

## **Women's Rights and Gender Equality: An Analysis of Jasser Auda's Thoughts and His Contribution to Renewal of Islamic Family Law in Indonesia**

### **Hak Perempuan dan Kesetaraan Gender: Analisis terhadap Pemikiran Jasser Auda dan Kontribusinya dalam Pembaharuan Hukum Keluarga Islam di Indonesia**

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DOI: 10.24260/jil.v3i1.530

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Received: December 27, 2021 | Revised: January 20, 2022 | Approved: January 20, 2022

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**Abstract:** There are still many practices of marginalization and subordination of women. An incomplete understanding of the Qur'an and hadith is the main reason. Women have the same position as men and are elevated in status in Islam. This article aims to explain Jasser Auda's thoughts on women and their contribution to the reform of Islamic family law in Indonesia. This paper uses bibliographic research as the primary source of Jasser Auda's works. This study concludes that Jasser Auda's thinking which provides equal positions between men and women, aligns with *maqāsid al-syari'ah*, which was developed and combined with systems theory. Women have an equal role and position with men in the mosque, become leaders, and are given rights in reproductive health. The authors argue that Jasser Auda's views on women have inspired several reforms in Islamic family law in Indonesia that pay more attention to women's rights and position on an equal footing with men rather than the practice of understanding Muslim societies, which are still patriarchal.

**Keywords:** Jasser Auda, Women, *Maqāsid al-Syari'ah*, Islamic Family Law, Indonesia.

**Abstrak:** Masih banyak praktik marginalisasi dan subordinasi terhadap perempuan hingga saat ini. Pemahaman yang tidak lengkap terhadap

Alqur'an dan hadis merupakan sebab utama. Padahal, perempuan memiliki kedudukan yang sama dengan laki-laki dan diangkat derajatnya dalam Islam. Artikel ini bertujuan untuk menjelaskan pemikiran Jasser Auda tentang wanita dan kontribusinya dalam pembaharuan hukum keluarga Islam di Indonesia. Tulisan ini menggunakan jenis penelitian bibliografi dengan menjadikan karya-karya Jasser Auda sebagai sumber primer. Penelitian ini menghasilkan kesimpulan bahwa pemikiran Jasser Auda yang memberikan kedudukan yang setara antara laki-laki dengan perempuan sejalan dengan *maqāsid al-syari'ah* yang dikembangkan dan dikombinasikannya dengan teori sistem. Wanita memiliki peran dan kedudukan yang setara dengan laki-laki di masjid, menjadi pemimpin, dan diberikan hak-hak dalam kesehatan reproduksi. Penulis berargumentasi bahwa pandangan Jasser Auda tentang wanita telah mengilhami beberapa pembaharuan dalam hukum keluarga Islam di Indonesia yang lebih memperhatikan hak dan kedudukan wanita yang setara dengan laki-laki dari pada praktik pemahaman masyarakat muslim yang masih patriarki.

**Kata Kunci:** Jasser Auda, Perempuan, *Maqāsid al-Syari'ah*, Hukum Keluarga Islam, Indonesia.

## A. Introduction

In history, the position of women is seen as a second-class society and has an impact on the weakness of their position and rights. Women are not capable of law acting and are equated with crazy people and immature children.<sup>1</sup> The share of Islamic inheritance<sup>2</sup> and women's testimonies<sup>3</sup> are valued at half that of men in Islamic law. In the family, women are also positioned as weak creatures. Women are considered objects that men marry and divorce. Women must obey their husbands and cannot leave the house unless they get permission from their husbands.<sup>4</sup> So many destructive treatments such as discrimination, exploitation, and violence against women are justified on religious grounds.<sup>5</sup> Islam protects

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<sup>1</sup> Moh Bahardin, "Kedudukan Perempuan dalam Perspektif Hukum Islam," *ASAS* 4, no. 1 (February 14, 2012): 1–8.

<sup>2</sup> Muhammad Lutfi Hakim, "Keadilan Kewarisan Islam terhadap Bagian Waris 2:1 antara Laki-Laki dengan Perempuan Perspektif Filsafat Hukum Islam," *Al-Maslahah: Jurnal Ilmu Syari'ah* 12, no. 1 (2016): 18.

<sup>3</sup> Layyin Mahfiana, "Kesaksian Wanita dalam Perspektif Hukum Islam dan Hukum Positif di Indonesia," *Musawa Jurnal Studi Gender dan Islam* 8, no. 1 (January 22, 2009): 93–111.

<sup>4</sup> Ali Muhtarom, "Perempuan Perspektif Kiai: Studi terhadap Kedudukan Perempuan dalam Hukum Keluarga," *El-USRAH: Jurnal Hukum Keluarga* 4, no. 1 (February 9, 2021): 32.

