

Position of DSN-MUI Fatwa No.79 of 2011 Concerning *Qard* with Customer Funds in the Perspective of *Maqāṣid Shari'ah* Jasser Auda

Kedudukan Fatwa DSN-MUI. No: 79/DSN-MUI/III/2011 Tentang Qardh Dengan Menggunakan Dana Nasabah Perspektif Maqashid Syari'ah Jasser Auda

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Abstract: This study will explain the DSN-MUI Fatwa No.79 of 2011 regarding the perspective of *Maqāṣid Syari'ah* according to Jasser Auda's approach theory. The method used in this study is qualitative with literature study by finding and collecting factual facts or information using the themes and topics that will be or are being researched. This study tries to explain that the system approach theory echoed by JasserAuda is not only rigid but also elastic. So it can be implemented in legal provisions by means of a surgical process through the application of the six-element method which is the criterion, namely cognitive elements, openness, comprehensiveness, interconnected or interrelated hierarchies, meaning, and multidimensionality. As a result, the position of *Maqāṣid Shari'ah* can be found, and of course, the provisions of the rules can be applied to people's lives with a wide range. Regarding the DSN-MUI Fatwa No. 79 of 2011 concerning *Qard*, it is permissible to use customer funds because it fulfils the elements of the system theory applied by Jasser Auda. Indirectly, the theory of Jasser Auda's system approach is a tool or scale in dissecting the position of *Maqāṣid Shari'ah* against legal provisions that have been established or will be enforced.

Keywords: Systems Theory, Jasser Auda, *Qard*, DSN-MUI Fatwa.

Abstrak: Penelitian ini menjelaskan Fatwa DSN-MUI No.79 Tahun 2011 tentang Perspektif *Maqāṣid Shari'ah* menurut teori Jasser Auda. Metode yang digunakan dalam penelitian ini adalah kualitatif dengan model studi literatur yang mencari dan mengumpulkan fakta atau informasi faktual menggunakan tema dan topik yang akan atau sedang diteliti. Penelitian ini menjelaskan bahwa teori pendekatan sistem yang digaungkan oleh Jasser Auda bukan hanya teori kaku namun teori yang elastis juga. Sehingga dapat diimplementasikan dalam ketentuan hukum melalui proses pembedahan, melalui penerapan metode enam unsur yang menjadi kriterianya, yaitu unsur kognitif, keterbukaan, kekomprensifan, hirarki yang saling berhubungan atau saling berkaitan, makna, dan multidimensionalitas. Alhasil, posisi *Maqāṣid Shari'ah* dapat ditemukan dan tentunya ketentuan aturannya dapat diterapkan dalam kehidupan masyarakat dengan jangkauan yang luas. Mengenai Fatwa DSN-MUI No. 79 Tahun 2011 tentang *Qard*, boleh menggunakan dana nasabah, karena memenuhi unsur teori sistem yang

diterapkan oleh Auda. Secara tidak langsung, teori pendekatan sistem Auda merupakan alat atau skala dalam membedah kedudukan *Maqāṣid Sharī'ah* terhadap ketentuan hukum yang telah ditetapkan atau akan diberlakukan.

Kata Kunci: Teori Sistem, Jasser Auda, Qardh, DSN-MUI Fatwa.

Introduction

Judging from human life in developing human mindsets and views regarding legal provisions will be characterized by a dynamic personality. It will complicate the problem of human life, so Islamic law can not just solve this problem or provide legal provisions in order to benefit from standard classical theory.¹ In this case, there is a problem that the problems of human life are becoming more complex; how does Islamic law deal with this? Can Islamic Law cooperate with or adapt to it? Therefore, reform is needed, which is a breakthrough in the discussion of *Maqāṣid Sharī'ah*. Therefore, the study of *Maqāṣid Sharī'ah* is an urgent issue in the study of Islamic law, which aims to answer all the complexities of economic problems and social change in society.

Some modern or contemporary Muslim scholars, including Jasser Auda, want to reform Islamic Law Philosophy (*Uṣūl al-Fiqh*). Auda has *Maqāṣid Sharī'ah* as the basis of his philosophy of thought by using a systems approach as a way of thinking and an analytical knife.² The discussion of Islamic law and the Proposal of *Fiqh* uses a systems approach by Jasser Auda that has never been echoed before.

