

MAQÂSHID AL-SHARÎ'AH IN THE STUDY OF HADÎTH AND ITS IMPLICATION FOR THE RENEWAL OF ISLAMIC LAW (STUDY ON JASSER AUDA'S THOUGHT)

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Abstract

Jasser Auda's effort in researching, utilizing and developing re-assessment of Maqâshid looks different from the study of previous Maqâshid, because the starting point of his study initiated and triggered by the annual report of HDI of the Islamic world which is still relatively low. This Reality is what encourages Auda to undertake mappings, and critical studies of existing theory of Maqâshid through the mobilization and integration of the study using the scientific approach and social science as well as contemporary humanitarian issues related to human rights, gender, harmonious relations with non-Muslims, etc. The Writer through this limited research paper intends to explore further one side of Auda's thought, mainly related to the concept of maqâshid in the study of hadîth. The central questions to be answered in this study are: 1) How is the conception of Auda's thought of Maqâshid in an effort to contextualize narration of the Prophetic traditions as the primary source of Islamic law? 2) How is the methodological implication of the contextualization of Prophetic narrations based on Auda's maqâshid in the contemporary of Islamic legal reform? By using descriptive-analytic and critical approach, this article is going to answer these questions. The results of this study concluded that: 1) In order to gain a closer understanding to the purpose of the hadith, one way that can be pursued is through the contextualization of the Prophetic narrations (hadîth), especially when the scripture can't be understood textually. The conception of Auda's maqâshid could be a solution to the problem. First, Auda, in this terms, offers a way of reading the scripture based on the intent in the application of Islamic law and how its implications when maqâshid be a primary consideration in reading and applying the law. In this aspect, a contemporary reading of maqâshid gives more contribution, including maqâshid for thematic interpretation of the hadîth. The holistic approach in the thematic interpretation of hadîth based on Maqâshid approach has the potential to open opportunities up for the disclosure of the principles and moral values embodied by hadîth. For this, Auda added one more requirement for the validity of hadîth that has been applied for this. The requirement is 'a systematic coherence' from the conditions of authenticating the content (matan) of these narrations with the principles and values of Islam. Thus, a maqâshid-based approach could fill a crucial gap in the narration of hadîth, in general, which is the gap of missing context. Second, maqâshid combined with multi-dimensionality, according to Auda, can provide a rational and constructive solution to dilemmas that are considered to be contradictory; (2) The methodological implications of contextualization of the prophetic tradition based on maqâshid in the renewal of contemporary Islamic legal are the occurrence of what is called the "Contemporarization concept of maqâshid" through the transformation of paradigm and theory of maqâshid from the traditional theory of maqâshid to the contemporary theory of maqâshid which more takes account on development and rights.

Keywords: Maqâshid, Hadîth, Islamic Law, Narration, Purpose, Anthropocentric.

1 INTRODUCTION

The hermeneutic method, which emphasizes awareness of text, context, and contextualization, has actually become part of the consciousness of classical interpreters. The study of the texts for example, has become the basic instrument of the interpreters and the jurist in interpreting Qur'ân and Prophetic traditions (hadîth).. Scholars of fundamental (*ushûlîs*) for example, has been discussed in detail about the linguistic theories (*al-qawâ'id al-lughawiyyah*) such as a term of *haqîqah-majâz* (allegorical), *mantûq-mafhûm* (explicated-implied), *'âm-khâs*, *muthlaq-muqayyad*, *amr-nahy* and so on. Similarly, the awareness of context (*asbâb al-nuzûl / asbâb al-wurûd*) has also become an integral part of the study of *ulûm al-Qur'ân* and al-hadîth, such as *makkî-madanî*, *nâsikh-manshûkh* (abrogating- abrogated), *asbâb al-nuzûl*, *asbâb al-wurûd* and so on.

Moreover, this aspect of "contextualization" is also inseparable from the attention of some scholars of the Qur'ân as well as the hadîth of the classical period. Studies on the concept of *mashlahah* (public interest) or *Maqâshid al-Sharî'ah* can be included in this sphere. The books of methodology of Islamic law (*ushûl al-fiqh*) by classical Muslim scholars have actually provided a significant portion of this discourse. Nevertheless, in the tradition of conventional Islamic studies, the tradition of making the text "the object of material" less well known, this is again because of the assumption of mainstream Islamic studies that have been running That the sciences of the Qur'an are regarded as a mature and raw science (*nadhaja wa ikhtaraqa*) (Abû Zayd, 1994, p. 10)

The study of the theoretical history of *Maqâshid* is based on several reasons. *First*, one implication of the theological view of Muslims that the Qur'ân is always relevant for every time and place is the development of a methodological interpretation significantly along with the acceleration of the development of socio-cultural conditions and human civilization. It is reasonable if Syahrûr said that the Qur'ân needs to be interpreted in accordance with the demands of the contemporary era. *Second*, that Islam is faced with permanent problems, namely the limited number of texts (al-Qur'ân and al-Hadîth), while the various events and dynamics of society are constantly rolling out and creating more complicated and complex problems (al-Juwaynî, 1997, pp. 3-7). Strictly speaking, Muslims are now facing the challenges of highly complex contemporary dynamics. Certainly very sad when we look at the reality of Muslims today. Because, when called Islam then the imagined is backwardness, especially when it comes to science and technology. It is almost inconceivable to hear or read the news that the latest discoveries in the field of science and technology on an international scale come from the Islamic world (Bernard Lewis, 2002, p. 151). Unfortunately, the response that often comes to the surface is apologetic defensive and counter-productive actions. As a result, the majority of Muslims are increasingly confined in worrisome situations and conditions.

