

CONTEXTUALISATION OF JASSER AUDA'S MAQĀṢID SHARĪ'AH ON HYSTERECTOMY (SURGICAL REMOVAL OF THE UTERUS)

Denny Firmansyah¹, R. Tanzil Fawaiq Sayyaf², Khadijeh Ahmadi Bighash³

^{1,2}Universitas Muhammadiyah Malang, Jawa Timur, Indonesia ³Quranic Studies,
Kosar Institute, Iran

email: 1dennyfirmansyah016@gmail.com, 2tanzil_fawaiq@umm.ac.id,
3kh.ahmadi31@yahoo.com

ABSTRACT

Jasser Auda's concept of maqāṣid sharī'ah has reviewed the classical-era maqāṣid sharī'ah reasoning that tends to be atomistic and textual in reviewing the sources of Islamic law. Thus, Jasser Auda formulated systems theory as a means of a more comprehensive and contextualised reductionist approach in unravelling the complexity of contemporary issues. Hysterectomy (surgical removal of the uterus) is one of the most controversial current issues, which requires openness of interpretation from various disciplines in addressing it. Therefore, this article seeks to identify a systems approach based on Jasser Auda's perspective by contextualising maqāṣid sharī'ah to the case of hysterectomy. The type of research used refers to library research that belongs to the qualitative realm with a descriptive-analytical approach method to produce facts. The data collection technique used is by collecting data sources (primary and secondary), then analysing the references to produce the formulation of the problem. The primary data sources referred to are scientific literature, in the form of books by Jasser Auda that discuss maqāṣid sharī'ah. Meanwhile, secondary data sources refer to relevant reputable journals. Finally, the results of this study show that, based on Jasser Auda's maqāṣid sharī'ah system theory offered in six features of the approach, namely cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality and purpose can be contextualised in reviewing hysterectomy

Keywords: Contextualisation, Maqāṣid Sharī'ah, Jasser Auda, Hysterectomy

A. INTRODUCTION

Among the complex contemporary issues is hysterectomy. In general, a hysterectomy is a surgical process to remove the uterus or womb where a tumour is indicated. Hysterectomy can alter the reproductive system by causing several post-hysterectomy effects, including vaginal bleeding, menopausal symptoms, vaginal narrowing, and decreased sexual function.¹ The main consequence is infertility, meaning that patients who have their uterus removed cannot carry a foetus permanently.

Recently, the background of women undergoing hysterectomy is no longer based on health factors, but based on other factors. As according to the opinion of KH. Husein Muhammad who divides women's reproductive rights in marital status, one of which is the right to refuse pregnancy on the grounds of old age, economic conditions and others.² This right can be categorised in the context of hysterectomy. If this statement is examined using the concept of Maqāṣid Shari'ah initiated by previous scholars, it falls into the category of Hifd an-Nasl, which focuses on the protection of offspring. Therefore, the ruling applied is a prohibition, as it is considered irrelevant to the objectives of Islamic law.

In deciphering the issue of hysterectomy to produce legal provisions that are in accordance with various contexts, a solutive Islamic legal methodology is needed. The presence of Jasser Auda as a Muslim intellectual who is developing classical Maqāṣid Shari'ah by reconstructing previous theories as a benchmark in analysing the object of study that is relevant to the context of space, time, technological advances and knowledge. This is done on the basis of concern about

¹ Barkah Wulandari, Irwan Taufiqur Rachman, and Wenny Artanty Nisman, "Seksualitas Pada Wanita Setelah Total Abdominal Histerektomi (TAH) (The Sexuality of Women After Total Abdominal Histerektomy (TAH)," *Journal of Nursing Care and Biomoleculer* 1, no. 1 (2016): 38–44.

² Imam Syaifudin, "Pandangan Perempuan Tentang Hak Menolak Kehamilan Perspektif KH. Husein Muhammad," *SAKINA: Journal of Family Studies* 4, no. 3 (September 30, 2020), <http://urj.uin-malang.ac.id/index.php/jfs>.

the compilation of Islamic law which is still inadequate to answer contemporary cases or issues in modern society.³

In the Maqāṣid Sharī'ah revolutionary movement, Jasser Auda's system approach tends to rely on the philosophy of Islamic law (usul fiqh) without ignoring the products of Islamic law (fiqh). Through the Maqāṣid Sharī'ah theory, Jasser Auda uses a system approach as a form of strategic ijtihad to restore the essence of Islamic law which should rest on the foundation of Islamic legal producers to achieve the values of justice, humanity and equality.⁴ The proposed systems theory publishes six components or features consisting of; Cognitive Nature to validate all cognitions, Wholeness towards holistic thinking, Openness towards self-renewal, Interrelated Hierarchy as the core of the system's working process, Multidimensionality to review and consider various disciplines and Purposefulness which is oriented towards the main purpose and goal of sharia. All features are interconnected to create a unified framework in responding to all kinds of issues, including hysterectomy.

This article discusses two issues: the controversial practice of hysterectomy and the contextualisation of Jasser Auda's maqāṣid sharī'ah theory of hysterectomy. This article argues that hysterectomy is not only based on health reasons to save lives from disease. However, it is caused by other factors that are not legally contradictory, so it is legalised. This can be strengthened by Jasser Auda's systems theory approach contained in maqāṣid sharī'ah, resulting in a more comprehensive and contextual interpretation.

