

MAQASID SHARIA JASSER AUDA THEORY: SYSTEMS APPROACH TO ISLAMIC FAMILY LAW IN THE DIGITAL ERA



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Abstract

The digital era is characterized by the rapid use of information technology in daily human interactions. The telepresence feature of the virtual world, which allows for remote interactions, presents unique challenges for Islamic family law, which in some provisions requires the physical presence of parties when conducting contracts. Problems that arise include issues such as the validity of online marriage contracts (ijab kabul), fulfilling sexual needs of long-distance relationship (LDR) couples online, divorce and reconciliation via social media, and so forth. This paper aims to examine Jasser Auda's thoughts on maqasid Sharia using a systems approach by conducting a content analysis of Jasser Auda's main works in the field of maqasid Sharia. Jasser Auda's proposal is then tested for its ability to address the issues of family law in the virtual world. The six system features offered by Jasser Auda as a problem-solving method are highly relevant in providing solutions to the emerging issues of Islamic family law in the digital era. The features of openness and purposiveness provide ample room for society to freely leverage the potential of the digital world without losing authenticity to the primary Islamic texts. These features allow for the incorporation of digital customs ('urf) as a category of 'urf that can serve as a legal basis in determining the rulings for various activities occurring in the virtual world.

Abstrak

Era digital ditandai dengan pesatnya penggunaan teknologi informasi dalam interaksi manusia sehari-hari. Karakter telepresensi dunia maya yang memungkinkan dilakukannya interaksi jarak jauh membawa problematika tersendiri bagi hukum keluarga Islam yang dalam beberapa ketentuannya mengharuskan kehadiran para pihak dalam melakukan akad. Problem yang muncul misalnya pada hukum akad ijab kabul online, pemenuhan kebutuhan seksual pasangan LDR (Long Distance Relationship) secara online, talak dan rujuk via medsos dan lain sebagainya. Tulisan ini bermaksud mengkaji pemikiran Jasser Auda tentang maqasid Sharia menggunakan pendekatan sistem dengan melakukan analisis konten terhadap karya utama Jasser Auda di bidang maqasid Sharia. Tawaran Jasser Auda ini kemudian diuji kemampuannya dalam menjawab problem hukum keluarga di dunia maya. Keenam fitur sistem yang ditawarkan Jasser Auda sebagai metode pemecahan masalah memiliki banyak relevansi dalam memberi jawaban pada problem hukum keluarga Islam yang muncul di Era digital. Fitur keterbukaan dan kebermaksudan memberikan ruang gerak yang cukup luas bagi masyarakat untuk memanfaatkan potensi dunia digital dengan leluasa tanpa kehilangan otentisitasnya pada teks-teks sumber utama Islam. Fitur keterbukaan dan kebermaksudan memungkinkan untuk memasukkan unsur 'urf dunia digital sebagai kategori 'urf yang dapat dijadikan landasan hukum dalam menentukan hukum bagi segala aktivitas yang terjadi di dunia maya.

INTRODUCTION

The rapid development of information technology has given rise to a new social space that is artificial and virtual, known as cyberspace. Everything we can do in the real world can also be found as a substitute in this virtual space. Yasraf Amir Piliang even suggests that almost all aspects of life in the real world can be prefixed with "cyber," such as cyber—society, cyber—community, cyber—economy, cyber—politics, cyber—culture, cyber—spirituality, and cyber—sexuality, to indicate a massive migration from the real world to the virtual world.¹

Cyberspace is a new imaginary realm where humans can do anything that can be done in the real world, such as conducting business, engaging in discussions, critiquing, expressing opinions, and even making love, all through the sophistication of information technology and computers. Michael Heim identifies seven characteristics of the virtual world that allow people worldwide to interact without the constraints of space and time. These seven characteristics are: Simulation: The reality of the virtual world is a simulation or imitation of the real world. Interaction: The virtual world facilitates interaction without the limitations of space and time. Artificiality: The reality of the virtual world is an artificial reality built through communication and computer technology. Immersion: All who are involved in it will experience the world as if it were the real world. Telepresence: The virtual world makes distance no longer an issue, allowing full body immersion where people can be present, move, and speak as if they are in the real world. Networked Communications: Interactions in the virtual world occur by connecting computer devices to the internet.²

The reality of the digital world, which has now become part of our daily lives, presents unique challenges in the field of Islamic family law. The limitless ease of virtual interactions raises several issues regarding contracts, such as marriage contracts, the delivery of dowry (*mahar*), divorce (*talak*), and reconciliation, all of which can potentially be conducted online. Another issue pertains to marital interactions, such as sexual relations, which can now also occur virtually for long—distance couples, known as cybersex. The economic potential in the digital era also raises problems concerning shared assets and inheritance within families.

In the future, as the widespread use of information technology by society continues to accelerate, the aforementioned issues in family law will increasingly surface. On the other hand, Muslim families consistently seek Islamic legitimacy for all their life activities. Therefore, Islamic law needs to provide answers to these new challenges emerging in the digital era, ensuring that life can progress in harmony with the times without being detached from its Islamic foundation.