Third, the study of *maqâshid's* theorizing and diversifying generally only focuses on the book of al-Muwâfaqât of al-Syâtibî written in the eighth century, whereas the actualization of *maqâshid* has in fact experienced ups and downs in the period of several centuries even up to the present era (Wael B. Hallaq, 1997, p. 231). For some of these considerations, the conception of Jasser Auda, a contemporary Muslim thinker from Egypt, about *Maqâshid al-Sharî'ah*, particularly *al-maqâshid* or the 'intents' of the Prophet, deserves to be considered and studied more deeply.

The Writer through this limited research paper intends to explore further one aspect or side of Auda's thought, mainly related to the concept of *Maqâshid* in the study of the hadîth texts. The central question to be answered in this study is: 1) How is the conception of Jasser Auda's thought of *Maqâshid* in an effort to contextualize the narrative of prophetic traditions as the primary source of Islamic law? 2) How is the methodological implication of the Prophetic narrative contextualization based on Jasser Auda's *Maqâshid* in the contemporary of Islamic legal reform? By using descriptive-analytic and critical approach, this article is going to answer these questions.

2 READING PURPOSEFULNESS: A CONTEXTUAL READING OF PROPHETIC TRADITION

Genealogically the design of *Maqâshid* conception is not a new finding. *Maqâshid al-Sharî'ah* is not the result of the achievements of contemporary scholars, because in the classical fundamentals of Islamic law (*ushûl al-fiqh*), the term of *maqâshid* was found in books written by classical scholars of fundamentals (*ushûlîs*), but it is still summarized and scattered in the discussion of analogy (*qiyâs*). As in the time of the Companions, according to Salam Madkur in Duski Ibrahim, that the ijtihâd of the Companions are three forms, among them: 1) interpreting the texts, 2) using the method of analogy, and 3) using 'unrestricted interest' (*al-masâlih al-mursalah*) and juridical preference (*istihsân*) (Duski Ibrahim, 2008, p. 13).

The history of the ideas that attempt to read the scripture, both Qur'ân and hadîth, by drawing conclusions of the purposes, or intents behind the text (*al-qirâ'ah al-maqâshidiyyah*), has actually begun since the ijtiḥad era of the Companions of the Prophet. One well-known and popular example, which has been narrated through many narrators, is the incident of afternoon prayer at Banî Quraydhah (Auda, 2008, p. 11)

Other historical events, which show a more serious consequence of taking a 'purpose-oriented' approach to the Prophetic instructions are those involving the activities of the ijtiḥad of the Companions of Umar bin al-Khattab in various religious cases. The incidents referred to are among others, *first*, Umar's rejection to distribute the newly-'conquered' land of Egypt and Iraq among the warring soldiers as some sort of 'spoils of war'. In this case, it seems clear that Umar, the second caliph, along with his Companions who supported his opinion, had understood the specifics of the verses of 'spoils of war' in the broader context of the Islamic legal purpose of the general division of property. The intention is, to borrow contemporary expressions, to reduce the 'class gap' (Auda, 2008, pp. 11-12).

Second, it is an incident which shows the thinking and application of Islamic law based on *maqâshid* by Umar, namely a moratorium on the (Islamic) punishment for theft during the famine of Madinah. He thought that applying of hand-cut punishment prescribed in the scripture, while people are in need of basic supplies for their survival, goes against the universal principle of justice, which he considered more fundamental to follow (Biltaji, 2002, P. 190). *Third*, it is an incident when Umar decided to put the horses into the types of wealth included in the obligatory charity of zakah (*al-mâl al-zakâwî*), despite the Prophet's clear instruction to exclude them. Umar's Rational argument was that horses at his time were becoming significantly more valuable than camels, which the Prophet included in zakah at his time. In other words, the Caliph Umar understood and perceived the Prophetic intent or purpose of zakah in terms of form of social assistance that is paid by the wealthy for the sake of the poor, regardless of the exact types of wealth that were mentioned in the prophetic tradition and understood via its literal implication (al-Qardhâwî, 1985, p. 229). Some of these case examples are presented to explain how the early conceptions of how the text was read based on its intent and purpose (*al-qirâ'ah al-maqâshidiyyah*) in the application of Islamic law and how its implications when *al-maqâshid* are taken into the primary consideration in reading and simultaneously applying the law.

According to Auda, after the Companions' era, the theory and classifications of *maqâshid* began to develop. However, *maqâshid*, as Auda acknowledged, were not clearly developed until the time of the later *usûlis*; between the fifth to eighth Islamic century. For the early conceptions of *al-maqâshid* between the third and fifth Islamic centuries, we can inventory names such as al-Tirmidzî al-Hakîm (d.296 AH/ 908 CE) with his book's title *al-Shalâ H wa Maqâshiduhâ* (Prayers and their Purposes); Abû Zayd al-Balkhî (d.322AH/ 933 CE) with his work *al-Ibânah 'an' Ilal al-Diyânah* (Revealing Purposes in Religious Practices); Al-Qaffâl al-Kabîr Syâsyî (d. 365 AH/ 975 CE) with his work's title *Mahâsin al-Sharâ'i* (The beauties of the Laws); Ibn Bâwaih al-Qummî (d 381 AH / 991 CE) with his book *'Ilal al-Sharâ'i* (The Reasons behind the Rulings of Shari'ah); And al-'Âmirî al-Faylasûf (d.381 AH/ 991 CE) with his book *al-'Ilâm bi-Manâqib al-Islâm* (Awareness of the Traits of Islam). From this description we can conclude that classifications of *maqâshid* according to 'level of necessity' were not developed until the fifth Islamic century. Then, the whole theory reached its more mature stage in the eighth Islamic century (Auda, 2008, pp. 14-17).