As a Contemporary Islamic scholar, Jasser Auda proposed in his thoughts about a system approach theory in *Maqāṣid Sharī'ah*, which has six elements as guidelines, namely: Cognitive elements, openness, comprehensiveness, interconnected or interrelated hierarchies, meaning, and multidimensionality. The purpose of the six elements is to open the door to *ijtihād* through the classical *Maqāṣid Sharī'ah* paradigm, which tends to protect and also guard contemporary *Maqāṣid Sharī'ah* which tends to develop based on the part of human rights. From these human rights entities, the scope of *Maqāṣid Sharī'ah* is very broad and universal, thus enabling human life to reach a level of benefit.³

As the article written by Khusniati Rofiah⁴ explained that it opened the door of *ijtihād* to the *Maqāṣid Sharī'ah* concept presented by Jasser Audah, which aims to be more active and courageous in criticizing the methodology of Islamic law for Muslim scholars. Due to the complexity of human life, Islamic law is firmly

¹ Maruf Amin, *Fatwa Dalam Sistem Hukum Islam* (Jakarta: eLSAS, 2011).

² Auda Jasser, *Membumikan Hukum Islam Melalui Muqashid Sharī'ah* (Bandung: PT Mizan Pustaka, 2015).

³ Muhammad Iqbal Fasa, "Reformasi Pemahaman Teori Pada Maqasid Sharī'ah (Analisis Pendekatan Sistem Jasser Auda)," *HUNafa: Jurnal Studia Islamika* 13, no. 2 (2017): 18–46.

⁴ Khusniati Rofiah, "Teori Sistem Sebagai Filosofi Dan Metodologi Analisis Hukum Islam Berorientasi Maqāṣid Syari'ah (Telaah Atas Pemikiran Jasser Auda)," *Jurnal Hukum Islam* 15, no. 1 (2016): 83–106.

established to provide relevant and flexible solutions to achieve justice, peace, equality and profitable human life.

Specifically, Fageh analyzes how the identical *Maqāṣid* of Auda concept promotes *maṣlahah*. Fageh defines the *maqāṣid* of Auda in four meanings, first, the wisdom behind a law. Second, a good end goal that the law was trying to achieve. Third, the divine purpose group and the moral concept are the basis of law. Fourth, *maṣālih*. In the *maqāṣid* idea offered by Auda, values and humanitarian principles are the most important.⁵

However, when applied to legal provisions, the statement becomes much wiser. Because, in theory, *Maqāṣid Shari'ah* based on the Jasser Auda system approach certainly cannot make any changes without practising and implementing these theories in an application. Can the System Theory approach provided by Jasser Auda analyze the usefulness of *Maqāṣid Shari'ah's* position, especially regarding legal provisions that are stipulated and/or will be enforced? To prove this, the author tries to analyze qard contracts using customer funds in terms of a system approach theory to applicable legal provisions, namely the DSN-MUI Fatwa number 79 of 2011.

Research Method

The research used in this paper uses qualitative methods with literature studies. A literature study is a researcher who investigates and collects factual information about the problem or topic under investigation and explains it or describes a thorough and detailed analysis using facts in the form of clear and substantive information. The data in this study are sourced from books, scientific journals that are related to the *Maqāṣid Shari'ah* theory and the Jasser Auda system approach, books by classical scholars referred to by the MUI in establishing Fatwas, and DSN-MUI Fatwa number 79 of 2011 concerning Qard for the use of customer funds.

Operational Definition

Jasser Auda Biography

Jasser Auda, when he was young, spent time studying religion at the Al-Azhar Mosque in Cairo from 1983 to 1992. While in Egypt, Auda never studied religious education at formal institutions like al-Azhar University. Auda only attended recitations and also *halaqah* at the Al-Azhar Mosque. While Auda was active in recitation, Auda attended lectures at Cairo University, majoring in

⁵ Achmad Fageh, "Contextualization of Maslahah Jasser Auda's Thought in Islamic Economy". *Indonesian Interdisciplinary Journal of Sharia Economics (IJJSE)* 4, no. 1 (September 6, 2021): 132-155. Accessed January 9, 2023. <https://ejournal.ikhac.ac.id/index.php/ijse/article/view/1344>.