The virtual reality and the family law issues it brings forth necessitate the need for *ijtihad*. The limited scope of the revealed texts is challenged to provide answers to the issues arising from this parallel reality. Scholars have recognized that the reasoning of *maqasid al-Sharia* (objectives of Islamic law) plays a significant role in bridging the gap between the textual sources of revelation and the changes brought by time.³ By understanding the objectives of legislation, it opens up spaces for *ijtihad* to achieve

¹ Yasraf Amir Piliang, "Masyarakat Informasidan Digital: Teknologi Informasi Dan Perubahan Sosial," *Jurnal Sositoteknologi* 11, no. 27 (December 1, 2012): 145.

² Michael Heim, *The Metaphysics of Virtual Reality* (Oxford University Press, 1994), 110—16.

³ Jasser Auda, *Al-Maqasid Untuk Pemula* (Yogyakarta: Suka Press, 2013), 5.

those objectives in new spaces and times. In other words, *maqasid al-Sharia* is an approach that allows us to grasp the intended benefits desired by Allah in every legal ruling He has ordained, so that those benefits must continue to be realized even as times evolve.⁴

A new idea in the field of *maqasid al-Sharia* is Jasser Auda's concept of examining Islamic law through a systems approach. This idea is referred to by Amin Abdullah as a theory of the new era of *maqasid* that focuses on human development as the primary target of *maslahah* (public interest).⁵ Auda's proposition is rooted in his academic concerns regarding the limitations of the traditional concept of *maqasid al-Sharia*, which focused more on preservation and protection. Maulidi similarly concludes that Auda's *maqasid* idea represents an integrative—holistic approach departing from the classical hierarchical and binary *maqasid* framework. Auda's thought does not compartmentalize human needs into categories like *daruriyah* (necessities), *hajiyyah* (needs), and *tahsiniyah* (luxuries); instead, it integrates and synergizes these categories into a unified system.⁶ According to Syarifuddin, Jasser Auda's thought pattern provides a revolutionary, reformulative, and reconstructive space in interpreting the revealed texts, thereby opening the door to *ijtihad* based on the welfare of society.⁷ In addition, according to Gumanti, the realization of *maqasid* through a systemic approach demonstrates openness, renewal, realism, and flexibility in Islamic legal systems. Therefore, the validity of a law should be determined by the level of *maqasid* realization that can be achieved.⁸

Muhammad Iqbal Fasya utilizes the systemic approach of *maqasid* in the context of Islamic economics. According to him, the concepts of *ibadah* (worship), *maslahah* (public interest), and *falah* (well-being) merge into a unified whole that creates *maslahah* (benefit).⁹ Fasya does not elaborate further on how the distinctive features of Jasser Auda's systemic approach contribute to the Islamic economic system. However, in the field of Islamic Religious Education, Auda's six system features are considered highly relevant to the development of Islamic Religious Education, especially since the development of Islamic Religious Education has traditionally focused heavily on curriculum aspects. The multidimensional aspects within Auda's system features also ensure interdisciplinary education within the context of Islamic Religious Education.¹⁰ The idea of *maqasid* with a systemic approach is also seen as relevant to the

⁴ Auda, 20.

⁵ Amran Suadi, *Menggugat Stagnasi Pembaruan Hukum Islam di Indonesia* (Kerjasama Pengadilan Tinggi Agama Surabaya dan Penerbit UII Press Yogyakarta, 2016), 79.

⁶ Maulidi Maulidi, "Maqasid Syariah Sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda," *Al-Mazaahib: Jurnal Perbandingan Hukum* 7, no. 1 (December 20, 2022): 126, <https://doi.org/10.14421/al-mazaahib.v7i1.2860>.

⁷ Syarifuddin Syarifuddin, "Maqashid Syari'ah Jasser Auda: Sebuah Sistem Pendekatan Dalam Hukum Islam Kontemporer," *Al-Mizan (e-Journal)* 17, no. 1 (June 30, 2021): 36, <https://doi.org/10.30603/am.v17i1.2061>.

⁸ Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Al-Himayah* 2, no. 1 (March 1, 2018): 118.

⁹ Muhammad Iqbal Fasya, "Reformasi Pemahaman Teori Maqasid Syariah (Analisis Pendekatan Sistem Jasser Auda)," *Hunafa: Jurnal Studia Islamika* 13, no. 2 (2016): 240, <https://doi.org/10.24239/jsi.v13i2.438.218-246>.