<sup>5</sup> Lukman Hakim dan Mohammad Nasir Omar, "Sisi Gender dalam Pemikiran Islam Liberal Nurcholish Madjid," *Substantia: Jurnal Ilmu-Ilmu Ushuluddin* 12, no. 2 (June 11, 2010): 276–90.

women and has an equal position with men in accessing education, work, and politics.<sup>6</sup>

The gap in position and rights between men and women that occurs in Muslim countries is caused by the incomplete understanding of the Qur'an. The Qur'an is a book that elevates women above any other holy book and fights all forms of injustice, economic exploitation, political oppression, cultural domination, gender domination and all other forms of disequilibrium.<sup>7</sup> Between Sharia and the welfare of humanity are two things that cannot be separated from one another, be it in this world or the hereafter. Sharia is in line with justice, benevolence, benefit, and wisdom. A rule that contradicts all of that cannot be part of the Sharia itself.<sup>8</sup> Classical women's problems, such as whether women are allowed to go to the mosque to those related to reproductive health, are exciting to study. Jasser Auda (in the future referred to as Auda) is one of the scholars concerned with studying women and argues that the discussion of women in Islam is critical in current discourse. This matter is because women are seen as half of society (*al-mar'ah nisfu al-mujtama' au aksar*) in any community and are always interesting issues to discuss.<sup>9</sup>

Many researchers have discussed the thoughts of this figure, starting from the discussion of *maqāṣid* to *ushūl al-fiqh*. There are two categories of previous research that examines Auda's thoughts. The first category is the results of research that discuss the theory of *maqāṣid al-syarī'ah* proposed by Auda. Prihantono discusses the six dimensions of Auda's *maqāṣid al-syarī'ah* system approach and its implementation in Islamic law.<sup>10</sup> Phase developed the theory of *maqāṣid al-syarī'ah* Auda in Islamic economics.<sup>11</sup> Ni'ami and Bustamin focused on studying the similarities and differences in the theory of *maqāṣid al-syarī'ah* by

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<sup>6</sup> Djamila Usup, "Kedudukan dan Perlindungan Hukum terhadap Perempuan dalam Hukum Islam," *Jurnal Ilmiah Al-Syir'ah* 13, no. 1 (June 22, 2016): 1–19.

<sup>7</sup> Khoiruddin Nasution, *Fazlur Rahman tentang Wanita* (Yogyakarta: Tazzafa, 2002), 1.

<sup>8</sup> Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'in 'an Rabb al-'Alāmin*, Jld. 3, 11.

<sup>9</sup> Jasser Auda, *Al-Mar'ah wa al-Masjid fī Do'i Nuṣūṣ Syari'ah wa Maqāṣiduhā* (Kudus: Dār al-Maqāṣid, 2016), 1.

<sup>10</sup> Syukur Prihantoro, "Maqasid Al-Syari'ah dalam Pandangan Jasser Auda: Sebuah Upaya Rekonstruksi Hukum Islam melalui Pendekatan Sistem," *At-Tafkir* 10, no. 1 (October 14, 2017): 120–34.

<sup>11</sup> Muhammad Iqbal Fasa, "Reformasi Pemahaman Teori Maqasid Syariah (Analisis Pendekatan Sistem Jasser Audah)," *HUNAFA: Jurnal Studia Islamika* 13, no. 2 (2016): 218–46.

comparing the views of Ibn Asyr with Auda's.<sup>12</sup> The second category is the research results that uses the theory of *maqāṣid al-syarī'ah* to analyze several recent cases. Among the contemporary problems studied by scholars is the multidisciplinary education system,<sup>13</sup> the minimum age limit for marriage,<sup>14</sup> the division of inheritance between different religions,<sup>15</sup> the meaning of *ngruwat manten* in marriage ceremonies,<sup>16</sup> etcetera.

This article complements the second category and focuses on Auda's thoughts on women and their contribution to Islamic family law. This paper is bibliographical research by using Auda's works in *Al-Mar'ah wa al-Masjid fī Do'i Nuṣūṣ Syari'ah wa Maqāṣiduhā* and *Muslim Woman between Backward Traditions and Modern Innovations* as primary data. In addition to the two primary data, the authors also use research results, journal articles and websites related to Auda's thoughts on women as secondary data. There are three research objectives in this paper. First, to describe the biography and works of Auda. Second, to explain Auda's view of women. Third, to analyze Auda's view and its contribution to the reform of Islamic family law in Indonesia.