This article has included several previous studies as supporting and comparative reference materials with this work. Thus, this research can be accounted for its originality. Some of the previous studies are as follows:

³ Ah Soni Irawan, "Maqāshid Al-Sharīah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporer," *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (April 26, 2022): 39–55.

⁴ Ahmad Gazali, "Maqasid Al-Syariah dan Reformulasi Ijtihad Sebagai Sumber Hukum Islam," *Alhadharah: Jurnal Ilmu Dakwah* 18, no. 2 (February 7, 2020).

First, Nugraheni Restining Tyas, with the thesis title "Islamic Law Review of Uterine Removal in Limiting Childbirth (Case Study of Pranti Village, Sedati District, Sidoarjo Regency)" published in March 2018. The results of this study explain the factors behind the source of uterine removal, namely having many children, so they are worried about their food and education needs. Then, it can be concluded that the law of hysterectomy is haram, because limiting offspring is likened to deliberate sterility.⁵

Second, Puput Novi Arista, with the thesis title "Hysterectomy in the Perspective of Health Law No. 36 of 2009 and Islamic Law" published in August 2018. The object of this research explains about the Hysterectomy law based on Health Law No. 36 of 2009 which states that hysterectomy is prohibited, because it has attempted to permanently limit female reproduction with the exception of the basis of disease. In addition, according to Islamic law, the act of hysterectomy is *haram* on the grounds of not being grateful for the gift of Allah.⁶

Third, Moh. Wahyu Romadlon, with the thesis title "Uterine Removal as a Child Birth Restriction in the Family Planning Programme" Perspective of Jurisprudence (*Izā Ta'āraḍa Mafsadatāni Rūiya A'zamuhumā Zārarān Birtikābi Akhaffihimā*) published in October 2022. The conclusion of the study states that the ruling on hysterectomy is permissible by relying on the fiqh principle of seeking the lesser *mafsadah* (harm).⁷

Fourth, Muhammad Nirwan Idris and Kurnaemi Anita, with the journal title "Analysis of the Implementation of the Jurisprudence of *Lā Ḍarar Wa Lā Ḍirār* in Modern Medicine in the Case of Surgery" published in June 2020. The

⁵ Nugraheni Restining Tyas, "Tinjauan Hukum Islam Terhadap Pengangkatan Rahim Untuk Membatasi Kelahiran Anak (Studi Kasus Desa Pranti Kecamatan Sedati Kabupaten Sidoarjo)" (Surabaya, Universitas Islam Negeri Sunan Ampel, 2018).

⁶ Puput Novi Arista, "Histerektomi Dalam Perspektif Undang-Undang Kesehatan No. 36 Tahun 2009 dan Hukum Islam" (Tulungagung, Institut Agama Negeri Tulungagung, 2018).

⁷ Moh. Wahyu Romadlon, "Pengangkatan Rahim Sebagai Pembatasan Kelahiran Anak dalam 'Keluarga Berencana' Perspektif Kaidah Fiqh (*Izā Ta'āraḍa Mafsadatāni Rūiya A'zamuhumā Zārarān Birtikābi Akhaffihimā*)" (Kediri, Institut Agama Islam Negeri (IAIN) Kediri, 2022).

study describes the concept of the fiqh rule of *lā ḍarar wa lā ḍirār* in formulating *istinbat* of *shar'i* law in the medical discipline and the correlation between the two, then implements it based on the example of the case presented, for example a hysterectomy.⁸

From the explanation of the scholarly research above, it shows that there is no research similar to this article. The difference between previous research and this research lies in the concept of legal formulation and the point of view used. Thus, this research is interesting to study in developing scientific findings and expanding academic insights.

B. METHOD

The type of research used is qualitative with a library research approach to prioritise the quality of research that aims to produce facts or phenomena that are easier to understand in creating new hypotheses. The primary data sources referred to are scientific literature, in the form of books by Jasser Auda discussing *maqāṣid sharī'ah*. Meanwhile, secondary data sources refer to relevant reputable journals. The data analysis technique is to analyse the references through descriptive-analytical method to answer the problem formulation

C. RESULTS AND DISCUSSION

1. The Practice of Hysterectomy (Uterine Removal Surgery)

Uterine removal surgery is a preventive measure recommended by medical personnel to restore reproductive health. In general, the medical action performed during a hysterectomy is to remove the uterus by making an incision in the abdominal area. It can also be performed in the vaginal area in case of uterine prolapse (the descent of the uterus from its original position into the vaginal canal). The main reason for a woman to have a hysterectomy (uterus removal surgery) is

⁸ Muhammad Nirwan Idris and Kurnaemi Anita, "Analisis Implementasi Kaidah Fikih Lā Ḍarar Wa Lā Ḍirār Dalam Kedokteran Modern Pada Kasus Tindakan Operasi," *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam* 6, no. 1 (June 1, 2020): 50–76, <https://doi.org/10.36701/nukhbah.v6i1.100>.

a disorder of the female reproductive system (cervix, fallopian tubes, ovaries), so it is advisable to remove the uterus from the body. There are several types of hysterectomy performed, namely total hysterectomy, partial hysterectomy, radical hysterectomy, and pelvic exenteration hysterectomy..⁹

