in the story of Hadith is based on ʿ*Alloh* which some friends understand differently from others, resulting in differences in the results of ijtihād. Because when the Prophet (PBUH) said not to pray ẓuhrʿaṣr except in the village of Bani Qurayṣah then *dilālah zahir* showed that
should pray in the village bani Quraydah, and Alloh is to get to the village, but Maqasid (intent and purpose that is understood contextually) is al-Isra’ (hastening to reach the village before the prayer time runs out), then dilālah al-Maqaṣид his is hurrying and praying in the middle of the road (Auda Y. , Madkhal Maqāshid li al-Ijtihād).

In Auda's view that there are similarities between Alloh and Maqasid, because Alloh which is defined as al-Ma'na al-ladā Bedari Shari'a al-hukm li Alloh (a make which is, therefore, a law that is in Shariah) is the same as the definition of Maqasid (which has been mentioned in front). Not to mention some names Alloh, such as al-Sabab, al-Amarah, al-Dai', al-Ba'ith, al-Hāmil, al-Manāt, al-Dafīl, al-Muqtadāf, al-Mujīb and al-Mu'athir can also be the reason that there are similarities between Alloh and Maqasid. So when there is a rule ushūliyah favourite reads: "al-Hukm al-Shariyya ma'a Alloh; wujudan wa adaman" (Shariah law is oriented to the existence or absence of an Alloh) means that a law will be punished there, if Alloh exists, and vice versa. Thus, a conclusion can be made that "Tadūr al-Ahkām al-Shariyyah al-'Amaliyyah ma'a Maqāsidihā Wujudan wa 'Adaman, kama tadūrma'a illaliha wujadan wa 'adaman".

And Auda also agreed with the opinion of classical scholars who divide 'Alloh into two parts, namely ta'abbudī (irrational) and ta'aqquli (rational). (Auda Y. , Madkhal Maqāshid li al-Ijtihād) And 'Alloh a law that can be found by reason is often called al-Ta'llī bi al-Ḥikmah (the determination of Alloh with an Ḥikmah). And if 'Alloh a law is not or has not been known Ḥikmah-his, then Maqasid-his is ta'abbudī. But there are still some scholars who equate and distinguish between Alloh and Ḥikmah. So most fuqaha view 'illah can be hujiyyah al-hukm, but not for Ḥikmah. (Auda Y. , Madkhal Maqāshid li al-Ijtihād) Then Auda also made a big question that will be the major study of his research, namely, "is Maqāsid in a position like Alloh or Ḥikmah?" (Auda Y. , Madkhal Maqāshid li al-Ijtihād)

Through some analysis of the example of the search case Alloh, Auda seems to have concluded that Alloh and Ḥikmah are the same, because Alloh the ta'aqquli it is al-Ta'llī bial-Ḥikmah, and Ḥikmah a law can undoubtedly be sought and accepted sense (ta'aqquli). But even above, Auda has tried to align between Alloh or Ḥikmah and Maqāsidhān its extensibility to the existence of a law, but Auda still makes a feature to find
the difference between Ḥikmah and maqāṣid (Maqāṣid), namely: Ḥikmah is a Maṣlaḥah of some Maṣlaḥah which is the foundation of Law, while maqāṣid is a Maṣlaḥah that is in-nas by Shariah or a maqāṣid (the primary purpose) of Law in strong perception (al-żan al-Ghālib) from ijtihād a mujtahid which is, therefore, the Law is shared. Then there are three circumstances between Ḥikmah and Maqāṣid, namely: a) sometimes there is a difference between Ḥikmah and Maqāṣid; b) sometimes Ḥikmah is also part/branch of Maqāṣid and; c) sometimes Ḥikmah is the essence of Maqāṣid itself.