In contrast to the earliest conceptions of *maqâshid* between the third and fifth centuries, with literal and nominal method of reading and incapable of coping with the complexities of life and the evolving of civilization, the theory of 'unrestricted interest' (*al-mashlahah al-mursalah*), after that century, has been developed as a method which includes what is not mentioned in the scripture. This theory filled a gap in the literal methodologies and, later, gave birth to the theory of *maqâshid* in the discipline and practice of Islamic law. The most influential religious jurists made the most significant contributions to the *maqâshid* theory between the fifth and eighth centuries can be mentioned such as Abû al-Ma'âlî al-Juwaynî (d. 478 AH/1085 CE) with his book *Al-Burhân fî Ushûl al-Fiqh* (The Proof in the Fundamentals of Law) and *Giyâts al-Umam* (The Salvage of the Nation); Abû Hâmid al-Ghazâlî (d. 505 AH/1111 CE) with his work *al-Mustashfâ* (The Purified Source); 'Izz al-Dîn bin 'Abd al-Salâm (d. 660 AH/ 1209 CE) with *Maqâshid al-Shalâh* (Purposes of Prayers), *Maqâshid al-sawm* (Purposes of Fasting), and *Qawâ'id al-Ahkâm fî Mashâlih al-Anâm* (Basic Rules Concerning People's Interests); Syihâb al-Dîn al-Qarâfî (d. 684 AH/ 1285 CE) with his *Al-Furûq* (The Differences); Ibn al-Qayyim (d. 784 AH/ 1347 CE) with his *'Ilâm al-Muwaqqi'în*; and Abû Ishâq al-Shâthibî (d. 780 AH/1388 CE) with his *Al-Muwâfaqât fî Ushûl al-Sharî'ah* (Congruencies in the Fundamentals of the Revealed Law) (Auda, 2008, pp. 17-22).

Maqâshid, in Jasser Auda's view, is one of the most important intellectual and methodological means today for Islamic reform and renewal. In contemporary terms, Auda attempts to introduce the study of *maqâshid* as

an attempt to achieve 'human development' and to realize 'human rights' so that the achievement of *maqâshid* is easier to measure and evaluate empirically through contemporary scientific standards. Therefore, Auda in this context, introduces the concept of *maqâshid* as the principle of launching new ideas in Islamic law; especially the important notion of 'the difference between means and purpose'. *Maqâshid*, therefore, is illustrated by Auda as an important strategy in reinterpreting the Qur'an and the Prophetic tradition (Auda, 2008, pp. 22-23).

Another important contribution which can be contributed by the contemporary reading of *maqâshid* for the realization of the renewal of Islamic thought is in the realm of *ijtihad*, or the renewal of the theory of Islamic law. In this aspect, the contemporary reading of *maqâshid* provides many contributions, including *maqâshid* for the thematic interpretation of the Qur'ân and hadîth. This is what the author means to present 'the contemporary reading of the purposes' (*al-qirâ'ah al-maqâshidiyyah al-mu'âshirah*) as the model of 'interpretation of the purpose of Qur'ân' (*tafsîr al-maqâshidî*) and 'interpretation of the Prophetic intent' (*hadîth al-maqâshidî*); An alternative model in the study of contemporary interpretations, both Qur'ân and hadîth.

3 MAQĀSHID AS THE BASIS OF CONTEMPORARY IJTIHAD

As we have known that '*maqâshid al-sharî'ah*' are principles that provide answer to the some kind of question about the Islamic law such as 'Why is giving charity one of Islam's principle pillar?' What are the physical and spiritual benefits of fasting the month of Ramadhan? Why is drinking any amount of alcohol a major sin in Islam? What is the link between today's nations of human rights and Islamic law? How can the Islamic law contribute to development and civility? And so on.

Maqâshid include the wisdom behind rulings, such as 'enhancing social welfare,' which is one of the wisdom behind charity, and 'developing consciousness of God,' which is one of the wisdom behind fasting. *Maqâshid* are also good ends that the laws aim to achieve by blocking, or opening, certain means. Thus, the *Maqâshid* of 'preserving people's mind and soul's explain the total and strict Islamic ban on alcohol and intoxicants. *Maqâshid* are also the group of divine intents and moral concept upon which the Islamic law is based, such as, justice, human dignity, free will, magnanimity, and social cooperation. Thus, they represent the link between the Islamic law and today's nations of human rights, development, and civility. In this context, we can conclude that it could play a fundamental role in the much-needed 'contemporaryization' or 'contextualization' of the Islamic law. According to Auda, among the most important contributions donated by al-Maqâshid's view for the realization of the renewal of Islamic thought, is in the realm of *ijtihad* or the renewal of Islamic legal theory.