## B. Jasser Auda: Short Biography and His Works

Jasser Auda was born in Egypt in 1966. He grew up in an excellent academic tradition by being educated in the East and the West. He earned her PhD from two leading universities. In 2006, Auda completed his PhD at the University of Waterloo, Canada, concentrating on Systems Studies. In 2008, Auda completed his PhD at the University of Wales, England, concentrating on the Philosophy of

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<sup>12</sup> Mohammad Fauzan Ni'ami dan Bustamin Bustamin, "Maqāṣid Al-Syarī'ah dalam Tinjauan Pemikiran Ibnu 'Āsyūr dan Jasser Auda," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 1 (June 21, 2021): 91-102.

<sup>13</sup> Siti Mutholingah dan 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): 90-111.

<sup>14</sup> Achmad Fauzan, "Pertimbangan Mahkamah Konstitusi terhadap Putusan Nomor 22/PUU-XV/2017 tentang Batas Usia Minimal Menikah bagi Perempuan Perspektif Maqāṣid Sharī'ah Jasser Auda," *Indonesian Journal of Islamic Law* 2, no. 1 (2019): 1-27.

<sup>15</sup> Samsuddin Samsuddin, "Analisis Pembagian Harta Waris pada Keluarga Beda Agama Persefektif Maqasyid Al-Syariah Jasser Auda," *Turatsuna: Jurnal Keislaman Dan Pendidikan* 2, no. 2 (December 2, 2020): 265-80.

<sup>16</sup> Faridatul Muaffiroh, "Makna Ngruwat Manten sebagai Tolak Bala' di Dusun Mendono Kelurahan Temu Bojonegoro dalam Upacara Pernikahan Perspektif Maqashid Syari'ah Jasser Auda," *Sakina: Journal of Family Studies* 5, no. 1 (February 24, 2021).

Islamic Law.<sup>17</sup> Auda was later founded and director of the Al-Maqāsid Research Center in London based on her doctoral education background. In addition, Auda is a research fellow at the University of Southampton, UK, associate professor at several world-renowned universities such as the College of Arts and Sciences, American University of Sharjah UAE, Ryerson University Canada, University of Bahrain and the University of Waterloo Canada, associate professor in Public Policy program, Faculty of Islamic Studies, Qatar Foundation. He is also a visiting associate professor at the Department of Islamic Law, Faculty of Law, Alexandria University, Egypt.<sup>18</sup>

This academic tradition gives Auda the authority to discuss legal philosophy and systems studies. Based on these two concentrations, Auda then developed *maqāsid al-syarī'ah* with a systems theory approach.<sup>19</sup> This matter is evidenced by his works which often integrate two sciences at once, namely Islamic studies and companionship science. One of Auda's magnum opus works is *Maqāsid Al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*. In writing his works, the primary approach used by Auda is to use the *maqāsid al-syarī'ah* analysis knife. He believes that *maqāsid al-syarī'ah* can be a solution for developing Islamic law in the future in solving increasingly complex life problems. His thinking tries to unite Western and Islamic scientific traditions, namely *maqāsid al-syarī'ah* and systems theory.<sup>20</sup>

Auda's several works talk about women, which are the focus of the study in this paper. Among them is Auda's phenomenal work in *Al-Mar'ah wa al-Masjid fi Do'i Nuṣūṣ Syari'ah wa Maqāṣiduhā* and *Muslim Woman between Backward Traditions and Modern Innovations*. Auda specifically said that Muslim women in Indonesia have a better position than those in other Asian countries, and Muslim women in these countries have no place in the mosque. The condition of Muslims

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<sup>17</sup> Jasser Auda, *Maqāṣid Untuk Pemula*, trans. oleh Ali Abdulmun'im (Yogyakarta: SUKA-Press UIN Sunan Kalijaga, 2013), 137.

<sup>18</sup> "Jasser Auda," in *Wikipedia*, September 7, 2021, [https://en.wikipedia.org/w/index.php?title=Jasser\\_Auda&oldid=1043003572](https://en.wikipedia.org/w/index.php?title=Jasser_Auda&oldid=1043003572).

<sup>19</sup> M. Amin Abdullah, "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam dalam Merespon Globalisasi," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 46, no. 2 (July 1, 2012): 327–28.