Auda concluded, there are four reasons why Maqāṣid is used as a method of ijtihād in Islamic Law. In other words, Maqāṣid is one of the sources of Islamic Law. (Auda Y. , Madkhal Maqāṣid li al-Ijtihād) First, fahm dilaḥ al-maqāṣid, meaning that it is permissible for a mujtahid to conclude meaning to a Shar'i text through Maqāṣid. His pieces of evidence thīṣth Bani Qurayḍah above.

Second, taghayyural-ḥatwā bi taghayyur al-zaman has an al-Maqāṣid (the change of a ḥatwā the Law because of the transformation of the Law of an era with the consideration of Maqāṣid), meaning that the relativity of a ḥatwā the direction is determined by the relativity of Maqāṣid at an age that is very relative and dynamic. Some ijtihād evidence thīrd Umar R.A., such as not setting a penalty of cutting off hands for a thief in the condition of the time that is dry season, not giving part of zakat to the rich and able muallaf or such ḥatwash zakat profession al-Qarḍawī and others.

Third, hallal-taʿāruḍ bi iʿtibār al-Maqāṣid (resolution of contradictions between the evidence and the consideration of Maqāṣid). In Uṣūl Fiqh, when there is an outward contradiction between the evidence, then there are three kinds of solutions, namely al-Naṣkh, al-Tarjih and al-Jamai. Then actually, this solution can also be done with consideration Maqāṣid. This has been proven by the Prophet Muhammad SAW's actions, such as allowing grave pilgrimage after previously prohibited, prohibiting the storing of sacrificial meat after previously recommended.

Fourth, manʿ al-hiyal al-Fiqhiyyah (prohibition of ḥilah trick law). In general, the scholars have agreed to prohibit ḥilah law, as the Prophet's prohibition against practice muḥallil and muḥallil lah. However, there are some cases ḥilah is allowed
For the above four reasons, Auda then proposed five strategies to make Maqāṣid as a new methodology inijtiḥād, namely: a) There must be the courage to change the madḥhab line theoretically; b) Think madḥhab Ẓahiriyyah (Literalism) by becoming Neo-Literalism; c) Approach the philosophy of deconstruction via historicism; d) But it is in the middle (moderate) between literalism and historicism; with the limitation that literalism should not neglect (Maksum, 2009) Maṣlahah and historicism should not exceed the authority of revelation and by restoring the position of Maqāṣid in its original place and; e) Continuing to optimize the role of the concept of Maqāṣid in the renewal of Islam in all fields (Fuady, 2005).

**Contextualization Maṣlahah in Islamic Economy**

From the analysis that the author did to the thinking of Auda above and some other supporting literature on the concept of Maṣlahah Then according to the frugal author, the division of types Maṣlahah can be concluded into five kinds, namely: a) based on the purpose of the time/ time; b) based on the level of its needs; c) based on its scope (its range); d) based on the absence or absence of change; and e) based on whether or not there are terms in its determination.

Maṣlahah, based on his time's purpose, is divided into two levels. Namely, Maṣlahah The world and the Hereafter. Maṣlahah world is an obligation or rule of syara' related to the laws of Muʿāmalah (social and economic interaction). While Maṣlahah Hereafter is an obligation or rule of syariat related to the laws of aqidah (tawhid) and Worship (mahḍah/pure) (al-Buti, 1992).

Maṣlahah based on the level of his needs -as referring to his opinion al-Shaṭibi in maintaining the five main objectives of Shar'i (al-Maqāṣid al-Shariyyah)- it is then to realize the maintenance of the five central affairs, al-Shaṭibi (al-Shaṭibi, t.t) divides it into three categories and the level of strength of need for Maṣlahah which Auda also adopts in his book, namely: a) al-Maṣlahah al-Dlaruriyyah (primary benefit); b) al-Maṣlahah al-hajiiyyah (secondary benefit); and c) al-Maṣlahahal-Tahsiniyyah (tertiary benefit) (al-Munawwar, 2000).