¹⁰ Siti Mutholingah and Muh Rodhi Zamzami, "Relevansi Pemikiran Maqashid Al-Syariah Jasser Auda Terhadap Sistem Pendidikan Islam Multidisipliner," *TA'LIMUNA: Jurnal Pendidikan Islam* 7, no. 2 (October 8, 2018): 109–11, <https://doi.org/10.32478/talimuna.v7i2.183>.

interpretation of the Quran, which is considered to provide a maqasidi interpretation framework. This approach interprets *maqasid al-Sharia* as the starting point of reasoning that forms the system of interpretation.¹¹

None of the existing works on maqasid al-Sharia with a systemic approach have yet explored its relevance to the issues of Islamic family law in the digital era. Considering the increasing prevalence of family law issues in the digital age and the urgent need for ijtihad, this paper intends to examine the capability of the systemic approach within Jasser Auda's framework of *maqasid al-Sharia* to address the emerging challenges in Islamic family law resulting from the widespread use of information technology today.

METHODS

The research type in this article is a literature review focused on the systemic approach within Jasser Auda's concept of maqasid al-Sharia. Jasser Auda's ideas are examined using content analysis techniques to qualitatively explore the depth of text content, interpret symbols, and derive meanings. The analysis begins with coding relevant terms or usage of words and phrases that frequently appear in Jasser Auda's primary works, considering the contexts in which these terms are used. The coded results are then classified to assess the extent to which units of meaning relate to the research objectives. Classifications are established to construct categories from each classification. These units of meaning and categories are subsequently analyzed and their relationships explored to uncover the meanings within Jasser Auda's texts.

After conducting data exploration through content analysis as described above, Jasser Auda's concept of maqasid al-Sharia with a systemic theory is then described and its relevance to the issues of Islamic family law in the digital era is examined. This relevance is assessed based on its ability to provide rational (*aqli*) and revealed (*naqli*) legal foundations, as well as benefits for society in the digital age.

RESULT AND DISCUSSION

The Maqasid of Sharia with a System Approach

Jasser Auda's academic concern stemmed from and was triggered by his dismay over the United Nations Development Programme's (UNDP) annual report indicating that the Human Development Index (HDI) rankings of predominantly Muslim countries remained low.¹² Additionally, he observed that despite high per capita income in Arab countries, they lagged behind in terms of justice, women's empowerment, political participation, and equal opportunity. He questioned whether Islamic law had failed as a catalyst for change. This led him to revisit the existing maqasid al-Sharia and integrate it with systems theory in scientific disciplines, as well as with social sciences and humanities related to emerging issues such as human rights, gender, and interfaith relations. For Auda, a multidisciplinary approach is essential in Islamic legal research;

¹¹ Hilmy Pratomo, "Peran Teori Maqasid Asy-Syari'ah Kontemporer dalam Pengembangan Sistem Penafsiran Al-Qur'an," *Jurnal Ilmiah Al-Mu'ashirah: Media Kajian Al-Qur'an dan Al-Hadits Multi Perspektif* 16, no. 1 (January 27, 2019): 107–10, <https://doi.org/10.22373/jim.v16i1.5744>.

¹² "Biography," جاسر عودة, accessed May 24, 2021, <https://www.jasserauda.net/portal/biography/?lang=en>.

otherwise, Islamic law risks being confined to the limitations of traditional manuscript literature, which would render it outdated.¹³

According to Amin Abdullah, Jasser Auda's works and efforts are highly significant for the development of Islamic thought in general, and for the transformation of Islamic higher education institutions from IAIN to UIN. This transformation represents an integration and interconnection of Islamic sciences with other disciplines. Amin suggests that through his work, Jasser Auda exemplifies a new method of Islamic studies characterized by interdisciplinary, multidisciplinary, and pluridisciplinary approaches, which are crucial for advancing the noble values and goals of Islam in the contemporary era.¹⁴

Jasser Auda's proposal for change begins with his critique of the classical scholarly framework, particularly regarding the concept of maqasid al-Sharia (objectives of Islamic law). Auda then examines the renewal ideas proposed by contemporary scholars and subsequently provides a broad framework for the weaknesses of traditional thought and the ideas of contemporary scholars using a systemic philosophy. Auda establishes six system features as a broad framework for analyzing Islamic law: cognitive nature, comprehensiveness, openness, interdependent hierarchy, multidimensionality, and the objectives of the Islamic legal system.

Jasser Auda selected and established these six features after studying systemic philosophy and its applicability to *usul al-fiqh* (principles of Islamic jurisprudence). Auda assumed *usul al-fiqh* to be a system, which he then analyzed based on these six features.

1. Cognitive Characteristic of the Islamic Legal System

In systems theory, there exists a correlation between conception and reality; however, correlation does not imply identity nor does it mean complete disconnection. If this stance is applied to *fiqh* as a product of human reasoning, then *fiqh* is indeed the result of human *ijtihad* (independent reasoning) on the texts rather than direct commands from God Himself.¹⁵ As a product of human cognition, *fiqh* is highly open to debate because it is considered by jurists as the most probable truth. Therefore, *fiqh* must be positioned as human cognition of divine knowledge rather than divine law itself.¹⁶ Therefore, the products of *fiqh* require changes and innovations in line with the changes and developments of the times..