<sup>20</sup> Ada enam hal yang harus diperhatikan dalam teori *maqāsid al-syarī'ah* yang dikemukakan oleh Auda. Lihat: Muhammad Lutfi Hakim, "Pergeseran Paradigma Maqasid Al-Syari'ah: Dari Klasik sampai Kontemporer," *Al-Manahij: Jurnal Kajian Hukum Islam* 10, no. 1 (2016): 1–16.

will not get better until the condition of the mosques becomes good and fulfils their ideal role as centres of activity, education, and worship. Even the mosques will not be good so that some, including women, contribute to a mosque as happened to the Prophet.<sup>21</sup>

### C. Jasser Auda's Views on Woman

Auda is a prolific thinker related to Islamic law. In several of her works, men's rights and gender equality. Auda has a progressive in several of her works related to women view on women's issues, such as the role of women in mosques, women and leadership issues, and women and reproductive health. First, women and mosques. The mosque has an important place played by Muslims, both men and women. Women do not have a place in the mosque. This matter is due to a partial understanding of the texts, both the Qur'an and hadith. This atomistic approach arises because several hadiths explain that women should pray at home based on a hadith from Umm Humaid. Such an understanding contradicts Auda's opinion. In his search, the verses of the Qur'an and hadith texts state that women are allowed to come, perform prayers, carry out activities, and prosper the mosque. In fact, according to Auda, the hadith that explains that women have a role in the mosque is more than the hadith that forbids her to only come to the mosque.<sup>22</sup> Lifting and glorifying women is the same as exalting religion itself. Many verses of the Qur'an and hadiths speak of this issue. According to Muhammad Sahrur, today, we must understand the text by departing from the ancients' problems, knowledge, reality, and history.<sup>23</sup>

The fundamental question from classical times to the present about women and mosques is, is it permissible for women to go to the mosque? Which is more critical between praying in the mosque and at home? These questions require a deep understanding. There are so many questions that are often asked by the public regarding the presence of women in mosques. Women in many Muslim countries do not have a place as expected in the mosque. In fact, according to the

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<sup>21</sup> Auda, *Al-Mar'ah wa al-Masjid fī Ḏo'i Nuṣūṣ Syari'ah wa Maqāṣiduhā*, v.

<sup>22</sup> Auda, *Al-Mar'ah wa al-Masjid fī Ḏo'i Nuṣūṣ Syari'ah wa Maqāṣiduhā*, 48.

<sup>23</sup> Muhammad Sahrur, *Nahwa Usūl Jadīdah li al-Fiqh al-Islām* (Damaskus: Dār Ahali, 2000), 55.

Qur'an, women have the same potential in achieving rewards, as stated in Surah al-Nahl verse 97. This verse shows that both men and women who do good deeds will be rewarded in the form of rewards from Allah. Imam At-Tobari explained in his commentary that anyone who does good deeds means he has faith and obeys Allah.<sup>24</sup> Al-Qurtubi also added that anyone who believes that Allah will provide fortune or a good life, whether male or female.<sup>25</sup> So, in principle, anyone who believes and does good deeds, whether male or female, will get a noble position in the sight of Allah. There are several verses of the Qur'an and hadith about the role of women in prospering the mosque.

Some commentators interpret the word "*rijāl*" in Surah al-Nûr verse 37 as men. Therefore, the word "*rijāl*" must be interpreted by men as written by Imam Al-Tobari. Al-Tobari interprets it as a man in his famous commentary because women should pray at home.<sup>26</sup> Al-Tobari added that women do not pray in congregation and Friday prayers in mosques, and women are only in the domestic area, including praying. Ibn Kastir noted the word "*rijāl*" in Surah al-Nûr with the comment, "*Women pray more at home. Women are allowed to attend men's congregations on condition that the woman does not "hurt" any man by revealing jewellery and wearing perfume.*"<sup>27</sup> According to Auda, the verse in Surah al-Nûr does not necessarily mean only men but can also be interpreted as women in Surah al-A'raf verse 46.

The word "*rijāl*" in Surah al-Ahzab verse 23 also refers to men and women. Suppose Allah wants to specialize the pronunciation of "*rijāl*" for men only, not for women. He mentions the pronunciation of "*nisā'*" in the same verse.<sup>28</sup> Etymologically, women are sometimes referred to as *rijāl*. In the *Majma' Lughoh* dictionary published by the Egyptian Ministry of Waqf, it is explained that the word "*ra-ja-la*" has the word *niswah* (woman) in it, so women are also called

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<sup>24</sup> Al-Thobari, *Tafsîr at-Thabarî: Jami' al-Bayân an Ta'wil Ayyîl Alqur'an* (Riyad: Dâr al-Alam li al-Kutûb, 2003), 2.

<sup>25</sup> Al-Qurtubi, *Tafsîr al-Qurtubi* (Riyadh: Dâr al-'Alam al-Kutûb, 2003), 424

<sup>26</sup> Abu Ja'far Muhammad bin Jarir, *Jami' al-Bayân an Ta'wil Âyat al-Qur'an* (Kairo: Dâr Hijr, 2001), 325.

<sup>27</sup> Ibn Katsîr, *Tafsîr ibn Katsîr* (Dâr al-Tayyibah li al-Nasyr wa al-Tauzî', 1999), 252.