As for Maṣlahah based on its scope (its range), majority scholars divide it into three levels, namely: a) al-Maṣlahah al-'ammāh (Maṣlahah general): relating to everyone; b)
al-Maslahah al-Ghālibah (Maslahah majority): relating to the majority (mostly) of people, but not for everyone; c) al-Maslahah al-Khāṣṣah (Maslahah unique/personal): concerning specific people, it is rare, such as the benefit of a wife for the judge to make a decision fasakh because his husband declared missing (maţqūd). And this part becomes meaningful when there is a contradiction between each other. In this case, Jumhur argues that the more general benefit takes precedence over the benefit under it. This division is similar to what Auda did by dividing the level (al-Munawwar S. A., 2000) of Maslahah into general, specific, and partial.

While Maslahah, if reviewed from the existing or not changes to it, can be divided into two parts, namely: a) Maslahah that changes in line with the change in time, or environment, and or people who undergo it, this happens only to problems related to mu‘āin fact and ‘urf (habit); b) Benefit that never changes and is fixed until the end of time. The benefit is fixed even though the time, environment, and people dealing with the benefit have changed. This unchanging benefit is related to the problems of Worship. According to al-Shatibi, the above division's talk becomes relevant and essential when the scholars want to establish the Law of a matter based on Maslahah. In this case, the direction of the issue can only change if it belongs to the category of problems that can be changed. And Auda, in the view of the author, does not seek to distinguish in this matter. He enduring all (al-Munawwar S. A., 2000) Maslahah can accept changes following the conditions of space and time that continue to be dynamic all the time (Dahlan, 1996).

And lastly, Maslahah based on the absence or absence of Shar‘i‘at in its determination by some scholars such as al-Ghozali divide it into four levels which in the encyclopedia of Islamic Law is called the four benchmarks Maslahah, namely: a) Maslahah mujabah (benefits confirmed syara‘ nau‘ (species or such); b) Maslahah malā‘imah (benefits confirmed syari‘at jeans (genus or it's kind); c) Maslahah mulghah (undone benefit) by syara‘, and (d) Maslahah gharibah (the benefit of silence) by syara‘.

In common with al-Ghazali-Bu‘ti also divides Maslahah in this category into four levels, only by using different terms, namely: (a) Maslahah mu‘athirah; b) Maslahah malā‘imah; c) Maslahah munāsibah gharibah; and d) Maslahah mursalah.
Contextualization of \textit{Maṣlaḥah}.....

\textit{Hujjah} of \textit{Maṣlaḥah} in the view of the scholars against \textit{Maṣlaḥah} as a source of Law that means become the basis of benchmark in the determination Law, or other words, the decision of a specific law a particular issue because of the benefit of wanting the Law. In this case, al-Munawwar mentions that \textit{uṣūliyyīn} (scholars of science \textit{uṣūl fiqh}) discuss the issue of \textit{Maṣlaḥah} in two subjects, namely: (Dahlan, 1996) a) \textit{Maṣlaḥah} as Alloh (motive that gave birth to the Law). The assessment of Alloh is related to the change around \textit{Qiyās}, which equates to the Law of a problem that does not exist \textit{nasb} because between the two, there are similarities in terms of Alloh. Jumhur scholars argue that every Law established by the \textit{naṣr} or \textit{Ijmā'} (agreement of the scholars), all based on \textit{Ḥikmah}, namely to benefit or benefit and avoid \textit{Maṣṣādah} (damage). In that, every Alloh that becomes the basis of a law boils down to the interests of human benefit. They believe in the decrees set by \textit{naṣr}, in \textit{which} there is no benefit, both in this world in the Hereafter; b) \textit{As a source of} Islamic Law, in discussing \textit{Maṣlaḥah}, in general, the scholars first review it in terms of whether or not the testimony of Syara' against it, whether it is to recognize it as al-\textit{Maṣlaḥah} or not.