2. The Holistic Nature of the Islamic Legal System

In systems theory, causality is seen as just one part of the whole picture. Each cause-effect relationship contributes to the characteristics that together form the entirety.¹⁷ The systems theory thus rejects an atomistic approach and advocates a holistic approach. In *usul al-fiqh* as a system, systematic and holistic development of thought is necessary. Resolving a case cannot rely solely on one specific textual evidence (*nas*) without considering other relevant texts. Holistic principles (*kulliyah*) must be placed above individual and partial laws (*juz'iyah*), as specific textual

¹³ Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, trans. Rosidin and 'Ali 'Abd El-Mun'im (Bandung: Mizan, 2015), 23–26; Auda, *Al-Maqasid Untuk Pemula*, xi.

¹⁴ Auda, *Al-Maqasid Untuk Pemula*, xii.

¹⁵ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law A Systems Approach* (London: The International Institut of Islamic Thought, 2007), 46.

¹⁶ Auda, 193–94.

¹⁷ Auda, 46.

evidences (nas juz'iyah) exist to support the holistic principles that form the basis for the formulation of legal provisions..¹⁸

3. The Openness of the Islamic Legal System

In systems theory, there is a proposition that asserts that a system capable of survival is an open system, not a closed and isolated one. An open system has the ability to achieve its goals by interacting with the external environment to renew itself. Usul al-fiqh (principles of Islamic jurisprudence) as a system also exhibits openness, necessitating ijtihad (independent legal reasoning) to address emerging issues. As a method of reasoning, usul al-fiqh must interact with the external environment to ensure its ability to respond to new challenges posed by changing times. Auda proposes two mechanisms for openness and self-renewal that must exist within Islamic law. Firstly, the renewal of cognitive orientation or worldview of a jurist. Secondly, philosophical openness.

The worldview, or in German, weltanschauung, is shaped by everything surrounding the jurist, including religion, self-concept, geography, environment, politics, economy, and language. Weltanschauung signifies the cognitive culture formed from the jurist's environment, providing a framework for interpreting reality.¹⁹

The environment where a jurist develops his thoughts in Islamic legal theory is known as 'urf. According to the principle in the Hanafi school of jurisprudence, *al-ma'rufu 'urfan ka al-mashruti nassan*, what is known based on 'urf is considered akin to what is mandated by explicit textual evidence (nass). This principle aims to accommodate the customs of societies outside of Arabia. According to Auda, many Islamic legal provisions historically accommodated only Arabian customs, particularly those of the medieval period.²⁰

The openness and self-renewal are intended so that Islamic law can interact and adapt to different spaces and times. Therefore, 'urf is what a jurist perceives as 'urf according to the space and time of his life, as long as it does not contradict the *maqasid* of *Sharia*.²¹

Philosophical openness requires Islamic legal theory to benefit from the original contributions of medieval Muslim philosophers to philosophy and logic. This is the second way that Auda requires for Islamic law to renew itself. Since usul al-fiqh is the philosophy of Islamic law, it should naturally open itself to ongoing philosophical investigations.²²

4. The Hierarchy of Mutual Influence in the Islamic Legal System

In the realm of cognition, there exists a term called categorization, which refers to the grouping of distinct entities according to specific, shared categories. This activity is commonly performed by humans when processing information. Humans naturally make generalizations and predictions, assign names, and make evaluations. According to Auda, there are two alternative methods of categorization: categorization based on feature similarity and categorization based on mental concepts. Categorization based on feature similarity aims to identify the similarities and differences among entities by determining the extent to which these entities

¹⁸ Auda, 199.

¹⁹ Auda, 203.

²⁰ Auda, 202.

²¹ Auda, 204.

²² Auda, 206 – 11.

correspond to or differ from pre – established features.²³ Meanwhile, mental concepts are defined as the fundamental principles or theories in human perception that facilitate categorization, including complex causality, within a structured framework. In the context of Islamic law, the appropriate categorization to apply is this mental concept – based categorization.

5. The Multidimensional System of Islamic Law

In systems theory, there are two terms that describe multidimensionality: rank and level. Rank indicates the number of dimensions in the field being discussed, while level indicates the number of layers within a single dimension. The prevailing tendency in thinking has been to involve only single – dimensional analysis with two levels, rather than a truly multidimensional approach. This often results in binary oppositions rather than complementary relationships..

In the field of Islamic law, this multidimensionality is crucial because, according to Auda, scholars (*mujtahids*) have traditionally considered only one factor in a legal case. Fatwas are often issued based on a single piece of evidence (*dalil*), even though many other pieces of evidence might lead to different conclusions if considered. This narrow approach results in conflicts and contradictions among the various pieces of evidence. According to Auda, adopting a multidimensional way of thinking can resolve the problems of conflicting and contradictory evidence in Islamic law.²⁴

Auda illustrates binary opposition in the concept of *qat'i* (certain) and *zanni* (presumptive) in understanding textual evidence (*dalil nas*). This dichotomy of certainty (*qat'i*) and uncertainty (*zanni*) is highly prevalent across various schools of Islamic jurisprudence (*fiqh*) and legal theory (*usul al – fiqh*). However, according to Auda, claims of certainty, such as *qat'i al-dilalah* (certain in indication), *qat'i al-tsubut* (certain in validity), and *qatiy al-mantiqy* (certain in logic), carry various negative implications.²⁵ The assertion of certainty in these aspects often leads to conflicts among different pieces of evidence and restricts the possibilities for diverse interpretations of a textual evidence (*dalil nas*).