<sup>28</sup> Auda, *Al-Mar'ah wa al-Masjid fi Do'i Nuşûş Syâri'ah wa Maqâsiduhâ*, 33.

*rojūlah* by using *ta' ta'nis*.<sup>29</sup> Meanwhile, in the Arabic *Lisānul* Dictionary, the word “*rijāl*” is mentioned that actually, Abu Ziyad Al-Kilābi recounted his experience when he was with his wife by using the editorial *tahāyaja al-rajulāni* (the two people were riding together). The word “*al-rajulāni*” here contains the meaning of *al-rajul* (Abu Ziyad) and *al-rajulah* (his wife). In short, if it is intended for men, then the sentence is *hādza rajulun* (this is a man). If it is intended for women, the sentence is *hādhīhi rajūlah* (a woman). Both use the *ra-jim-lam* word pattern.<sup>30</sup>

Meanwhile, the Qur'an has also prohibited various attempts to keep Muslims away from mosques. Supposedly, Muslims, both men and women, have the same right to come, prosper, gather, and become mosque administrators. Meanwhile, the opinions that say that women should pray at home alone are the opinions of most classical and contemporary scholars. In the authors' opinion, these opinions depart from reading the “selective texts.” The text must be read and interpreted using the thematic induction method (*istiqra' al-ma'nawi*) in *ushūl fiqh*. Although this method was born in the first period of Islam, it has received less attention from Islamic jurists.<sup>31</sup> Legal experts cannot only use a single (partial) argument in making a legal conclusion. Supposedly, the conclusion is drawn by collecting general arguments (*kullī*) by examining the related hadiths and bringing them to more precise conclusions. Therefore, the arguments that explain women's prayers in the mosque are preferred over women's prayers at home are based on the *ushūl fiqh* method.

Second, women's leadership. Auda allows women to become leaders if they meet the terms and conditions that have become stipulations. This ability is based on the *maqāsid al-syarīah* approach that he developed. One of the requirements of a leader is capable of leading; because the benchmark for becoming a leader is the ability to lead itself. Successful women leaders in various worlds can prove this matter. One example is the founder of the oldest female university globally,

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<sup>29</sup> Muhammad ibn Abi Bakr ibn Abdul Qodir Al-Razi, *Muhtar al-Sihā'* (Maktabah Lubnan, 2017), 225.

<sup>30</sup> Almaany Team, “Qāmus wa Mu‘jam al-Ma‘ānī Muta‘addid al-Lughāt wa al-Majālāt - Qāmus ‘Arabī ‘Arabī wa al-Qāmus ‘Arabī Inglīzī Tanā‘i,” Accessed January 20, 2022, <https://www.almaany.com/>.

<sup>31</sup> Muhammad Rofiq, *Problematika Fikih Perempuan* (Yogyakarta: Suara Muhammadiyah, 2014), 38.

Fatimah al-Fihri, founded the First Qarawiyin University in Fez, Morocco.<sup>32</sup> In Islamic history, Aisyah is also a very productive woman by narrating 2,210 hadiths and becoming the fourth most narrator. Thus, the ability of a woman to become a leader can be seen from the point of view of *maqāsid al-syariāh*. Women who have adequate competence are eligible to become communal leaders.<sup>33</sup>

The theme of women's leadership has long been a religious discourse that has attracted the attention of all elements. Leadership is expressed in various terms in the legacy of Islamic thought (*turāst*). Among them are *imāmah*, *khilāfah*, *imārah*, *wilāyah* and so on. Women's leadership has also been part of the issues discussed by scholars in the Islamic tradition since the classical period. The general tendency among classical scholars is to reject women's leadership. Ibn Hajar al-Asqalāni in *Fath al-Bārī*, for example, argues that it is not permissible to assign women as judges based on a hadith from Abi Bakrah.<sup>34</sup> Imam Syaukani even claimed that it is not permissible for women to become leaders, which is the consensus of the scholars. Women do not have the right to be leaders because they are not worthy (*laisa min ahli wilāya*). In *Maratibul Ijma'*, Ibn Hazm explained that no one allowed women's leadership from all Muslim groups.<sup>35</sup>

In contrast to the opinion of most classical scholars, Auda has a different view of women leaders. According to Auda, Islamic law is elastic (*murūnah*). Auda uses *maqāsid al-syari'ah* in answering women's leadership problems. According to her, the main issue regarding women's leadership is the hadith of the Prophet that criticizes women's leadership. Like, "*A people will not be happy if they give up their leadership to women.*" (Narrated by Bukhari No. 4425). In addition, the Qur'an also confirms that men are the leaders for women in Surah an-Nisā verse 34 and women are in the domestic sphere in Surah Al-Ahzab verse 33. These arguments prove that men are entitled to become leaders, not the other way around. Ibn Hajar argued that men should be the leaders, not women.<sup>36</sup>

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<sup>32</sup> "Fatima Al-Fihri," dalam *Wikipedia*, January 1, 2022, [https://en.wikipedia.org/w/index.php?title=Fatima\\_al-Fihri&oldid=1063227997](https://en.wikipedia.org/w/index.php?title=Fatima_al-Fihri&oldid=1063227997).