Total removal of the uterus due to cervical cancer has side effects that lead to sexuality. A wide range of post-hysterectomy complaints, including vaginal dryness due to reduced oestrogen and fat pads greatly affect sexual desire.¹⁰ Meanwhile, the quality of sexuality becomes a priority in domestic relationships to channel intimacy desires that are able to actively control emotional and psychological aspects.¹¹ In addition to causing physical problems, psychological problems also disrupt a woman's personality with the loss of the opportunity to have children. A woman will experience pessimism, lack of self-acceptance, feeling unappreciated or rejected by the environment leading to anti-social behaviour, due to the inability to bear children.¹²

Some husbands and wives also delay or refuse pregnancy for certain reasons. As women also have reproductive rights that have been discussed and regulated in Islamic law. The authority not to have children is based on the physical and mental problems of women, because during pregnancy women are in a weak condition.¹³ As explained in the word of Allah. Meaning; "...His mother conceived

⁹ Nugraheni Restining Tyas, "Tinjauan Hukum Islam Terhadap Pengangkatan Rahim Untuk Membatasi Kelahiran Anak (Studi Kasus Desa Pranti Kecamatan Sedati Kabupaten Sidoarjo)" (Surabaya, Universitas Islam Negeri Sunan Ampel, 2018).

¹⁰ Barkah Wulandari, Irwan Taufiqur Rachman, and Wenny Artanty Nisman, "Seksualitas Pada Wanita Setelah Total Abdominal Histerektomi (TAH) (The Sexuality of Women After Total Abdominal Histerektomy (TAH)," *Journal of Nursing Care and Biomoleculer* 1, no. 1 (2016): 38–44.

¹¹ Raden Khairiyatul Afiyah, Farida Umamah, and Nanik Handayani, "Gambaran Self Acceptance Pada Fungsi Seksual Pasca Histerektomi," *Jurnal Ilmiah Permas: Jurnal Ilmiah STIKES Kendal* 11, no. 1 (January 7, 2021): 227–234.

¹² Besse Ainul Mardiyah Kadir and Rini Fitriani, "Gambaran Kualitas Hidup Penderita Kanker Serviks Setelah Pengobatan di Rumah Sakit Islam Faisal Makassar Tahun 2016," *Jurnal Midwifery* 1, no. 1 (March 6, 2019).

¹³ Uswatul Khasanah and Muhammad Rosyid Ridho, "Childfree Perspektif Hak Reproduksi Perempuan dalam Islam," *Al-Syakhshiyah: Journal of Law & Family Studies* 3, no. 2 (December 11, 2021): 104–128.

him in a state of increasing weakness and weaned him in two years..." (Luqman/31:14).¹⁴ According to the view of Dardameisyah, the health risk will increase if a woman does not get pregnant, because the cycle of eggs that do not meet sperm will inhibit the occurrence of ovarian cancer.¹⁵

In addition, financial readiness before marriage is also a focus of attention, so many young couples decide not to have children.¹⁶ Preparing for the needs of the household is essential in order to avoid the exploitation of minors for labour, which is indicative of the country's welfare state. Massive demographic growth is suggestive of increased international migration, due to economic and social inequality. The government believes that low population growth is the cause of increased prosperity.¹⁷

2. A Brief Biography of Jasser Auda

Jasser Auda is a Muslim intellectual and contemporary Islamic legal reformer who was born in 1966 in Cairo, Egypt. He is the nephew of one of the leaders of the Muslim Brotherhood, Abdul Qadir Auda. His family's intellectual background is the main support for him to explore general and religious knowledge. Since childhood, he spent his time studying religion informally (talaqqi) including the Qur'an, Hadith, Jurisprudence and Usul Jurisprudence guided by his teachers Muḥammad al-Ghazali, Ismā'il Šādiq al-'Adawī and Muḥammad 'Abd al-Salām Farāj at al-Azhar Mosque.¹⁸ In addition, Auda also

¹⁴ *Al-Qur'an*, Terjemah Kementerian Agama Republik Indonesia, 2019.

¹⁵ Zidni Amaliyatul Hidayah, Nina Octaviana, and Wakhidatur Rokhmah, "Childfree: Mengurangi Populasi Manusia Untuk Kesejahteraan dalam Pandangan Islam dan Sosial" 5 (2023).

¹⁶ Nuria Febri Rahayu, "Keputusan Pasangan Subur untuk Tidak Memiliki Anak," *Hermeneutika: Jurnal Hermeneutika* 8, no. 1 (May 31, 2022): 20–33, <https://doi.org/10.30870/hermeneutika.v8i1.13043>.

¹⁷ Tiara Hanandita, "Konstruksi Masyarakat Tentang Hidup Tanpa Anak Setelah Menikah," *Jurnal Analisa Sosiologi* 11, no. 1 (January 28, 2022), <https://doi.org/10.20961/jas.v11i1.56920>.