According to Auda, thinking in multidimensional terms offers a way out of conflicts between legal evidences (*dalil*). Examining the objectives (*maqasid*) behind seemingly conflicting evidences also provides a solution, as these evidences may actually complement each other in achieving specific objectives within different contexts. Auda asserts that determining a legal ruling must involve an analysis across multiple dimensions, considering their systematic interdependencies and structural connections. This approach aims to avoid reductionist views and binary thinking in legal interpretation.²⁶

6. Maqasid of the Islamic Legal System

In systems theory, a common feature is its orientation towards goals and purposefulness. According to Auda, citing Gharajedaghi, a system can be considered purposeful based on two main criteria: The system is capable of achieving the same objectives using different approaches within the same environment. The system is capable of producing varying outcomes in either the same or different environments.

²³ Auda, 48 – 49.

²⁴ Auda, 50.

²⁵ Auda, 212.

²⁶ Auda, 226 – 27.

This concept emphasizes the flexibility and adaptability of a system in achieving specific goals, whether through diverse approaches within similar environments or varied responses to different environmental conditions..²⁷

The coherence of the six features identified by Auda as foundational for system analysis above are closely interconnected; however, Auda evaluates the feature of purposefulness as encompassing the other five features and serving as the core methodology in system analysis. *Maqasid* are related to the cognitive nature of Islamic law because they reflect the cognitive methods of jurists in understanding Sharia. The general objectives of Islamic law pertain to its entirety and general principles. *Maqasid* also play a crucial role in the process of *ijtihad* as a mechanism for the openness of Islamic law. *Maqasid* are also present in every hierarchy within Islamic law. *Maqasid* also encompass various multidimensional perspectives that unravel seemingly conflicting texts. If the effectiveness of a system is assessed based on the achievement of its goals, then likewise with Islamic law as a system, its effectiveness is evaluated based on the degree to which its *maqasid* are achieved.

Because of the importance of *maqasid* in analysis, Auda incorporates *maqasid* into every element that comprises the principles of Islamic jurisprudence (*ushul al-fiqh*). For instance, in the method of interpreting texts to derive meanings or legal implications, Auda introduces an additional form of indication, namely the indication of intent, into the previously literalist system of indications. Thus, alongside literal indication, indicative indication, comparative analogy, indicative compliance, and indicative contradiction, Auda grants juridical authority (legal validity) to indications of intent.

The two primary sources of Islamic law, the Qur'an and Hadith, must be interpreted using a *maqasid* perspective. The Qur'an should be understood thematically, involving an exploration of moral principles and noble values based on the perception that the Qur'an is an integrated whole. Discussions regarding specific laws should consider the overall moral messages present, such as verses on faith, prophethood, the universe, and the afterlife, thereby forming a comprehensive picture of what God truly intends to manifest.

Even Hadith should be viewed through this *maqasid* perspective. For instance, regarding isolated Hadith (*hadis ahad*)—Hadith that are narrated by only one person in the chain of narration—criticism of these Hadith should not only focus on their content but also question their systematic coherence with the entire Sharia system. The authenticity of a Hadith needs to be based on how well it aligns with the principles of the Qur'an.

Problems in Islamic Family Law in the Digital Era

Era cyber is associated with the widespread use of information technology and computers as mediums for social interaction in daily societal activities, a consequence of the Fourth Industrial Revolution.²⁸ The term "cyber" itself denotes virtual reality, a realm that emerges as a counterpart to the physical world, where individuals can engage

²⁷ Auda, 51 – 52.

²⁸ Venti Eka Satya, "Strategi Indonesia Menghadapi Industri 4.0," *Info Singkat Kajin Singkat Terhadap Isu Aktual dan Strategis* 10, no. 9 (2018): 20.

in various activities within cyberspace much like they do in the real world.²⁹ The emergence of this new reality raises questions about existence within it—whether being in cyberspace is equivalent to being in the physical world?

In the real world, humans experience reality sometimes consciously, sometimes subconsciously or in the realm of dreams and the subconscious. However, in cyberspace, human experience is conscious but distinct from both the physical world and the dream state. Unlike the physical world where human consciousness perceives objects governed by the laws of physics, in the virtual world, human perception of objects occurs artificially through units of information within computer imaging systems known as bytes.³⁰ Experiences in the virtual world can be likened to hallucinations, but they are technologically produced within computer systems. These virtual experiences can be copied, replicated, transmitted, and revisited in the future.³¹

Due to the ability for human interactions to occur not only offline but also more swiftly and effectively online, several legal issues have arisen in certain contracts within Islamic family law. Here, six cases in Islamic family law will be the focus of study, arising from the widespread use of information technology in the digital era.