<sup>33</sup> Auda, *Al-Mar'ah wa al-Masjid fī Do'i Nuṣūṣ Syari'ah wa Maqāṣiduhā*, 102.

<sup>34</sup> Al-Asqalānī Ibn Hajar, *Fath al-Bārī*, 1 ed., vol. 1 (Beirut: Dār al-Ilmiyyah, 1994), 324.

<sup>35</sup> Ibn Hazm, *Marātib Ijma'* (Beirut: Dār ibn Hazm, 1998), 286.

<sup>36</sup> Ibn Hajar al-Asqalānī, *Fath al-Bārī Syah Ṣahīḥ Bukhārī*, 1 ed., vol. 1 (Kairo: Maktabah Salafiyah, 2002), 575.

In answering the above problems, at least it is necessary to understand more about the function and position of women in Islam. Syamsul Anwar said the levelling norms in Islamic law, namely fundamental values, general principles, and concrete legal regulations.<sup>37</sup> Implicitly, there are lots of fundamental Islamic values that are the basic values of the Islamic law of the Qur'an. One of the fundamental values in the Shari'ah is the equality of men and women in obtaining rewards. The provisions for the primary value of equality are contained in Surah an-Nahl verse 97. In addition, the hadith that prohibits women from becoming leaders has *causa legis ('illah)* because the women from Persia referred to in the hadith are indeed not capable of leading a region. Therefore, the prohibition against women being leaders in the hadith applies specifically to specific times and particular reasons.<sup>38</sup>

Third, early marriage and reproductive health. One of the exciting issues to study is the discourse on women and reproductive health. There are assumptions from various groups who argue that Islam does not provide reproductive rights to women and does not mention the rights attached to these reproductive tasks.<sup>39</sup> The Qur'an often talks about women's reproductive health. But what has happened so far are conventional interpretations and tend to highlight patriarchal culture, especially the interpretation of the hadith of the Prophet's early marriage with Siti Aisyah, who was six years old and married at nine.

According to Auda, there is an incorrect narration when interpreting the verses of the Qur'an or hadiths related to women.<sup>40</sup> Auda believes that this hadith needs to be investigated further regarding the early marriage hadith. Hisham bin Urwah narrates hadith about Aisyah's marriage. Hisham relates that the age of the Prophet when he married Aisha was 71 years. According to some hadith experts, Hisham's memory has declined considerably, so the hadiths originating from him need to be criticized. To reject the hadith of the Prophet, who married Aisyah when she was six years old and had sex with her when she was nine, Auda uses the

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<sup>37</sup> Syamsul Anwar, *Studi Hukum Islam Kontemporer* (RM Books, 2007), 37.

<sup>38</sup> Samsul Zakaria, "Kepemimpinan Perempuan dalam Persepektif Hukum Islam (Studi Komparatif antara Pemikiran KH. Husein Muhammad dan Prof. Siti Musdah Mulia)," *Khazanah: Jurnal Mahasiswa* 6, no. 1 (July 1, 2013): 77.

<sup>39</sup> Waliko Waliko, "Islam, Hak dan Kesehatan Reproduksi," *KOMUNIKA: Jurnal Dakwah dan Komunikasi* 7, no. 2 (2013): 1-14.

<sup>40</sup> Jāsir 'Awda, Al-Mar'ah fi al-Masjid Dawruhā wa Makanuha wa Ahkāmuha, December 21, 2012, <https://www.jasserauda.net/portal/>.

concept of *matan* criticism because criticism of the *sanad* is not enough. A hadith can only be valid (*sahīh*) after its eyes are tested first. Auda explained that the criticism was carried out from at least three benchmarks, namely conformity with the general principles of the Qur'an, other Prophetic traditions, and the general context of Islamic history.<sup>41</sup> About the need for historical knowledge to evaluate the validity of hadith, Auda argues that knowledge of history is more critical than the *sanad* itself. The Qur'an and hadith never specifically explain the minimum age for a person to be able to get married. That is, the issue of marriage boundaries is a matter of *ijtihādī*.<sup>42</sup>

In the Indonesian context, early marriage is not in line with Law Number 1 of 1974 concerning Marriage. In terms of health, early marriage is very vulnerable to risks related to reproductive health, such as maternal and infant mortality and low levels of maternal and child health. Women who marry early are not included in the ideal age for pregnancy and childbirth and have a high risk. Girls married at the age of 10-14 years have a five times greater risk of dying during pregnancy or childbirth than women aged 20-25 years, while women aged 15-19 have twice the risk. Today, the context in Indonesia and the health aspect is different from when the Prophet married Aisyah.