Communication Studies. His Bachelor's studies were completed in 1988, and his Master's degree was achieved in 1993.⁶

After obtaining his Master of Science degree from Cairo University, Jasser continued his studies for a doctorate in Systems Analysis at the University of Waterloo, Canada. In 1996, Auda earned his doctorate at Waterloo. He then returned that year to study at the American Islamic College with a concentration in Islamic law. During the following three years (1999), for the second time, he obtained a Bachelor of Arts (BA) degree from the American Islamic College in the field of Islamic studies. On a permanent campus, Auda continued his master's degree focusing on Islamic law and completed it in 2004. He then left for England to pursue a doctorate at the University of Wales. In 2008, he earned a doctorate in Islamic law.⁷

Jasser Auda is a member of the Associate Professor at the Qatar Faculty of Islamic Studies (QFIS), with a focus on Public Policy studies in the Islamic Studies Program. One of the founding Members of the International Union of Muslim Scholars, which operates in Dublin, a member of the Academic Council of the International Institute of Islamic Thought located in London, England; a member of the International Institute of Advanced Systems Research, Canada; then a member of the Global Supervisory Board of the Center for Civilization Studies (GCSC), UK; member of the Executive Council of the Association of Muslim Social Scientists (AMSS), UK; and also a member of the Forum against Islam phobia and Racism (FAIR), UK. On Islam online.net. Jasser became a consultant.

Auda has held various positions, including Associate Professor (Public Policy), Visiting Professor (Universities of Egypt, Canada and also the UK for Philosophy, Islamic Law and Islamic Minority Affairs), Member of various Islamic institutions related to the Scientific Research System, then a member of the Islamic Ulama organization and even as an adviser on the Internet, namely islamonline.net.⁸ An essential position concerning the development of Maqāṣid Sharī'ah is Jasser Auda, a writer and founder of the Center for Maqāṣid Research in Philosophy of Law London, UK.⁹ Auda believes that Maqasid Sharī'ah can be seen through his various works including Maqasid Sharī'ah, *A Beginner Guide, London: The International Institute of Islamic Thought*, 2007 and *Maqasidal-Sharī'ah as Philosophy of Islamic Law: A SystemApproach/Systems Approach*, London: The International to the Institute of Islamic Thought, 2007. This paper has been successfully published in 8 books and hundreds of journal

⁶ Retna Gumanti, "Retna Gumanti, "Maqasid Sharī'ah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Himayah* 2, no. 1 (2018): 97–118.

⁷ Hengkil Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda* (Tangerang Selatan: Yayasan Pengkajian Hadist Bukhori, 2018).

⁸ Syukur Prihantoro, "Maqasid Syari'ah Dalam Pandangan Jasser Auda (Sebuah Upaya Rekonstruksi HukumIslam Melalui Pendekatan Sistem)," *Jurnal Tafkir* 10, no. 1 (2017): 120–34.

⁹ Abbas Arfan, "Maqasid Syari'ah Sebagai Sumber Hukum Islam: Analisis Terhadap Pemikiran Jasser Auda," *Al-Manahij Jurnal Kajian Hukum Islam* 7, no. 2 (2013): 183.

articles. Contribute to books and DVDs, public lectures and online journals spanning the globe.¹⁰

Background of Jasser Auda's Thoughts Regarding Maqāṣid Syari'ah

Jasser Auda's thoughts in revising Maqāṣid al-Shari'ah for the philosophy of Islamic law were motivated by his thoughts on the classical Maqāṣid al-Shari'ah by previous scholars such as as-Syatibi and others who did so. It is declared irrelevant to the current state of humanity as time goes by. According to Auda, classical Maqāṣid al-Shari'ah does not have a holistic element but has a specific application, and then there is more emphasis on literal than moral aspects. There is only one dimension, and not multidimensional, more deconstructed than reconstructed. Jasser Auda's argument is certainly not just an unreasonable opinion. Of course, there are compelling reasons for this. Regarding the reasons for the absence of relevance of the classical sharia maqasid, according to Jasser Auda, it can be examined from various aspects, namely:

1. The scope of classical *Maqāṣid Shari'ah* constitutes the whole of Islamic law, but they cannot add separate objectives to single or group decisions that contain a particular topic or chapter of Fiqh;
2. Classical *Maqāṣid Shari'ah* is more individual in nature and less social, humanitarian and general.
3. Classical *Maqāṣid Shari'ah* does not cover the most fundamental and universal values, such as the principles of freedom and justice.
4. Classical *Maqāṣid Shari'ah* is detailed from understanding the literature or Fiqh arguments and not from the original source.¹¹

According to Jasser Auda, classic *Maqāṣid Shari'ah*, which tends to be individual or single; namely the protection and also preservation must be reoriented to become *Maqāṣid Shari'ah* which is more universal, tends to be comprehensive to society and also humanity (human rights and freedom). Moreover, this kind of reorientation will be the difference between Jasser Auda's thinking and the thinking of the classical or earlier *uṣūl al-fiqh* scholars.