Firstly, the case of online marriages presents a significant legal challenge within Islamic family law. The contract of marriage (*akad ijab kabul*) typically requires, according to the majority of scholars (*jumhur ulama*), that it be conducted in a single gathering (*majlis*) involving the bride's guardian (*wali*), the groom, and witnesses.³² This requirement ensures the continuity between the proposal (*ijab*) by the guardian and the acceptance (*kabul*) by the groom, thereby guaranteeing the validity of the marriage contract, which is considered crucial in Islam.

In scenarios where couples are compelled to marry promptly due to various reasons, such as obstacles preventing the meeting of the guardian and groom (e.g., during the COVID–19 pandemic), there arises a need for online marriage ceremonies. The legal issue that arises consequently is whether such online marriages can be validated, given the requirement for a single gathering to ensure the certainty of the contract's validity.

Secondly, the use of digital assets as dowry in Islamic marriages has emerged as a notable issue in the digital era. In the digital age, earning a livelihood through economic activities can be conducted not only offline but more conveniently and lucratively online. Some couples have started using digital assets as dowry, such as bitcoin,³³ Google AdSense earnings, unlimited hosting assets,³⁵ IDR crypto assets,³⁶

²⁹ Yasraf Amir Pilliang, "Masyarakat Informasi Dan Digital: Teknologi Informasi Dan Perubahan Sosial," *Jurnal Sosioteknologi* 11, no. 27 (December 1, 2012): 145.

³⁰ Pilliang, 146.

³¹ Pilliang, 147.

³² Wahbah Az–Zuhaili, *Fiqih Islam Wa Adillatuhu*, trans. Abdul Hayyie Al Kattani dkk., vol. 9 (Jakarta: Gema Insani, 2011).

³³ "Anti–Mainstream, Pasangan Ini Menikah dengan Mahar Bitcoin," kumparan, December 1, 2017, <https://kumparan.com/kumparanstyle/anti-mainstream-pasangan-ini-menikah-dengan-mahar-bitcoin>.

³⁴ "Viral Perempuan Sulsel Dilamar Pakai Mahar Bitcoin Senilai Rp 1,6 Miliar," suara.com, April 14, 2021, <https://sulsel.suara.com/read/2021/04/14/201414/viral-perempuan-sulsel-dilamar-pakai-mahar-bitcoin-senilai-rp-16-miliar>.

³⁵ "Jatuh Cinta pada Blogging, Pasangan Ini Menikah dengan Mahar Google AdSense," suara.com, August 7, 2020, <https://www.suara.com/news/2020/08/07/125217/jatuh-cinta-pada-blogging-pasangan-ini-menikah-dengan-mahar-google-adsense>.

and GoPay balances.³⁷ The use of digital assets as dowry raises concerns regarding their utility. In Islamic family law, dowry (*mahar*) must be something of value that is tangible, known, and free from deception.³⁸ However, digital assets like bitcoin have fluctuating values and are susceptible to hacking. Similarly, earnings from Google AdSense can only be cashed out once they reach a minimum threshold.

Thirdly, the issue of online sexual relations between spouses poses a unique challenge. In the digital era, spouses in long – distance relationships (LDR) can maintain their marital intimacy through online means. Although they do not meet physically, they can experience sexual satisfaction together using online media. The legal problem that arises is whether such online sexual relations can be considered as having fulfilled the sexual aspect of the marriage, thus preventing one spouse from filing for divorce on the grounds of unfulfilled sexual needs? Another issue is whether a marriage involving only online sexual relations can be classified as "*qabla al-dukhul*" (before consummation) or "*ba'da al-dukhul*" (after consummation) if the couple divorces. This classification significantly affects the determination of the waiting period (*iddah*) and the dowry (*mahar*) that must be paid.

Fourthly, the issues of *nusyuz* (disobedience) and *zina* (adultery) in the online context present new legal challenges. With the possibility of fulfilling marital sexual relations online, there is also the potential for infidelity in the virtual world. When one spouse engages in an intimate relationship with someone else in cyberspace, can this be classified as *nusyuz* against their partner? Additionally, if one spouse engages in virtual sexual relations with another person, can this be considered *zina* and thus a legitimate ground for divorce, given that the traditional understanding of *zina* has been limited to physical acts in the real world?

Fifthly, the issue of income generated from online businesses as joint marital property presents a significant challenge. In the digital era, individuals can earn money through various online activities, such as creating blogs, running YouTube channels, working as dropshippers, engaging in cryptocurrency trading, and more. The question that arises is whether all income from these online activities should be considered joint marital property, which would need to be divided equally in the event of a divorce. Traditionally, the definition of joint marital property in Islamic law has been limited to assets acquired offline. There has been no explicit provision regarding whether assets obtained through online business activities should also be considered joint property. This gap in the legal framework necessitates a re – evaluation of the definition of joint marital property to include digital earnings, ensuring that the distribution of assets in divorce proceedings reflects the realities of the digital economy.