¹⁸ Ilham Mashuri, "Pendekatan Sistem Dalam Teori Hukum Islam (Perspektif Jasser Auda)," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 5, no. 1 (January 27, 2020): 11–28.

pursued formal education at the undergraduate programme majoring in Communication Science at Cairo University (1988) and postgraduate with the first Master of Science (MSc) degree (1993). He also pursued an undergraduate degree (S1) in Islamic Education at the Islamic University of America with a second Bachelor of Arts (BA) degree (2001) as well as completing a master's programme at the same campus in the field of Maqāṣid Sharī'ah with a Master of Jurisprudence degree (2004). The Doctor of Philosophy (Ph. D) degree was obtained in two different places. First, at the University of Waterloo, Canada (2006) with a research focus on Systems Analysis and second, at the University of Wales, UK (2008) with a concentration in Islamic Legal Philosophy.¹⁹

3. Systems Theory and Jasser Auda's Thought

Jasser Auda as the initiator of systems theory responds to the classical maqāṣid sharī'ah study that is still textual and literal, so it is not in line with the dynamics of contemporary times. According to him, there are four weaknesses in the application of classical maqāṣid that require continuous renewal of orientation. Firstly, the scope of an issue is not defined in specific chapters, which makes it impossible to answer it in detail. Secondly, the scope of classical maqāṣid tends to focus on the benefit of individuals, rather than the benefit of society in general. Third, the classical theory ignored basic universal rules and values, such as justice and freedom. Fourth, the analysis of classical maqāṣid theory is fanatical towards the thoughts of previous Islamic jurists.²⁰ Therefore, Auda presents six features of a system approach that are considered relevant and systematic as an analytical tool to find answers to contemporary Islamic legal issues, including the following:

a. Nature of Cognition

The main feature of this feature is the separation between ilāhī revelation (shari'ah) and human reasoning (fiqh) in different realms to formulate Islamic

¹⁹ Muhammad Syaifullah, "Pendekatan Sistem Terhadap Hukum Islam Perspektif Jasser Auda," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 3, no. 2 (December 31, 2018): 219–238.

²⁰ Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Al Himayah* 2, no. 1 (March 1, 2018): 97–118.

law. Basically, revelation consists of the Qur'ān and the Hadith of Prophet Muhammad PBUH. As the main source of Islamic law. Meanwhile, fiqh is an effort to interpret the text of the Qur'an and Hadith on matters of worship and muamalah to reveal the implied meaning carried out by fakih (Islamic jurists) individually or collectively. Automatically, the products of sharia law are absolute at all times and universally occupy the highest priority over the results of the ijtiḥad of scholars which are relative, dynamic and contextual.²¹ Therefore, Jasser Auda reveals that ijmak (collective agreement) is only a way of considering the law, so it cannot be aligned with God's decision. The paradigm shift conveyed by Auda directly allows Muslims to accept or reject consensus.

b. Wholeness

Analysing an Islamic legal issue with a partial approach always shows shortcomings. As was done by classical era thinkers, who considered that something as uncertain as general science could not be integrated with religious science which is a true claim. The solution offered by Auda is to shift the paradigm of atomistic thinking into a holistic system. This feature refers to changing the causal theory ('illah) in studying a phenomenon into a theory that sees certain problems with broader implications. This is because holistic theory intends to connect one part with another part as a whole. This way of thinking is very important in developing contemporary Islamic legal philosophy or *usul fiqh* as a principle in Islamic law.²² By applying holistic theory, Auda assumes that one will more easily find the broad meaning of sharia.

²¹ Dedisyah Putra, Asrul Hamid, and Martua Nasution, "Metodologi Maqashid Al-Syari'ah Jasser Auda Sebagai Pendekatan Baru Sistem Hukum Islam," *AL-SYAKHSHIYYAH Jurnal Hukum Keluarga Islam dan Kemanusiaan* 4, no. 1 (June 26, 2022): 77–100.

²² Lukman Hakim and Akhmad Rudi Maswanto, "Maqasid Al-Syari'ah Ala Jasser Auda Upaya Mereformasi Hukum Islam Melalui Pendekatan Teori Sistem," *AL-ASHLAH: Jurnal Hukum Keluarga Dan Hukum Islam* 1, no. 1 (January 20, 2022): 015–027.

c. Openness

According to Jasser Auda's explanation, the system is open in accepting views from other disciplines and can interact with external conditions or environments that determine the reach of a goal. In addition, the renewal of the Islamic legal system approach can be achieved in two ways, namely changing the perspective or culture of thinking and accepting philosophical theory as a mechanism for renewal.²³ This openness means that the limitations of texts (nāṣ) that do not match the consistency of phenomena require the development of methods in dealing with every public issue. Collaboration between mujtahids and scientists is needed to integrate multidisciplinary skills to answer contemporary problems and find maqāṣid sharī'ah. A competent mujtahid is one who has both religious and other general sciences integrated for one purpose. An example of the application of the value of integration can be applied to hereditary customs ('urf) in legal considerations to accommodate community conditions. In addition, interpretation of analogy (qiyās) and usefulness (maṣlaḥah mursalah) are applied to address ongoing problems.

d. Interrelated Hierarchies

The relationship between sub-systems has a very important influence to realise the functions and goals to be achieved. Auda explains that this feature leads to the theory of categorisation, which is the way humans view things. There are two alternatives that can be considered. First, feature-based categorisation can be understood as drawing conclusions on an object of analysis based on the classification of differences and similarities or right and wrong. While the second, concept-based categorization is a form of observation by an expert that combines detailed discussion theories to

²³ Tri Marfiyanto, "Maqasid Syariah dan Pendekatan Teori Sistem dalam Hukum Islam Menurut Yasser Auda," *Jurnal Kajian Hukum Islam* 6, no. 1 (March 22, 2019).

produce conclusions with multidimensional criteria.²⁴ For example, when using the first category, the hierarchy of secondary (ḥajjiyah) and tertiary (taḥsīniyyah) needs is below the primary (ḍarūriyyah) needs. However, if the second category is applied, then the three aspects are in an equal position.