3.1 Differentiating between ta'ârudh and tanâqudh

In the treasures of the Islamic juridical theory, there are two different terms, namely the term of *ta'ârudh/ikhtilâf* (opposition or disagreement) and the term of *tanâqudh / ta'ânud* (contradictions) of a number of propositions (Qur'ânic verses or Prophetic narration). To what extent are the possible contradictions of the two terms of the various propositions? According to the ulama, in essence, the first term, *ta'ârud*, is considered to be possible. While the second term, *tanâqud*, is considered impossible between the valid arguments, unless the validity is not true. Therefore, conflict or disagreement between evidences is defined as an 'apparent contradiction between evidences in the mind of the scholar' (*ta'ârud fî dhihn al-mujtahid*), Precisely wrong perception of fiqh scholars (Auda, 2008, p. 218).

This kind of understanding illustrates that the two apparently disputed evidences (*ta'ârudh/ikhtilâf*), should not be a contradiction (*tanâqudh*) that can not be resolved. This can happen because it is caused by a lack of perception of a jurist so as to make him feel that contradiction, where he, for example, lacks or does not even get complete information about the Prophetic narration that is considered to be contradictory. Another possibility is that the jurist has no knowledge which includes the aspects of the narrator's context in terms of place (*al-makân*), time (*al-tawqîf*), situations and conditions (*al-dharûf*) ('Azîz, 1997, p. 77).

Meanwhile, the term *tanâqud* is defined as 'a clear logical conciliation of truth and falsehood shares in the same statement' (*taqâsum al-shidq wa al-kadzib*). The illustration of the possibility of contradictions is when there are two texts, or more, which are equally authentic, in which one leads to a certain law (such as forbid something), while the other leads to the opposite law (e.g. justifying the existence of something). The contradiction of this model is unlikely to occur in the shariah prologues are truly revealed, both the Qur'ân or hadîth (Auda, 2008, p. 218). The possibility of a contradiction if it feels existed, it is true only in the domain of the process of the history of hadîth caused by the negligence of the narrators, thus raises the perception of two contradictory evidences.

A case example explaining the contradiction of a narrator's negligence is a hadīth narrated by Imām Ahmad that two men met 'Āisyah ra, saying that: "Abū Hurairah narrated, according to Bukhārī, that the Prophet has said: 'Indeed such a bad omens are in women, animals, and houses' (*innamā al-thiyarah fi al-mar'ati wa al-dawāb wa al-dār*). However, (also according to Bukhārī) 'Āisyah replied: "For the sake of bringing down the Qur'ān to Abī Qāsim, it is not like that of the Prophet, but the Prophet had said:" The people during the Days of Ignorance (*jāhiliyyah*) used to say that bad omens are in women, animals, and houses" (Auda, 2008, p. 219).

This kind of contradiction, which actually includes two contradictory narrations in its legal significance, rarely occurs and its effect on fiqh is very limited. The majority of *ta'ārud* cases are disputes between Prophetic narrations because of, apparently, a missing context, not because of the logically contradicting accounts of the same episode. In contrast to the other term, namely *ta'arudh*. Most of these *ta'arudh* cases actually have great influence in fiqh, hereinafter known as "outward contradiction"; A contradiction outwardly, seen for our understanding as a contradiction, but in fact he is not a contradiction on his side.

3.2 Towards Multi-Dimensionality: A Resolving 'Opposition'

As is known, that the scholars have tried to make a method formula to resolve the contradictions that exist between the evidences. The method is the possibilities of harmonization between the evidences are arranged based on its hierarchy as follows:

- 1) Conciliation (*al-jam'u*): Attempts to consolidate contradictory narrations in the unity of thinking because of differences in the context of each narration. This method is based on a fundamental rule that states that "applying the script is better than ignoring it (*i'māl al-nash awlā min ihmālihā*).
- 2) Abrogation (*al-naskh*): This method suggests that the later evidence, chronologically speaking, should 'abrogate' (juridically annul) the former evidence. This means that when verses disagree, the verse that is (narrated to be) revealed last is considered to be an abrogating evidence (*al-nāsikh*) and others to be abrogated (*al-mansūkh*).
- 3) Elimination (*al-tarjīh*), weigh the effort between evidence. This method suggests endorsing the narration that is "most authentic" and dropping or eliminating other narrations. The eliminating hadīth is called *al-riwāyah al-rājihah*, which literally means the narration that is 'heavier in the scale'.
- 4) Waiting (*al-tawaqquf*), reluctance to give opinions. This method suggests that the scholar is not to make any decision until one of the above three methods is proved.
- 5) Cancellation (*al-tasāquth*). This method suggests the scholar ignores both two narrations because of the uncertainty in both.
- 6) Choice (*al-takhyīr*). This method allows the scholar to choose whatever is judged to be suitable for the situation at hand (Auda, 2008, pp. 219-221).

Hierarchical sorting of solving methods as mentioned is not actually agreed upon by scholars. This is also recognized by Auda. Based on Auda's inductive investigation of various cases of external contradiction, that *al-tawaqquf*, *al-tasāqut*, and *al-takhyīr* methods are rarely performed. While the theoretical method is preceded by the most scholars is the conciliation method (*al-jam'u*). The method of abrogation is a method performed by followers of the Hanafi school. The results of Auda's further inductive investigations indicates that among hadīth scholars sometimes use the *al-tarjīh* method. While among the tendency of Islamic jurists is more towards the use of the *al-naskh* method. So, it can be said that the most widely used method is the abrogation and elimination.