Sixthly, the issue of divorce (*talak*) and reconciliation (*rujuk*) conducted online raises important legal questions. Traditionally, *talak* and *rujuk* are considered valid when performed face – to – face. In the digital era, however, these actions can be carried out using telecommunication media facilitated by computers and the internet. The legal

³⁶ Vinsensius Sitepu, "Pernikahan Bermahar Aset Kripto Ala Manda – Nadya, Bagaimana Kisahnya?," *Blockchain Media Indonesia* (blog), January 11, 2020, <https://blockchainmedia.id/pernikahan-bermahar-aset-kripto-ala-manda-nadya-bagaimana-kisahnya/>.

³⁷ Liputan6.com, "Viral Pasangan yang Menikah dengan Mahar Saldo Gopay Rp 10 Juta," *liputan6.com*, October 13, 2020, <https://www.liputan6.com/citizen6/read/4380986/viral-pasangan-yang-menikah-dengan-mahar-saldo-gopay-rp-10-juta>.

³⁸ Az – Zuhaili, *Fiqh Islam Wa Adillatuhu*.

question that arises is whether talak and rujuk conducted virtually can be considered valid?

The six cases mentioned above are merely examples of the legal issues in Islamic family law that have emerged in the cyber era. Numerous other issues are likely to arise as the widespread use of digital technology continues to shape daily interactions.

The legal rulings established by Islamic jurists (*ulama fiqh*) in their works are based solely on the realities of the physical world, as these rulings were formulated before the advent of information technology. Contracts and their conditions were determined according to their understanding of the tangible world. In the era of the Fourth Industrial Revolution, the reality of the physical world is being challenged by the virtual world, which is also experienced by humans as 'real' despite its different form. With its distinct characteristics, the virtual world is experienced by humans much like the physical world.

In the future, human experiences with the virtual world will become increasingly intense due to rapid technological advancements. The problems of space and time, which are very limited in the physical world, become non-issues in the virtual world. Consequently, Islamic family law must prepare to face the new challenges posed by virtual reality by accommodating this new reality within its legal provisions. This adaptation is essential to keep pace with the demands of information technology development and to continue serving as a guiding framework for family life in the digital era.

In Islamic family law, the presence required for certain contracts is traditionally understood as physical presence. However, in the virtual world, which features telepresence, presence no longer needs to be physical. The simulation characteristics of the virtual world, facilitated by computer technology, can represent someone's presence. Although a person's presence in the virtual world is merely a simulation or imitation of the physical world, they can directly experience events they attend, seeing and feeling those events unfold. This is the immersive nature of the virtual world, allowing a person to engage in the simplest forms, such as viewing text on a computer screen, to more physically interactive forms, such as using internet-connected garments for virtual sexual relations.³⁹

In addition to the issue of physical presence, Islamic family law is also required to redefine the concept of existence. For instance, in cases of online sexual activity without physical contact, which occurs between distant partners, the question arises whether this act can be considered as fulfilling their sexual obligations to each other? Similarly, if such an act is conducted by one partner with another person, can it be classified as adultery?

New possibilities in the field of Islamic family law are also emerging, such as the use of virtual currency as mahr (dowry) and its transfer online, becoming a new trend widely adopted by society. The emergence of the digital economy also allows for the fulfillment of financial support (nafkah) through business or other activities in the digital world that can generate income. This digital economic potential also impacts the concept of joint marital property, which now includes assets obtained from both offline and online activities.

³⁹ Kompas Cyber Media, "Pakaian Dalam dengan Vibrator dari Durex," KOMPAS.com, May 2, 2013, "Relationship~Seks."

The Relevance of Maqasid Al-Sharia with a Systems Approach in Addressing Legal Issues in Islamic Family Law in the Cyber Era

Jasser Auda's revolutionary proposition in *usul al-fiqh* with a systemic approach is crucial in addressing the challenges of Islamic family law emerging in the digital era. The relevance of Auda's thoughts in addressing these issues can be observed through the visionary reforms present in several features of the system he proposes.

The feature of cognition that necessitates a shift in the jurists' cognition from the assumption that *fiqh* is divine law to one that is limited to the human reasoning of a jurist is pivotal. This feature significantly broadens the scope for resolving legal issues in Islamic family law emerging in the digital era. Consequently, the outcomes of classical *fiqh* thinking in the field of Islamic family law are not final and immutable in response to the times. Rather, as a product of thought, they can evolve, expand, and adapt to the needs of family life in the digital age.

The establishment of laws concerning new issues in Islamic family law arising in the digital era must be approached holistically by considering all Quranic verses as a basis for legal determination. The feature of comprehensiveness also ensures the broadening of the scope of *maqasid* (objectives of Islamic law) from initially being individual-focused to encompassing social aspects, national concerns, and even the development of human society. The societal life referred to here is not limited solely to interactions in the physical world but also includes social interactions in the virtual world.