Jasser Auda chose the concept-based categorisation, as it is considered to be highly integrative. It is evident that the hierarchical connection can enhance and expand the dimensional pattern of maqāṣid sharī'ah in the realm of scope and subject covered. In the realm of scope, this feature system theory hints at the development of the maqāṣid hierarchy, which is divided into general goals (maqāṣid 'ām), specific goals (maqāṣid khāṣ) and partial goals (maqāṣid juz'ī).²⁵ Meanwhile, the expansion of the scope of the object of study leads to the social dimension of society. This aims to implement Islamic law reform in realising the benefit of all humanity.

e. Multidimensional

The multidimensional approach used to analyse maqāṣid is a solution to the conflicting sharī' propositions. This is due to the development of dichotomous thinking in solving problems. According to Jasser, multidimensional legitimacy is to position a text into a priority scale by considering social conditions without contradicting other texts. In addition, he also invites contemporary Islamic scholars to use a multidimensional approach to contemporary Islamic legal theory, so as not to be fixated on the reductionism paradigm.²⁶

²⁴ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law* (International Institute of Islamic Thought (IIIT), 2022).

²⁵ Sholihul Huda, "Filsafat Sistem dalam Studi Hukum Islam Perspektif Jasser Audah," *Al-Hikmah: Jurnal Studi Agama-Agama* 8, no. 1 (2022): 12–28.

²⁶ Ari Murti and Toufan Aldian Syah, "Menelaah Pemikiran Jasser Auda Dalam Memahami Maqasid Syariah," *Citizen: Jurnal Ilmiah Multidisiplin Indonesia* 1, no. 2 (September 16, 2021): 60–67.

f. Destination

The last feature presented by Auda in the system approach is Purpose by associating the previous five features. He also added his view that the entity of a system must have results. Thus, the basis of all issues discussed in Islamic law is to reveal the essence of the intention or purpose of sharia with various methods used or various situations and conditions. In addition, the achievement of effectiveness value becomes the benchmark of a system and the validity of *ijtihad*.

4. Contextualising Maqāṣid Sharī'ah on Hysterectomy (Uterine Removal Surgery)

The systems theory approach initiated by Jasser Auda has six characteristics that are used to study a phenomenon by connecting Islamic law. The following is an explanation of the contextualisation of *maqāṣid sharī'ah* on hysterectomy using the systems approach:

a. Nature of Cognition

Jurisprudence is the pure intellectual product of an Islamic jurist in detailing a particular topic that requires legal clarity. Theories derived from the ability of reason to analyse a particular object are very likely to be challenged and debated. Thus, contemporary Islamic jurists have the opportunity to change the perspective of classical Islamic jurists. This movement of change is based on the observation of the effectiveness produced at different times and subjects.

As for the study of hysterectomy, this theory of cognition directly rectifies people's views on the concept of preserving offspring. In the past, people speculated that married women should have offspring with the slogan "many children, many fortunes". Of course, it cannot be denied that the presence of children in quantity causes an economic crisis experienced by families. The evidence is that some cases of parents killing their children due to low economic quality. In fact, Islam clearly states through the wording of the hadith that: "Marry women who are fertile and loving, for I am proud of

your many children." (HR. An-Nasā'i).²⁷ However, referring to today's context, a balance is needed between the amount of Human Resources (HR) and Natural Resources (NR) available in the process of growth and progress of the country in various sectors.

An increase in population supported by a high birth rate has the potential to change the scheme of the country's development order. Qualified human resources can contribute to realizing progress in industry, health, education and other fields. Progeny equalization can be applied in countries with low population numbers. Because, Indonesia's population ranks fourth as the most populous country in the world.²⁸ By equalizing the birth rate, it can be a means of maintaining the stability of world food security. Islamic teachings certainly want everything to be measured in a balanced manner, no more and no less, so that human life can revolve in a balanced manner. This illustrates that hysterectomy can be performed by considering all aspects without harming any of them.

b. Wholeness

In studying hysterectomy, a holistic mindset is required. This can be followed up by examining in detail the reasons why a person undergoes a hysterectomy. The reason is that the decision taken always refers to various reasons, such as diseases that are considered life-threatening for women, inability to take care of children materially and psychologically, so they are not sure they can produce quality Human Resources (HR). This is because Indonesia's population in 2022 will reach 275,000 people. Translated with www.DeepL.com/Translator (free version). In studying hysterectomy, a holistic mindset is required. This can be followed up by examining in detail the reasons why a person undergoes a hysterectomy. The reason is that the

²⁷ *Sunan An-Nasā'i*, Bab Nikah, Nomor Hadis 3175, Aplikasi Hadits Soft, 2016.

²⁸ Monika Rizki and Yayat Karyana, "Taksiran Total Fertilitas Rate Penduduk Jabar Periode 2015 - 2020 dan 2020 - 2025," *Jurnal Riset Statistika* 2, no. 1 (July 7, 2022): 13–18.

decision taken always refers to various reasons, such as diseases that are considered life-threatening for women, the inability to care for children materially and psychologically, so they are not sure they can produce quality Human Resources (HR). This is because Indonesia's population in 2022 will reach 275,773 million.²⁹ Hysterectomy, therefore, can be a progressive reason to reduce the human population as well as the level of emissions that worsen the environment and cause imbalances in the increasingly scarce natural resources in various regions.