In this case, the number of scholars divides into three kinds, namely: a) \textit{Maṣlaḥah} that there is a testimony syara' in acknowledging its existence, namely \textit{Maṣlaḥah mujabah (mu'athirah) and mu'ālimah}, this incarnates into the basis in \textit{Qiyās}, because the same with \textit{al-munaṣṣibin} the discussion of \textit{Qiyās}, which is a natural trait in the form of benefit, which is found in a legal case, can be measured and reasoned, is one of the characteristics in knowing Alloh law to do \textit{Qiyās}. All scholars agreed to say that \textit{Maṣlaḥah} this kind of \textit{hujjah} (can be used as a source of Law); b) \textit{Maṣlaḥah that} there is a testimony syara' who canceled it (reject it), \textit{Maṣlaḥah} this -known as \textit{maṣlaḥah mulgah}- is false means can not be used as \textit{hujjah} or legal source because it is contrary to the \textit{naṣ}. c) \textit{Maṣlaḥah} that there is no testimony syara' either in admitting it or rejecting it in the form of a certain \textit{naṣ}. This is known as \textit{Maṣlaḥah mursalah}.

In that, al-Ghozali added three conditions for \textit{Maṣlaḥah} the third type above can make \textit{hujjah}, which is then called \textit{al-Maṣlaḥah al-mursalah}, namely: a) \textit{Maṣlaḥah} must have \textit{malā'imah} nature; (b) Being in the level of \textit{al-ḍarurah} or in \textit{hajah} level that can be
equated with emergency level. While those in the tahsinat level do not become hujjah;  and c) If it relates to the soul, then Mašlahah must be daruri, qaṭī and kullī (Khalaf, t.t.)

Al-Khalaf, meanwhile, sets out three main conditions for Mašlahah mursalah; if it wants to be used as hujjah (legal source). These three conditions are determined so that there are no actions (making the Law) with lust and narrow desire alone in the name of the evidence Mašlahah mursalah. As for the three conditions are: (a) Mašlahah-his must be accurate (true and robust) and not benefit based on the allegations (Khalaf, t.t.) (Mašlahah wahmiyyah), meaning Mašlahah-his must be able to realize the benefits or reject mafṣadat, (b) Mašlahah-it must be 'ammah (general), meaning Mašlahah-it is of general interest (benefit), not the benefit of a certain person or group only and (c) the law to be removed from the Mašlahah this should not be contrary to the law or legal principles that already exist based on naṣ or Ijmā. So it is not valid (cancel) to equate the inheritance part between men and women with the basis Mašlahah, because of Mašlahah-his contradictory naṣ al-Qur’an (Khalaf, t.t.).

Meanwhile, al-ButI argues, Mašlahah can be used as a legal source if it meets the five criteria that he termed Dawābi al-Mašlahah. The five criteria are; Mašlahah must be: (a) included in the scope of the five al-Maqhashid al-Shariyyah, (b) not contrary to the the Qur’an, (c) does not contradict al-Sunnah, (d) does not contradict al-Qiyaṣ and (e) does not conflict with other higher benefits / more substantial / more important (al-Buti, 1992).

Furthermore, al-ButI in his book "Dawābi al-Mašlahah fi al-Shari‘ah al-Islamiyyah" concludes in the final chapter, that the five criteria scent the existence of three consequences, namely: a) should not men-takhsīs, interpret ortaqyid something from the Qur’an and al-Sunnah solely on the basis of Mašlahah, because the problem should not outperform and contradict the two primary sources of Islamic law; b) The opinion of some scholars who put a famous rule, namely "tatabaddal al-Aḥkām bi tabaddul al-azman" (change of Law because of the change of times) it should not be taken outwardly only, because a law that was born because it is based on the Qur’an or Sunnah or from Qiyaṣ which is sourced from both must always exist as long as both still exist and can not change solely following the times; and c) a moral message for scholars who have been able to ijtiḥād and discuss some issues of Islamic Law to be more thorough and careful in understanding
the characteristics of Maslahah, so as not to occur confusion or influenced by madaniyah (favorable) laws and materialistic modern culture (al-Buti, 1992).