In Islam, a person must first be *baligh*<sup>43</sup> to marry someone. When the Prophet decided to marry Aisyah, who was nine years old, Aisyah's age is believed to have entered the category of puberty at that time.<sup>44</sup> According to Auda, Aisyah's age when she was married to the Prophet was 16 or 17 years, not nine years. This age corresponds to historical evidence that Aisyah had converted to Islam with her father (Abu Bakr) when she was five years old and married the Prophet eleven

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<sup>41</sup> "Qaḍāyā al-Mar'ah wa al-Rajul, Markaz Dirāsāt al-Tashrīf al-Islāmī wa al-Akhlāq," diakses 1 January 1, 2022, <https://admin.cilecenter.org/ar/area-research/gender-studies>.

<sup>42</sup> Ramdan Wagianto, "Reformasi Batas Minimal Usia Perkawinan dan Relevansinya dengan Hak-Hak Anak di Indonesia Perspektif Maqashid Asy-Syari'ah," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 51, no. 2 (November 11, 2017): 291.

<sup>43</sup> *Baligh* means 'until. The point is when a person can be said to be an adult. According to most fiqh scholars, a person's age can be said *baligh* to be 15 years old. According to Hanafi scholars, the adult age for men is 18 years and for women is 17 years. Wahbah al-Zuhaili, *Al-Fiqh al-Islāmī wa Adillatuhu* (Beirut: Dār al-Fiqr, t.t.), 423.

<sup>44</sup> Asman Asman, "Dinamika Usia Dewasa dan Relevansinya terhadap Batas Usia Perkawinan di Indonesia: Perspektif Yuridis-Normatif," *JIL: Journal of Islamic Law* 2, no. 1 (February 27, 2021): 124.

years later. Regarding the minimum age for marriage in fiqh, Auda criticized it. The psychological and biological conditions of nine-year-old children today are very different, and human values today are very different from fourteen hundred years ago.<sup>45</sup> Therefore, the traditions related to Aisyah's marriage to the Prophet must be contextualized with the circumstances and culture of the people at that time, and this is *ijtihādī*.<sup>46</sup>

#### **D. Contribution of Jasser Auda's Thoughts to Renewing Islamic Family Law in Indonesia**

Auda is one Muslim scholar who calls for the renewal of Islamic law related to women's discourse. Even though it is only a thought, his ideas should reference the renewal of Islamic law in Indonesia, where society's tendency is still patriarchal. The discourses discoursed by Auda about women can be used as fresh *ijtihād* and can break the opinions of scholars and scholars of the Islamic law that have been established so far.

In the context of Indonesia, there are no explicit rules governing women's leadership and the role of women in mosques. Indonesia has ratified the International Convention on eliminating all forms of discrimination against women in Law Number 7 of 1984. Based on the 1979 United Nations Convention in Mexico, all forms of discrimination against women should be abolished.<sup>47</sup> In practice, there is still a lot of discrimination experienced by women. Ironically, it happened inside the mosque. One example is the harassment of women at the Wajo Mosque, Sengkang, South Sulawesi, and at the Al-Amin Mosque, Jatinegara, East Java. These two cases are only a small number of cases in Indonesia. This matter shows that mosques in Indonesia are not yet friendly to women. How can women empower the mosque if the mosque is not yet friendly to women? Auda

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<sup>45</sup> "Canadian Prof. Aishah Married Prophet Muhammad at 16, Not 9," *About Islam* (blog), October 8, 2016, <https://aboutislam.net/muslim-issues/global/canadian-prof-aishah-married-prophet-muhammad-16/>.

<sup>46</sup> Yusuf Yusuf, "Dinamika Batasan Usia Perkawinan di Indonesia: Kajian Psikologi dan Hukum Islam," *JIL: Journal of Islamic Law* 1, no. 2 (August 2, 2020): 209.