According to Islamic law, a Muslim is required to marry in order to have offspring. In addition, both partners are also required to be responsible for protecting themselves and their families from actions that lead to bad things, according to the word of Allah SWT: "O you who believe, protect yourselves and your families from the fire of hell, whose fuels are men and stones, and whose guardians are hard and harsh angels. They do not disobey Allah in what He commands them and always do what is commanded." (At-Tahrim/66:6).³⁰ The conclusion of the verse explains the importance of parental custody in this day and age of negative influences. Thus, studying hysterectomy does not focus on the cause, but rather leads to preventive decisions for the benefit of all groups.

c. Openness

The scholars agree that *ijtihad* must remain and the results can be an improvement and complement to the sources of Islamic law. An approach to the Islamic legal system that makes it flexible to the changing times. This is necessary in dealing with the case of hysterectomy, which has become a current issue and has never happened in ancient times. After knowing the background of hysterectomy, today's open effort is to review the

²⁹ Hendri Noviyanto and Arma Fauzi, "Prediksi Pertumbuhan Penduduk di Indonesia Menggunakan Metode Least Square," *Mathematics and Applications Journal* 4, no. 2 (2022): 155–162.

³⁰ *Al-Qur'an*, Terjemah Kementerian Agama Republik Indonesia, 2019.

implementation of hysterectomy based on other points of view as a consideration in determining the law of hysterectomy. Such as limiting children after marriage is a concept of family life that relies on mutual agreement. The decision is the prerogative of each couple collectively with various indications, such as mental readiness, past trauma, finance, career, emotional control, and hobbies.³¹ Thus, the study of hysterectomy cannot stop at one aspect only, but to realism maqāṣid sharī'ah, it needs to be supported by other aspects that do not contradict the rules of Islamic law.

d. Interrelated Hierarchy

Islamic law is a structured and dynamic legal system. Efforts to maintain the existence of Islamic law throughout the ages are an adjustment to the development of science and technology as well as the conditions of society in each region. The diversity of these characteristics underlies the emergence of complex problems. The connection between scientific disciplines and Islamic legal theory must continue to be carried out by changing textual to contextual. The reasoning of the fakih or mujtahid is also influenced by the worldview in considering a law based on the context of the characteristics of the society at hand to find a way out in solving common problems. A fakih can interact with the outside world which includes geographical, social, economic and linguistic fields.³²

If the concept-based categorisation is applied to the hysterectomy case, it will result in different alternatives in understanding the purpose of maintaining offspring to prevent unfulfilled children's rights by parents. The efforts that can be made are first, the empowerment of orphans. Although in lineage, biological children and orphans have different positions. However,

³¹ Nuria Febri Rahayu, "Keputusan Pasangan Subur untuk Tidak Memiliki Anak," *Hermeneutika: Jurnal Hermeneutika* 8, no. 1 (May 31, 2022): 20–33.

³² Novizal Wendry and Syafruddin, "Paradigma Pendekatan Sistem Dalam Kajian Hukum Islam Menurut Jasser Auda," *Jurnal AL-AHKAM* 11, no. 1 (June 10, 2020): 49–63.

Islam also strongly encourages its people who have wealth to support orphans, as mentioned in the ṣaḥīḥ Hadīth: I and those who care for orphans will be like this in Paradise. "He gestured with his index and middle fingers and then he opened something between them". (HR: Bukhāri).³³

Second, it can study premarital parenting materials for husband and wife. The aim is to prepare for domestic life which has various obstacles and challenges, one of which is parenting. Preparing a superior generation requires maximum and optimal efforts by preparing schools to get intensive educational services as a provision for decent family resilience. If you do not have knowledge about preparing offspring, it will have an impact on household conflicts. The two ways mentioned above are likely to be non-medical reasons for couples to undergo hysterectomy.

e. Multidimensional

A system is an arrangement of structured, non-single and coherent components.³⁴ Similarly, Islamic law is a system that consists of various dimensions. Thus, in studying a certain phenomenon using one scientific dimension is considered incomplete and reduces the development of Islamic law. Theories from other disciplines are also needed to complement the imbalance of ijtihad results which is a problem for Muslims. This is because the position of science and Islam is a dimension that has the same interests, so that a problem can be resolved by uniting the perspectives of both.

The multidimensional method of thinking should be applied to the issue of hysterectomy. This means looking at the hysterectomy phenomenon from various perspectives and socio-cultural conditions at large. In the context of hysterectomy, economic factors are one of the reasons why husbands and wives decide to limit childbearing. This can be triggered by the need for

³³ ṣ ḥīḥ ā , Bab Talak, Nomor Hadis 4892, Aplikasi Hadits Soft, 2016.

³⁴ Muhammad Kholil, "Analisis Sistem Metodologi Dan Filsafat Hukum Islam (Analisis Terhadap Pemikiran Jasser Auda)," *Al-Ulum Jurnal Pemikiran Dan Penelitian Ke Islaman* 5, no. 1 (February 16, 2018): 34–42.

quality education in order to form a quality generation that requires expensive costs. Therefore, the development of offspring (hifz al-nasl) interpreted by contemporary thinkers, namely Jasser Auda who states that the paradigm of protecting offspring outwardly shifts to a broad sense, namely by developing Human Resources (HR) in maintaining the integrity of family institutions as a means of realising national development and social civilisation. This is because Islamic teachings invite all humans to produce many offspring and prohibit killing humans or limiting their growth and development. Of course, a hysterectomy can cut off the bloodline completely, so there is no potential to conceive permanently.

f. Destination

The existence of purpose becomes the main point in understanding the text of the Qur'anic verse and the redaction of the Hadith. Jasser Auda's contribution to this theory is very effective in restoring the meaning of context that is lost in terms of *usul fiqh* theory. Changing the way of thinking and behaving towards phenomena that occur in the contemporary era is a preventive measure that is beneficial for the benefit of Muslims in particular and humanity in general. That way, every Islamic legal decision will always present a clear intention and purpose that can be accepted by Muslims. This is because the reason for the existence of Islam on earth is as a religion that contains comprehensive guidelines for life throughout the ages.