What Jasser Auda actually thinks is closely related to the social conditions currently being experienced by residents in London, to be precise where Auda is continuing his doctoral program. His thoughts were motivated by the increasing criminal activity and terrorism that occurred in the West, especially in London at that time (2007), in the name of "Islamic Law" and were executed by people with Muslim identities. It makes many Westerners think that Islamic law is related to

¹⁰ Syaifuddin, "Teori Hukum Islam Dalam Pendekatan Sistem Jasser Audah," *Interest* 13, no. 1 (2015): 124–31.

¹¹ Jasser Auda, "Maqasid Shari'ah as Philosophy of Islamic Law: A Systems Approach," *London The International Institut of Islamic Thought*, 2007, xxvii.

crimes and the killing of others. Furthermore, according to the HDI (Human Development Index), Muslims occupy a low level, especially in the determinants of HDI, including the level of illiteracy, education, political participation, economy and women's empowerment or emancipation, in this case, Islam is still below the minimum standard.¹²

In connection with this, it certainly inspired Jasser Auda to convey a new explanation to the public about what "Islamic/Shariah law" or fundamental Islamic law is and how Sharia law plays an essential role in handling criminal cases that occur in the name of "Islamic law". Jasser Auda believes Islamic Law is the driving force behind a just, creative, advanced, humane, spiritual, friendly and consistently democratic society. JasserAuda intends to restate Islamic Law to convince the public that "Islamic Law" is not a crime. Although Auda does not refute this in his travels to various countries, he finds little evidence that "Islamic law" is actually perfect.

Because the classical Islamic legal theory that was coined by previous scholars or classic by Jasser Auda, is no longer considered relevant, according to Jasser Auda, it is necessary to develop a theory of Islamic law (*Maqāṣid Sharī'ah*) that is relevant and able to keep up with today's developments. It aims to ensure that subsequent products of Islamic law (*Sharī'ah*) based on *maqāṣid sharī'ah* are always relevant in any place and at any time, due to the nature of the source of Islamic law itself, namely the Qur'an, "true at any time and anywhere". To make *Maqāṣid Sharī'ah* relevant anytime and anywhere, a keyword is needed, according to JasserAuda. The most appropriate keyword for the development of Islamic legal theory is "systems approach".¹³

These are some of the foundations that became Jasser Auda's reasons for carrying out ijtihad and revising *Maqāṣid al-Sharī'ah* as a philosophy of Islamic law by using the systems approach method, which forms the basis of his knowledge.

Contemporary *Maqāṣid Sharī'ah* Concept by Jasser Auda

The Islamic Legal Theory Systems Approach is useful for answering basic questions from the proposals of *Fiqh* and the role of *Maqāṣid Sharī'ah* in solving existing problems. The systems approach is a holistic approach in which each entity is considered an integrated system consisting of many subsystems that interact with the external environment. The above statement is based on the Islamic System (Islamic System Philosophy), which is expected to produce philosophical conclusions from system philosophy to renew the discussion of Islamic theology. Based on the previous causal discussion, it will ensure that the

¹² Auda.

¹³ Siti et al Muthoingah, "Relevansi Pemikiran MaqāṣidSharī'ah Jaseer Auda Terhadap Siistem Pendidikan Islam Multidispliner," *Ta'limuna* 7, no. 2 (2018): 90–112.

quality of truth can be measured based on scientific findings. Therefore, the applied system approach includes the following:

1. Cognitive Elements

The Cognitive element (*al-Idrākiyyah*) aims to separate from the paradigm of understanding between the position of revelation and its cognition. It can be interpreted that the Fiqh assigned to Divine knowledge has shifted its position as an understanding of human relations with Divine knowledge. This is stated from the definition of Fiqh conveyed by scholars, namely as the science of human behaviour originating from specific arguments. These differences indicate that there is no scholarly opinion about practical Fiqh being defined as divine knowledge. The arguments in the Qur'an are a revelation, so to distinguish that, the scholars' interpretations are not necessarily the best and correct. Because basically, the interpretation of the propositions of revelation has a subjective nature. This is an important factor and Jasser Auda's critique of the classical *Maqāṣid* is not directly from the provisions of the texts but leans towards Islamic legal texts that emerge from the interpretations of the scholars.¹⁴