According to Auda, many scripts are abrogated, without any compelling reason, other than the failure of the jurists to understand how they can harmonize the narrations in a unified perceptual framework. Therefore, *al-naskh* and *al-tarjīh* reflect the general feature of binary thinking in fundamental methodology (*ushūl al-fiqh*). It is essential that the method of conciliation make use of the concept of multi-dimensionality in overcoming the above deficiencies (Auda, 2008, p. 221). It is recalled that one of the practical consequences of the cancellation of a number of narrations both the Qur'ān and hadīth in the name of abrogation and elimination is the amount of 'rigidity' and inflexibility in the Islamic law (Majeed, 1997, p. 397).

Furthermore, in order to make *al-maqāshid* as the basis of contemporary ijtihad, precisely *al-maqāshid* combined with multi-dimensionality, according to Auda, could offer a rational and constructive solution for the dilemmas of opposing evidences.

Consider, for example, an attribute if we restrict our view to one dimension, such as war and peace, order and forbiddance, standing and sitting, men and women, and so on, we will no way to reconcile the evidences, it will most likely cause *ta'ārud adillah*. However, if we expand the one-dimensional space into

two dimensions, the second of which is a *maqâshid* to which both evidences contribute, then we will be able to 'resole' the opposition and interpret the evidences in a unified context. The following are some typical examples of applications from a combination of multi-dimensional methods and *maqâsid* that represent some of the views, both traditionalist and modernist today (Auda, 2008, pp. 224-226):

1) Purpose of magnanimity in the ritual of worship

In the case of different ways of performing 'acts of worship' (*kaifiyah al-ibâdât*) for example, there is a large number of opposing narrations, all attributed to the Prophet with a valid narration. In the nuances of interpretation by the method of abrogation (*al-naskh*), these different narrations often lead to heated debates and prolonged conflict within Muslim communities. This would have different implications,, Auda said, if the opposing narrations are resolved through the perspective of *al-maqâshid*. However, understanding these narrations within a *maqâshid* of magnanimity (*taisîr*) entails that the Prophet did carry out these rituals in various ways, suggesting flexibility in such matters. With this purpose of magnanimity in turn, the Muslims who in fact are human communities with different abilities and qualities, can perform their worship according to their circumstances. Examples of these acts of worship are the different ways of standing and moving during prayers, reciting 'God is Great' (*takbîr*) during 'Id prayers, details of pilgrimage, and so on.

2) Purpose of the Universality of Islam and Local Wisdom

Related to this case, there is a number of Prophetic narrations related to customs (*al-'urf*), which were also considered as 'in opposition'. The external contradictions between these narrations relating to customs (*al-'urf*) could all be interpreted through the purpose (*maqâshid*) of 'universality of the Islamic law' as Ibn 'Ashûr had suggested. In other words, that these narrations should be understood as the Prophet's efforts in showing his concern for the multicultural society. As an example of the contradictions between the two Prophetic narrations, both attributed to 'Âisyah ra; one of which forbids 'any women' from marriage without the consent of her guardian, while the other allows previously married women to make their own independent choices on marriage. It is also narrated that 'Aisha ra. did not apply the conditions of marriage guardian in some cases. Hanafis explained that, 'the Arabic custom goes that a woman who marries without her guardian's consent is shameless. For Auda, understanding these two narrations in the context of considering local wisdoms (*al-'urf*) based on the Islamic law's universality, is not only able to resolve the contradictions and provide flexibility in carrying out marriage ceremonies according to their own customs in different places and times. This *maqâshid* approach can help Muslims, anywhere, in coexistence, tolerance and mutual understanding of cultural plurality, by recognizing the legitimate marriage norms prevailing in their communities.

3) Purpose of gradual application of rulings

There is a number of Prophetic narrations were categorized as under cases of abrogation, even though they were, according to some jurists, cases of the principle of gradualism (*al-tadrîj*) in the application of the law. According to Auda, the purpose behind the gradual application of rulings on large scale is, to "soften the path of change brought by the law to society's deep-rooted habits. Thus, the external opposing narrations regarding the prohibition of liquor and usury, and the gradual execution of prayer and fasting, should also be understood in terms of the Prophetic intent of gradual application and implementation of change management in an effort to high ideals in any given society.

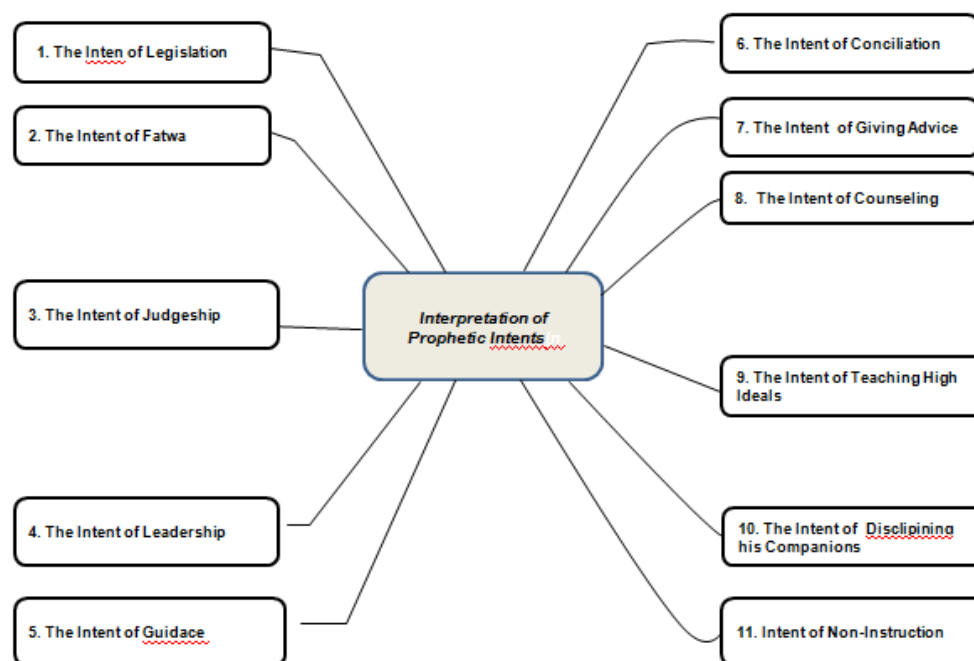
3.3 Maqâshid for Thematic Interpretation of the Prophetic Tradition