In relation to the hysterectomy case, it is necessary to know the intent and purpose of Islamic law contextually. A review of uterine removal surgery does not simply come from one discipline, but requires various disciplines to state its legal legality. Hysterectomy can be influenced by various factors, such as health, economy, psychology and others. Therefore, the collaboration of Islamic law with other perspectives is of great importance in the contemporary era to change the direction of reductionist thinking towards a holistic view. Thus, the principles of law, namely justice, rationality, expediency and morality, can be realised

D. CONCLUSION

In this article, there are two important findings: first, the practice of hysterectomy based on the reason of the disease that appears in the patient's body is more dominant than other reasons. However, it cannot be denied that the problems of people's lives are growing, so that all actions that are considered not to violate the rules of Sharia become alternative solutions. Secondly, all features of Jasser Auda's maqāṣid sharī'ah system theory were successfully contextualised in interpreting a more comprehensive hysterectomy case. Therefore, Jasser Auda's reformed maqāṣid sharī'ah can be a reference for Islamic legal philosophy methodology in formulating legal conclusions that prioritise the principle of benefit in order to reveal the wisdom and meaning of the true purpose of Islamic law.

As an intellectual reflection in this article, the health aspect is not the only reason for allowing a woman to have a hysterectomy, other aspects that do not contradict Islamic Shariah are also required. As a feature of Jasser Auda's maqāṣid sharī'ah system theory, which contextualises all issues whose resolution requires the review of Islamic law, it prioritises universal benefits while upholding the principles of humanity, justice, and freedom of expression or opinion

BIBLIOGRAPHY

- Afiyah, Raden Khairiyatul, Farida Umamah, and Nanik Handayani. "Gambaran Self Acceptance Pada Fungsi Seksual Pasca Histerektomi." *Jurnal Ilmiah Permas: Jurnal Ilmiah STIKES Kendal* 11, no. 1 (January 7, 2021): 227–34. <https://doi.org/10.32583/pskm.v11i1.1004>.
- Arista, Puput Novi. "Histerektomi Dalam Perspektif Undang-Undang Kesehatan No. 36 Tahun 2009 dan Hukum Islam." Institut Agama Negeri Tulungagung, 2018. <http://repo.uinsatu.ac.id>.
- Auda, Jasser. *Maqasid Al-Shari'ah as Philosophy of Islamic Law*. International Institute of Islamic Thought (IIIT), 2022.
- Fadli, Muhammad Rijal. "Memahami Desain Metode Penelitian Kualitatif." *Humanika, Kajian Ilmiah Mata Kuliah Umum* 21, no. 1 (2021): 33–54. <https://doi.org/10.21831/hum.v21i1.38075>.
- Gazali, Ahmad. "Maqasid Al-Syariah dan Reformulasi Ijtihad Sebagai Sumber Hukum Islam." *Alhadharah: Jurnal Ilmu Dakwah* 18, no. 2 (February 7, 2020). <https://doi.org/10.18592/alhadharah.v18i2.3133>.
- Gumanti, Retna. "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)." *Jurnal Al Himayah* 2, no. 1 (March 1, 2018): 97–118.
- Hakim, Lukman, and Akhmad Rudi Maswanto. "Maqasid Al-Syari'ah Ala Jasser Auda Upaya Mereformasi Hukum Islam Melalui Pendekatan Teori Sistem." *AL-ASHLAH: Jurnal Hukum Keluarga Dan Hukum Islam* 1, no. 1 (January 20, 2022): 015–027.
- Hanandita, Tiara. "Konstruksi Masyarakat Tentang Hidup Tanpa Anak Setelah Menikah." *Jurnal Analisa Sosiologi* 11, no. 1 (January 28, 2022). <https://doi.org/10.20961/jas.v11i1.56920>.
- Hidayah, Zidni Amaliyatul, Nina Octaviana, and Wakhidatur Rokhmah. "Childfree: Mengurangi Populasi Manusia Untuk Kesejahteraan dalam Pandangan Islam dan Sosial" 5 (2023).
- Huda, Sholihul. "Filsafat Sistem dalam Studi Hukum Islam Perspektif Jasser Auda." *Al-Hikmah: Jurnal Studi Agama-Agama* 8, no. 1 (2022): 12–28.
- Idris, Muhammad Nirwan, and Kurnaemi Anita. "Analisis Implementasi Kaidah Fikih Lā Ḍarar Wa Lā Ḍirār Dalam Kedokteran Modern Pada Kasus Tindakan Operasi." *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam* 6, no. 1 (June 1, 2020): 50–76. <https://doi.org/10.36701/nukhbah.v6i1.100>.
- Irawan, Ah Soni. "Maqāshid Al-Sharīah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporer." *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (April 26, 2022): 39–55. <https://doi.org/10.51675/jaksya.v3i1.192>.
- Khasanah, Uswatul, and Muhammad Rosyid Ridho. "Childfree Perspektif Hak Reproduksi Perempuan dalam Islam." *Al-Syakhsyiyah: Journal of Law & Family Studies* 3, no. 2 (December 11, 2021): 104–28. <https://doi.org/10.21154/syakhsyiyah.v3i2.3454>.