<sup>47</sup> Rifa' Rosyaadah dan Rahayu Rahayu, "Perlindungan Hak Asasi Manusia Perempuan terhadap Kasus Kekerasan dalam Rumah Tangga di Indonesia dalam Perspektif Hukum Internasional," *Jurnal HAM* 12, no. 2 (August 26, 2021): 266.

believes that mosques have the right to be empowered by anyone, including women.<sup>48</sup>

Although the patriarchal classical fiqh norms still influence the practice trend of Indonesian society, the laws and regulations in Indonesia have accommodated gender equality. This matter follows the idea that Auda has put forward. Regarding women's leadership, Auda argues that the ability of women's leadership in the public sphere depends on the competence and skills of the woman. *Maqāsid al-syari'ah* becomes an essential component as a benchmark for women's leadership.<sup>49</sup> *Maqāsid al-syari'ah* aims to create justice and benefit, leading to five principles in Islamic law: protecting religion, soul, mind, lineage, and property. In the Indonesian context, the law on women's leadership is relatively more equal when compared to some countries in the Middle East, which rarely place women in public.

The basic principles of Islamic law are also used as the basis by Auda regarding early marriage. The marriage of the Prophet with Aisyah should not be used as a justification for the formation of a marriage law that has so far been detrimental to women. In fact, according to Auda, Aisyah's age when married by the Prophet was sixteen or seventeen, not nine years as narrated in the hadith. Auda's opinion was based on the argument that Aisyah had embraced Islam with her father (Abu Bakr) at five. Then, she was married to the Prophet Muhammad for the next eleven years. Thus, the claim that Aisyah married the Prophet at six is a fallacy.<sup>50</sup> Auda's thoughts have inspired reforms in the age limit for marriage in Indonesia. Law Number 1 of 1974 concerning Marriage stipulates that the age limit for marriage for men must be nineteen years and for women sixteen years. Later, the government revised this provision through a particular article in Law Number 16 of 2019. This rule equalizes the age limit for marriage between men and women is nineteen years.<sup>51</sup>

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<sup>48</sup> Auda, *Al-Mar'ah wa al-Masjid fī Do'i Nuṣūṣ Syari'ah wa Maqāṣiduhā*, 123.

<sup>49</sup> Moh Romzi, "Kepemimpinan Bupati Perempuan Probolinggo Perspektif Maqasid Al Shariah Jasser Auda" (PhD, Surabaya, UIN Sunan Ampel, 2019), 8.

<sup>50</sup> "Canadian Prof."

<sup>51</sup> Yusuf, "Dinamika Batasan Usia Perkawinan di Indonesia."

Auda's thoughts on women and mosques, women's leadership, and women and reproductive health have not been without criticism. Jonathan Brown, for example, argues that Auda has been trapped in the modernity bias into historical facts in understanding hadith.<sup>52</sup> According to him, Auda did not realize that he was applying an anachronistic way of thinking and imposing modern product value standards to read factual events in the past. Auda, he added, seemed to deny the hadith about Aisyah, whom Muhammad married at the age of six and interfered with at the age of nine. The hadith about Aisyah was narrated by several narrators, not only by Hisham bin Urwah. Brown also explained that Arab society does not reject early marriage. Even the unbelievers have never had a problem with early marriage, and early marriage only became a problem after the modernist era.

Regarding the *maqāsid al-syarī'ah* theory used and developed by Auda, several scholars believe that the theory is still abstract if it must be interconnected with persistent science.<sup>53</sup> Auda's thinking is still not widely understood in practice by academics in various universities because scientific integration requires a catalyst to position two sciences. Abu Ja'far Muhammad bin Jarir claimed that Auda had underestimated the scientific authority built by classical scholars.<sup>54</sup> This claim can not be separated from Auda's criticism of religious knowledge, which is considered established by some scholars, and Auda's use of Western science regarding the disciplines of his masters

## E. Conclusion

Discourse issues against women, such as women and mosques, women's leadership, and women's reproductive health, will always be dynamic for discussion. Currently, Auda is considered a pioneer of modern *maqāsid al-syarī'ah* theory, which has succeeded in integrating religious knowledge with persistent science. Auda is also concerned with legal issues developing in the Islamic world, including women and Islam. Auda's thinking gives women equal rights with men

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<sup>52</sup> Muhamad Rofiq, "Hadis tentang Usia Nikah Aisyah: Kritik Jonathan Brown terhadap Jasser Auda," *IBTimes.ID* (blog), November 15, 2019, <https://ibtimes.id/hadis-tentang-usia-nikah-aisyah-kritik-jonathan-brown-terhadap-kONSEP-jasser-auda/>.

<sup>53</sup> Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem dalam Hukum Islam)," *Jurnal Al Himayah* 2, no. 1 (March 1, 2018): 107.

<sup>54</sup> Jarir, *Jami' al-Bayān an Ta'wil Āyat al-Qur'an*, 352.

and gender equality in various fields, including mosque empowerment rights leadership in reproductive health. Auda's opinion about women is progressive and in line with the opinions of other contemporary scholars. In the authors' opinion, Auda's opinion can be used as a reasonable discourse for renewing Islamic family law in Indonesia.

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