Al-Munawwar quoted Husayn Hamid Hassan as emphasizing the necessity of one of the two conditions for Maslahah mursalah to be a legal proof, namely: a) the conformity between (al-Munawwar S. A., 2000) maslahah with the law set al-Shari (Qur’an and Sunnah), through the way istikhrāj al-manāt (issue ’Allah law); b) the conformity between Maslahah and jeans bagarrafat al-Shari, meaning Maslahah at least must be in accordance and in line with the type of law that has been set al-Shari (Maslahah Malā‘imah).

From the author's analysis of the concept of Maqāṣid offered by Auda, which is identical to Maslahah and the view of scholars about Maslahah and such. So in principle, the author accepts the concept of Maqāṣid developed by Auda; there only needs to be clarity and concrete examples related to Fiqh Maqāṣid as a methodology of ijtihād in the field of Fiqh bolder and concrete, i.e., such as the field of jinayāt (criminal) that analyzes the nas-nas Qur’an and Sunnah related forms of punishment (hadud), such as cutting hands, stoning, flogging and order with the combined approach proposed by Auda, namely: between neo literalist and deconstruction-historicist. Although it looks like Auda will direct the concept of Maqāṣid-his there; to other than the field of Worship and mu‘āinstead, but he still seems floating and hesitant. Or maybe he deliberately lured other reformers to more sharply and concretely developed the concept of Maqāṣid-his in the form of results ijtihād concrete and use the method of the scholar with "maqāṣid approach" that has been developed by Jasser Auda this concept.

To reconstruct maqāṣid al-shari‘ah fundamentally, Auda uses a philosophical approach that is multidisciplinary and open with various other relevant disciplines as a methodological framework for reforming the study of uṣul al-fiqh and Islamic Law. (Zaprulkhan, 2018). In the maqāṣid concept offered by Jasser Auda, the values and principles of humanity are the main focus. The maqāṣid theory, which is hierarchical, has experienced developments, especially in the 20th century. The modern approach criticizes the above classification of necessities for the following reasons: the scope of maqāṣid theory includes all Islamic Law, is more individual, does not include the most universal
and fundamental values, such as justice and freedom, and deduced from a review of fiqh literature, not referring to the source or script (Auda Y., 2007).

The following are some of the offers of maqāṣīdal-syarī’ah concepts offered by Jasser Auda, namely: a. Levels of maqāṣīdal-syarī’ah Contemporary scholars' divide maqāṣid into three levels, namely maqāṣidāmmah (general maqāṣid or general objectives), maqāṣid khāṣṣah (specific maqāṣid or specific goals) and maqāṣid juz’iyah (partial maqāṣid or partial plans). Maqāṣidāmmah is public values and meanings that exist under all tasyrī conditions or in most of them, such as justice, freedom, justice, and convenience. Maqāṣid khāṣṣah is maslahat and values that want to be realized in a particular chapter in Sharia, such as the goal of not degrading and endangering women in the family system, frightening society and the deterrent effect of giving punishment, eliminating gharar (obscurity) in mu'amalāt, and others. While maqāṣid juz’iyah is the goal to be realized in specific legal requirements, such as the purpose of honesty and memorization in the provisions of the testimony, eliminating the difficulty of the Law, whether to not fast for people who are unable to fast because of illness, traveling or other. The classical scholars arranged maqāṣīdal-syarī’ah in pyramidal levels, starting from maqāṣidāmmah the center and then branching into maqāṣid khāṣṣah and finally maqāṣidjuz’iyah. Then from the other side starting from al-ḍarūriyah, ḥājiyah then tahsīniyah. They arrange an order of priority if there is a conflict between maqāṣids one another. A stronger priority is given, namely prioritizing the protection of religion over the soul, mind, etc. Although this theory seems simple, it turns out that applying this theory, in reality, is very difficult and complicated. There emerged other views among contemporary scholars such as Jamaludin' Atiyah and Jasser Auda, which differed from the aforementioned classical arrangements. They argue that maqāṣīdal-syarī’ah with all its levels is not a pyramidal structure, in which the maqāṣid is divided between the top and the bottom. Still, it is a circle that meets and intersects (dawārī mutadākhilah wa mutaqāṭī'ah), whose relationships are related to one another (Auda Y., 2007).