In the terms of Islamic reform, the thematic school of interpretation, as Auda expressed, attempts to pursue several steps towards the interpretation of the script (*nash*) which is more takes into account the *Maqâshid*. Reading purposefulness (*al-qirâ'ah al-maqâshidiyyah*) presented as a model of interpretation of the 'intent' has an assumption that the method of reading Prophetic narrations in relation to the themes, principles and supreme values, is based on the perception that 'the Prophetic narration is a unified whole' (Al-Turâbî, 2004, p. 20). Moreover, still within the term of thematic interpretation, there are attempts to interpret the Prophetic traditions based on the holistic approach of *Maqâshid*, taking into consideration the life of the Prophet as a whole which is divided into themes containing principles and moral values. Thus, the validity of the hadîth can be questioned, for example, if its content is incompatible with real principles and moral values. Similarly, if the jurists have not succeeded in breaking an outward contradiction between two linguistic Prophetic traditions, then one's validity will be based on 'the extent to which the narration fulfills and conforms to the principles of the Qur'ân (Makdisi, 2003 & Dutton, 1999, p.1).

In the context of the interpretation of *Maqâshid* in the renewal of Islamic thought, Auda added one more requirement for the validity of hadîth that has been applied for this. The requirement is 'a systematic coherence' from the conditions of authenticating the content (*matan*) of these narrations with the principles and values of Islam. Thus, a *maqâshid*-based approach could fill a crucial gap in the narration of hadîth, in general, which is the gap of missing context. Most of the Prophetic narrations, in all schools, are composed of one or two sentences or answer of one or two questions, without elaborating on the historical, political, social, economic, or environmental context of the narration (Auda, 2008, pp. 35-36). However, usually, the context and its impact on how the narration is understood and applied are left to the speculation of the narrator or jurist. A 'holistic picture' helps in overcoming this lack of information through understanding the general purposes of the law. In other words, *maqâshid*, as a scientific effort that examines the purposes of the Prophet, can be utilized in contextualizing narration of hadîth.

In addition to the above, Auda stated that *al-maqâsid* or the 'intents' of the Prophet, could also be utilized in the contextualizing narrations. In relation to this, al-Qarâfî differentiated between the Prophet's actions 'as a conveyer of the divine message, a judge, and a leader,' and suggested that each of these intents has a different impact in the law. Meanwhile, Ibn Ashûr added other types of 'Prophetic intents,' which is a significant expansion of al-Qarâfî's thought, and demonstrated the prophetic intents that he proposed via a number of Prophetic narrations (Ashûr, 1999). Sequentially, the Ibn Ashûr's further interpretations of the Prophetic intents are the intent of judgship, the intent of guidance (which is more general than that of legislation), the intent of conciliation, the intent of giving advice, the intent of counseling, the intent of teaching high ideals, and the intent of non-instruction (Auda, 2008, pp. 36-40). If illustrated, then Ibn Ashûr's reinterpretations of to the Prophetic traditions will appear as follows:

Chart. Ibn Ashûr's Interpretation of the Prophetic Intents



Those are Ibn Ashûr's reinterpretations of to the Prophetic traditions, according to *maqâshid* approach. For Auda, such an endeavor could raise the level of 'purposefulness' in traditional methods and allow much flexibility in interpreting and applying the scriptures.

4 TOWARDS AN ANTHROPOCENTRIC MAQĀSHID

As it is known that the paradigm of purposes (*maqâshid*) has undergone many changes in terms of classification, depending on the dimensions viewed by a jurist or scholar, such as: (1) level of necessity, which is the traditional classification; (2) scope of the rulings aiming to achieve purposes; (3) scope of people included in purposes; and (4) level of universality of the purposes (Auda, 2008, p. 4).

The traditional classifications of *maqâshid* include three levels of necessity, which are necessities (*al-dharûriyyât*), needs (*al-hajjiyyât*), and luxuries (*al-tahsiniyyât*). Then the scholars divided the level of

necessity into five popular of necessities, namely: preservation of religion (*hifdz al-dîn*), preservation of soul (*hifdz al-nafs*), preservation of mind (*hifdz al-'aql*), preservation of offspring (*hifdz al-nasl*), and the preservation of wealth (*hifdz al-mâl*) (Al-Ghazâlî, 1413 H, p. 172).