Auda also offers openness as another feature, allowing Islamic family law to renew itself continuously and serve as a guiding principle for people across all times. The legal challenges of Islamic family law in the digital era can be addressed through openness in the worldview of jurists. A jurist must incorporate the realities of the virtual world and its interactive characteristics into consideration when determining issues of Islamic family law. In establishing rulings, a jurist should also involve other branches of knowledge as analytical tools, both from the social sciences and from the fields of science and technology.

The *'urf* that must be the basis of law, therefore, includes not only the *'urf* of the real world but also the *'urf* of the virtual world. Philosophical openness should also involve considerations of information technology logic, especially in interpreting the new concept of 'existence', namely 'virtual existence'.

In addressing issues of Islamic family law, the feature of multidimensionality ensures that legal issues are viewed from multiple dimensions; supporting evidence should be examined comprehensively and seen as a unified whole that mutually reinforces each other, thereby eliminating terms of conflict and contradiction between pieces of evidence.

Distinguishing between *maqasid* as means and objectives in each case of Islamic family law is crucial to identify aspects that can change with the times while recognizing the eternal objectives sought in every provision. This feature of intentionality lies at the core of systemic theory in approaching the issues of Islamic family law in the digital era. Each case of Islamic family law that arises in the digital era must discern between the means (*wasail*) and the objectives (*ahdaf*) so that it can be determined which aspects can be influenced by the advancements in information technology and which objectives must be realized through the use of digital technology.

Jasser Auda's approach to Sharia maqasid and its application to Islamic family law in the digital era emphasize six significant system features: cognition, comprehensiveness, openness, interconnected hierarchy, multidimensionality, and intentionality. These aspects are central to addressing contemporary legal challenges within Islamic jurisprudence.

When establishing laws for each issue in Islamic family law arising in the digital era, characteristics of the cyber world such as interaction, simulation, immersion, telepresence, and networked communication must be taken into consideration. The features of cognition, comprehensiveness, openness, and multidimensionality proposed by Jasser Auda demand the accommodation of the prevailing 'urf (customs) in the cyber world in determining legal rulings, including those concerning Islamic family law.

The contracts such as marriage, divorce (*talak*), and reconciliation (*rujuk*) can be deemed valid for online execution given the consideration that contemporary reality extends beyond the physical world to include the virtual realm or cyberspace. The declaration of proposal and acceptance (*ijab kabul*) in marriage, which traditionally requires direct and consecutive verbal communication, can be viewed as a means (*wasail*) aimed at achieving specific objectives (*ahdaf*), namely ensuring the certainty of the contract. When these objectives can be assured through online means, for instance, utilizing fast internet connections that allow for instantaneous *ijab* and *kabul* without delay, the intended objectives of *ijab kabul* are effectively fulfilled, even if conducted through teleconferencing or other online media. This provision similarly applies to the process of online divorce (*talak*) and reconciliation (*rujuk*).

The stipulation regarding dowry (*mahar*) must also take into account the customs ('urf) of the cyber world. If traditional jurisprudence (*fikih*) only discusses dowry as commonly used in the physical world, then the economic potential that holds value and is free from deception in the virtual world should also be valid as dowry in marriage. This includes being valid as family maintenance (*nafkah*) and should be considered as joint marital property.

The interaction between spouses in the virtual world cannot be considered nonexistent simply because it does not occur physically. Sexual relations between spouses cannot be deemed nonexistent just because they take place in the virtual world. A judge cannot grant a divorce solely on grounds of lack of sexual relations due to their occurrence in the virtual world. This is because even in the virtual world, physical sexual interaction is possible through internet technology. Thus, each couple in the virtual world can achieve pleasure within the provisions regarding marital sexual relations. Similarly, adultery and infidelity occurring in the virtual world can also be categorized as grounds for divorce and as evidence of marital disobedience (*nushuz*), allowing a judge to grant divorce based on infidelity that occurs in the virtual realm.

CONCLUSION

The six system features proposed by Jasser Auda are highly relevant in providing legal considerations for Islamic family law issues emerging from the changing realities of the digital era. These system features allow for a comprehensive assessment of the digital era's characteristics as a basis for legal determinations in Islamic family law issues. The seven characteristics of the digital era—simulation, interaction, artificiality, telepresence, immersion, full-body immersion, and networked communications—need to be considered as capabilities of the digital era that facilitate daily interactions. When

these conveniences are utilized by society for contracts and other family-related activities, the legal implications must be aligned with their inherent characteristics. Auda's six features strongly support incorporating these new realities into legal considerations. For instance, the openness feature necessitates that legal frameworks not confine themselves to Arab societal norms, as this would contradict the welfare of other global communities. Restricting legal frameworks to real-world laws alone would also not serve the public interest in cases involving the virtual realm. Maqasid (objectives) as means (*wasail*) and ends (*ahdaf*) also need to be considered in the digital era, given its capacity to facilitate rapid interactions. What *Sharia* intended as means (*wasail*) can be substituted by the ease and speed of information and communication technologies while still achieving the intended objectives (*ahdaf*) of *Sharia*. The features of openness and intentionality require incorporating digital world customs (*urf*) into considerations for establishing Islamic family law in the digital era.

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