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

The recent economic recession after the Covid-19 pandemic in Indonesia and around the world has increased discussion about the contribution of the Islamic economy in overcoming it. Experts are increasingly demanding that Islamic economic institutions re-instill the philosophy of *maṣlaḥah* in carrying out their operations. The flexibility of Islamic Law is required to include the substance of the maṣlaḥah in the financial system. The findings of this study suggest the role of Islamic economists in making new policy breakthroughs and solutions. In determining the sharia compliance of Islamic economic policies in Indonesia, Islamic economists and scholars can concentrate on flexible technical Islamic Law by adapting the *maqāṣid al-sharīʿah* doctrine through the maṣlaḥah instrument. The *maqāṣid al-sharīʿah* approach in the context of Islamic economics is taken to meet the needs of the economic sector in Indonesia. (Shaharuddin, 2010) At present, the practice of Islamic economy in the contextualization of *maqāṣid al-sharīʿah* through the maṣlaḥah instrument can be explained is based on the concept of economic welfare, universal brotherhood, justice, fair income distribution, and individual freedom in the context of social welfare. It is intended that every individual and organization committed to being honest, to encourage balanced life between life in the Hereafter and the world.
Thus this development could only be achieved in conformity with the *maqāṣīd al-sha'i ah* through the maṣlaḥah instrument. This implies the necessity for Islamic economic actors to develop products based on overall welfare and a larger perspective from the maṣlaḥah framework and not just focusing on normative legal forms. With careful analysis, it can be seen that current Islamic economic practices are, in most cases, not up to the standards required by Sharia. For example, many Muslim economists prefer equity-based instruments and place greater responsibility for social welfare and religious commitment to realize *maqāṣīd al-sha'i ah* for equitable distribution of wealth and promote economic development and growth. In contrast, most of the Islamic economic policies in Indonesia only revolve around Islamic banking. Therefore, currently, one of the biggest challenges in producing Islamic economic policies that are solutive and following Sharia is *maqāṣīd al-sha'i ah* (Al-Mubarak, 2020).

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

**CONCLUSION**

Between *ijtiḥād* and *maqāṣīd al-sha'i ah* cannot be separated. Ijtihad, in essence, is an effort to explore syara'law optimally. The attempt to examine Shara's Law is successful if a mujtahid can understand *maqāṣīd al-sha'i ah*. Therefore, knowledge of *maqāṣīd al-sya'i ah* is one of the requirements of a mujtahid. Jasser Auda tried to offer a modern fiqh concept based on *maqāṣīd al-sha'i ah*. In Jasser Auda's view, Islam is a religion that upholds human values. Islam is also a concept religion that seeks to provide solutions for human life to be harmonious and balanced. This is what Jasser tries to raise how a system concept can regulate the lives of Muslims so that they run according to the rules and provide benefits to humans. Jasser Auda defines *maqāṣīd* in four meanings, first, the wisdom behind a law. Second, a good end goal that the Law was trying to achieve. Third,
the divine purpose group and the moral concept are the basis of Law. Fourth, maṣāḥīh. In the maqāṣid idea offered by Auda, values and humanitarian principles are the most important. Auda also tried to reconstruct the old maqāṣid concept, which is protection and preservation in the direction of the maqāṣid theory, which refers to development and rights. The implications of the application of maqāṣid al-sharī‘ah. Using the maṣlahah instrument in the context of the Islamic economy in Indonesia are used to fulfil the needs of sharia policies in the economic sector which do not only revolve around Islamic banking matters.

REFERENCES