- Kholil, Muhammad. "Analisis Sistem Metodologi Dan Filsafat Hukum Islam (Analisis Terhadap Pemikiran Jasser Auda)." *Al-Ulum Jurnal Pemikiran Dan Penelitian Ke Islaman* 5, no. 1 (February 16, 2018): 34–42. <https://doi.org/10.31102/alulum.5.1.2018.34-42>.
- Mardiyah Kadir, Besse Ainul, and Rini Fitriani. "Gambaran Kualitas Hidup Penderita Kanker Serviks Setelah Pengobatan di Rumah Sakit Islam Faisal Makassar Tahun 2016." *Jurnal Midwifery* 1, no. 1 (March 6, 2019). <https://doi.org/10.24252/jmw.v1i1.7534>.
- Marfiyanto, Tri. "Maqasid Syariah dan Pendekatan Teori Sistem dalam Hukum Islam Menurut Yasser Auda." *Jurnal Kajian Hukum Islam* 6, no. 1 (March 22, 2019). <https://doi.org/10.52166/jkhi.v6i1.4>.
- Mashuri, Ilham. "Pendekatan Sistem Dalam Teori Hukum Islam (Perspektif Jasser Auda)." *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 5, no. 1 (January 27, 2020): 11–28.
- Murti, Ari, and Toufan Aldian Syah. "Menelaah Pemikiran Jasser Auda Dalam Memahami Maqasid Syariah." *Citizen : Jurnal Ilmiah Multidisiplin Indonesia* 1, no. 2 (September 16, 2021): 60–67. <https://doi.org/10.53866/jimi.v1i2.9>.
- Noviyanto, Hendri, and Arma Fauzi. "Prediksi Pertumbuhan Penduduk di Indonesia Menggunakan Metode Least Square." *Mathematics and Applications Journal* 4, no. 2 (2022): 155–62. <https://doi.org/10.15548/map.v4i2.4835>.
- Putra, Dedisyah, Asrul Hamid, and Martua Nasution. "Metodelogi Maqashid Al-Syari'ah Jasser Auda Sebagai Pendekatan Baru Sistem Hukum Islam." *AL-SYAKHSHIYAH Jurnal Hukum Keluarga Islam dan Kemanusiaan* 4, no. 1 (June 26, 2022): 77–100.
- Rahayu, Nuria Febri. "Keputusan Pasangan Subur untuk Tidak Memiliki Anak." *Hermeneutika : Jurnal Hermeneutika* 8, no. 1 (May 31, 2022): 20–33. <https://doi.org/10.30870/hermeneutika.v8i1.13043>.
- Rizki, Monika, and Yayat Karyana. "Taksiran Total Fertilitas Rate Penduduk Jabar Periode 2015 - 2020 Dan 2020 - 2025." *Jurnal Riset Statistika* 2, no. 1 (July 7, 2022): 13–18. <https://doi.org/10.29313/jrs.vi.605>.
- Romadlon, Moh. Wahyu. "Pengangkatan Rahim Sebagai Pembatasan Kelahiran Anak dalam 'Keluarga Berencana' Perspektif Kaidah Fiqh (Izā Ta'arāḍa Mafsadatāni Rūiya A'zāmuḥumā Ḍararān Birtikābi Akhaffihimā)." Institut Agama Islam Negeri (IAIN) Kediri, 2022. <http://etheses.iainkediri.ac.id>.
- Syaifudin, Imam. "Pandangan Perempuan Tentang Hak Menolak Kehamilan Perspektif KH. Husein Muhammad." *SAKINA: Journal of Family Studies* 4, no. 3 (September 30, 2020). <http://urj.uin-malang.ac.id/index.php/jfs>.
- Syaifullah, Muhammad. "Pendekatan Sistem Terhadap Hukum Islam Perspektif Jasser Auda." *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 3, no. 2 (December 31, 2018): 219–38. <https://doi.org/10.25217/jm.v3i2.385>.
-

- Tyas, Nugraheni Restining. “Tinjauan Hukum Islam Terhadap Pengangkatan Rahim Untuk Membatasi Kelahiran Anak (Studi Kasus Desa Pranti Kecamatan Sedati Kabupaten Sidoarjo).” Universitas Islam Negeri Sunan Ampel, 2018. <https://core.ac.uk/download/pdf/158282314.pdf>.
- Wendry, Novizal and Syafruddin. “Paradigma Pendekatan Sistem Dalam Kajian Hukum Islam Menurut Jasser Auda.” *Jurnal AL-AHKAM* 11, no. 1 (June 10, 2020): 49–63. <https://doi.org/10.15548/alahkam.v11i1.1475>.
- Wulandari, Barkah, Irwan Taufiqur Rachman, and Wenny Artanty Nisman. “Seksualitas Pada Wanita Setelah Total Abdominal Histerektomi (TAH) (The Sexuality of Women After Total Abdominal Histerektomy (TAH)).” *Journal of Nursing Care and Biomoleculer* 1, no. 1 (2016): 38–44. <https://doi.org/10.32700/jnc.v1i1.9>.