However, the paradigm of *maqâshid* developed over time, especially in the twentieth century. Some Muslim scholars, the initiator of contemporary theory of *maqâshid*, have criticized the above traditional classifications of necessities for a number of reasons, including the following: (1) the scope of traditional classifications of *maqâshid* are only concerned with individuals rather than families, societies, and human in general; (2) the scope of traditional *maqâshid* is the entire Islamic law. However, they fall short to include specific purposes for single scripture/rulings or groups of scripture that cover certain topics or 'chapters' of Islamic law; (3) the traditional *maqâshid* classification did not include the most universal and basic values, such as justice and freedom, in its basic theory of necessities; (4) traditional *maqâshid* were deduced from the tradition and Islamic legal heritage itself, rather than referring to the original Islamic scripts (Qur'ân and hadîth) for basis of *maqâshid* (Auda, 2008, pp. 6-7).

In order to correct the deficiencies inherent in the traditional theory *maqâshid*, Auda said, that the contemporary scholars have induced the concepts and classifications of *maqâshid* from a new perspective. *First*, based on the considerations of the legal coverage covered by *maqâshid*, contemporary scholars divided *maqâshid* into three levels: (1) general *maqâshid*: these *maqâshid* are observed throughout the entire body of the Islamic law, such as the necessities and needs mentioned above and newly proposed *maqâshid*, such as 'justice', 'universality', and 'facilitation'; (2) specific *maqâshid*: these *maqâshid* are considered in one particular chapter of Islamic law, such as the welfare of children in the chapters of the family law, preventing criminals in the chapters of the criminal law (*jinâyât*), and preventing monopoly in the chapters of transactions (*mu'âmalât*); and (3) partial *maqâshid*: these *maqâshid* are the intents behind specific scripture or rulings, such as the intent of discovering the truth in seeking a certain number of witnesses in certain court cases, the intent of feeding the poor in banning Muslims from storing meat during festival days (*'ied*), and so on (Jughaim, 2002, pp. 26-35 & Al-Ghazâlî, pp. 172).

Second, in order to correct the deficiencies in classical *maqâshid* classification that tend to be individualistic-oriented, contemporary scholars have expanded the concept of *maqâshid* covering a wider scope of people-the community, nation, or humanity, in general. Ibn 'Âshûr, for example, has briefly placed *maqâshid* with respect to the 'nation' (*ummah*) at a higher level than *maqâshid* related to individuals. Rashîd Ridhâ, for a second example, included 'reform' and 'women's rights' in his theory of *maqâshid*. Yūsūf al-Qardlâwî, for a third example, included 'human dignity' and 'human rights' in his paradigm of *maqâshid*. These extensions of scope of *maqâshid* have provided an opportunity for contemporary jurists to respond to global challenges and issues and help them to realize *maqâshid* into practical plans for renewal and reform (Auda, 2008, pp. 7-8). Thus, according to Auda, that these contemporary theorists have indeed laid the fundamental basis of *maqâshid* and its system of values associated with the centre of the debates on citizenship, national integration and civil rights for the Muslim minorities in non-Muslim-majority societies.

Third, in order to revise traditional *maqâshid*, contemporary jurists have succeeded in introducing a new universal *maqâshid* were directly deduced from original scripture, rather than from the body of jurisprudence literature in the schools of Islamic law. This method, significantly, allowed the conception of *maqâshid* to overcome the historicity of fiqh edicts. Moreover, the direct deductive method of the source of the Islamic teachings provides an opportunity for the representation of scripture's higher values and principles (Auda, 2008, p. 8).

Furthermore, Auda suggest 'human development' to be a prime expression of *mashlahah* (public interest) in our time, which *maqâshid al-sharî'ah* as should aim to realize through the Islamic law. Thus, the realization of this *maqâshid* could be empirically measured via UN 'human development targets,' according to current scientific standards. Similar to the area of human rights, the area of human development requires more research from a *maqâshid* perspective. Nevertheless, the evolution of 'purposes of Islamic law' into human development gives 'human development targets' a first base in the Islamic world. Therefore, in an effort to bridge the gap between the traditional Islamic law and the international law agreed by most UN members, then Jasser Auda - after decomposing traditional Islamic legal theory by comparing it with the theory of modern Islamic law and Postmodern era and using a detailed framework of systems analysis proposed the need for a paradigm shift of the traditional *maqâshid* Theory to a new theory of *maqâshid*. A shift from the traditional theory of *maqâshid* composed by al-Shâtibî to a contemporary theory of *maqâshid*, taking into account the development of world governance thinkers in the terms of nation-states (Auda, 2008, pp. 21-26). Here is his suggestion in a following table:

Table of Shift Paradigm Theory of the Traditional *Maqâshid* towards the Contemporary *Maqâshid*

| No | Maqâshid Klasik | Maqâshid Klasik |
|----|--|--|
| 1. | Preservation of Offspring (<i>hifdz al-nasl</i>) | Family-oriented theories; more concern for family institutions. |
| 2. | Preservatio of Mind (<i>hifdz al-'aql</i>), | Multiplying thinking and propagation of scientific research; travelling to seek knowledge; suppressing the herd mentality, and avoiding brain drain. |
| 3. | Preservation of Honor and Preservation of Soul (<i>hifdz 'irdh wa al-nafs</i>) | Preservation of human dignity; safeguarding and protecting human rights. |
| 4. | Preservation of Religion (<i>hifdz al-dîn</i>), | Maintaining, protecting and respecting the freedom of faiths |
| 5. | Preservation of Wealth (<i>hifdz al-mâl</i>) | Prioritizing social assistance; paying more attention to economic development; promoting human welfare; and eliminating the gap between the poor and the have. |

5 CONSIDERING AUDA'S REASON OF MAQÂSHID

As Auda explainen, that contemporary jurists developed the traditional *maqâshid* terminology in contemporary's language, despite some jurists rejection of the idea of 'contemporaryization' of *maqâshid* terminology. The shifting paradigm from the traditional conception of *maqâshid* to the contemporary conception of *maqâshid* lies at the second press point. The traditional *maqâshid* more emphasizes on protection and preservation while the contemporary *maqâshid* more takes account on development and rights.

In an effort to develop the concept of *maqâshid* in this era, Jasser Auda proposed 'human development' to be a prime expression of his obsession and the main target of today's public interest; (*mashlahah*) in our time, which *maqâshid al-sharî'ah* should aim to realize through the Islamic law. Furthermore, the realization of this *maqâshid* could be seen empirically its development, tested, controlled, and validated through human development index and human development targets which proclaimed and designed by UN.

If so far, the classical scholars tend to base *mashlahah* (public interest) on the 'Will of God' (*maqshûd al-Shâri '*) obtained through the text of the Qur'ân and hadîth, so the product is a *mashlahah* that is not grounded and less realistic. Everything is always restored to the 'Will of God', whereas those who live and dabble with religious and social problems in the historical dimension are humans (al-Bughâ, 1993, p. 128). According to the writer, basing *mashlahah* on the 'Will of God' produced via scripture should be reviewed because it means did not give the space for human being those who are burdened the law (*mukallaf*) to determine their own law. In this context, the formulation of *maqâshid al-sharî'ah* offered by Jasser Auda could be used as a foothold for the effort of landing the epistemology of *mashlahah* from 'theocentric' conception to 'anthropocentric' conception by making human values such as freedom, equality, justice, democracy as the source of public interest.

According to the writer, this anthropocentric *mashlahah* or *maqâshid* has a very significant role as the objective of legal settlement. Because everything ordered by God has to contain the benefit, otherwise something that is forbidden has to contain the harm. All the laws and ordinances of life made by God for man, essentially derive from two basic principles, they are taking benefits (*jalb al-mashâlih*) and avoiding mischiefs (*dar'u al-mafâsid*). That is, all God's laws are made for the benefit of mankind in the world and in the Hereafter (Al-Shâhibî, p. 30). The presence of the law of Allah (*al-ahkâm al-sharî'ah*) which should be used as a guide and reference by mankind in wading life, there is no other purpose is for human beings to achieve goodness in the world and the hereafter. Based on this, the jurists have agreed that *mashlahah* is the core purpose of Islamic law (*maqâshid al-sharî'ah*), resulting in a popular adage among *ushûlîs*, that

"where there is *mashlahah* there is the law of God " (*ainamâ kânat al-mashlahah fa tsamma hukm Allâh*) (Al-Qardlâwî, 1994, pp. 127-132).

The logical consequence of this anthropocentric idea of *Maqâshid* necessitates legal conclusion based on *mashlahah*, no longer in written scripture (*al-'ibrah bi al-maqâshid la bi al-fâdz*). This revolutionary basic rule (*qâ'idah*) presupposes that which should be the attention of an Islamic jurist in deducing the law of the Qur'ân and hadîth rather than its scripture but from the *maqâshid* aspect contained.. The axis is the moral ethic of a verse and not the specific legislation or literal formulation. In order to know the *maqâshid*, one is required to understand the context and possess the competence of worldview, which is not only the context of the personal-particular worldview, but also the impersonal-universal context of worldview.

6 CONCLUSIONS

After explaining and analyzing the critical points of Jasser Auda's thought through long discussions, it may be possible to draw some substantive conclusions as follows:

In order to gain a closer understanding to the purpose of the hadith, one way that can be pursued is through the contextualization of the Prophetic narrations (hadîth), especially when the scripture can't be understood textually. The conception of Auda's *maqâshid* could be a solution to the problem. First, Auda, in this terms, offers a way of reading the scripture based on the intent in the application of Islamic law and how its implications when *maqâshid* be a primary consideration in reading and applying the law. In this aspect, a contemporary reading of *maqâshid* gives more contribution, including *maqâshid* for thematic interpretation of the hadîth. The holistic approach in the thematic interpretation of hadîth based on *Maqâshid* approach has the potential to open opportunities up for the disclosure of the principles and moral values embodied by hadîth. For this, Auda added one more requirement for the validity of hadîth that has been applied for this.. The requirement is ' a systematic coherence' from the conditions of authenticating the content (*matan*) of these narrations with the principles and values of Islam. Thus, a *maqâshid*-based approach could fill a crucial gap in the narration of hadîth, in general, which is the gap of missing context. *Second*, *maqâshid* combined with multi-dimensionality, according to Auda, can provide a rational and constructive solution to dilemmas that are considered to be contradictory;

The methodological implications of contextualization of the prophetic tradition based on *maqâshid* in the renewal of contemporary Islamic legal are the occurrence of what is called the "Contemporaryization concept of *maqâshid*" through the transformation of paradigm and theory of *maqâshid* from traditional theory of *maqâshid* to the contemporary theory of *maqâshid*. The traditional *maqâshid* more emphasizes on protection and preservation while Auda's contemporary *maqâshid* more takes account on development and rights. Theoretical objectivity as a result of Auda's academic research is the validation of several methodologies of *ijtihâd* which would produce the type of Anthropocentric *maqâshid*. The logical consequence of this anthropocentric idea of *Maqâshid* necessitates legal conclusion based on *mashlahah*, no longer in written scripture (*al-'ibrah bi al-maqâshid la bi al-fâdz*).

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