2. Wholeness

From a systems theory perspective, Jasser Auda reveals that every causality relationship must be seen as holistic (picture as a whole). Relations between parts play a certain role in the system. Relationships are built globally and dynamically, not just static subsets. Jasser Auda stated that holistic principles and ideas are needed in *Uṣūl al-Fiqh* because they can play a role in contemporary issues so that they can be used as permanent principles of Islamic law. In this system, Auda brings the personal dimension of *Maqasid al-Shari'ah* to a universal dimension (*Maqāṣid al-'Āmmah*) and expands it to be accepted by the general public as a matter of freedom and justice.

Of the various ways of thinking as a whole (holistic), there is one way of thinking, namely using thematic Tafsir (*mawḍū'ī*) to understand the Qur'an, which is a way of *Tafsīr* to look at a particular subject or theme, then look at and analyze all the verses to find the view of the Qur'an on the subject or theme. Then the verses are compiled with those that have general characteristics to specific characteristics, and those that have absolute characteristics are combined with those that are *muqayyad*. And also reproduce the hadiths on the theme. Then conclude with a comprehensive and thorough writing of the topics discussed.¹⁵

¹⁴ Muhamad Izazi et al Nurjaman, "Membeda Kedudukan Maqāṣid Shari'ah Dalam FatwaMUI Tentang Jual Beli Emas Secara Tidak Tunai Menurut Teori Pendekatan Sistem Jasser Auda," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 7, no. 1 (2021).

¹⁵ Prihantoro, "Maqasid Al-Syari'ah Dalam Pandangan Jasser Auda (Sebuah Upaya Rekontruksi Hukum Islam Melalui Pendekatan Sistem)," n.d.

3. The Openness of the Islamic Legal System

According to Jasser Auda's view, as classical scholars say, Islamic law does not have a term to close the door of *ijtihād*. This is because Islamic law can be developed to meet the needs of the times when faced with new changes in several aspects of human life. Islamic law is flexible in responding to changing times, circumstances and places. Even if classical or earlier scholars introduced existing Islamic laws such as *Shari'ah*, *Fiqh*, and *Fatwā*, they could be developed in the context of current human needs. However, the development of Islamic law is still based on the main sources of Islamic law, the Qur'an and hadith, and maintains Maqasid al-Shari'ah as the philosophy of Islamic law.

4. Hierarchical Elements

Hierarchical elements are interrelated elements (interrelated hierarchies/*al-ḥarakiyyah al-mu'tamadah tabāduliyyan*). It is; everything requires an attachment. Therefore, using this element, Jasser Auda defines two dimensions to improve *Maqāṣid Shari'ah*. Namely improving the area within the *Maqāṣid* and increasing the reach of the people covered by the *Maqāṣid*. Previously, Islamic scholars specifically or expressly determined *Maqasid Shari'ah*, so this limited the scope of *Maqāṣid Shari'ah*, with hierarchical elements related to Maqasid Shari'ah, divided into three categories, namely:¹⁶

First, *Maqāṣid Shari'ah* basically has a general nature and can be learned from the section on Islamic law. The second is *Maqāṣid Shari'ah*, which is specifically what can be learned from certain sub-chapters, and the third is *Maqāṣid Shari'ah*, which is special or particular which is derived from decisions on legal texts that have been determined. The meaning of the annexe to *Maqāṣid Shari'ah* is to provide treasures for a perfect *Maqāṣid Shari'ah*. In addition, the hierarchical element seeks to create a social and general dimension in the broader development of contemporary *Maqāṣid* because classical *Maqāṣid Shari'ah* is more personal or individual. This is aimed at the development of *Maqāṣid Shari'ah* in society, nation and all human beings.¹⁷

5. Elements of Multidimensionality

The element of multidimensionality (*multidimensionalitas/ta'addud al-ab'ad*) is a perspective on how to see things from different aspects, and dimensions are not just one aspect and one dimension. Because a one-

¹⁶ Jasser, *Membumikan Hukum Islam Melalui Muqashid Shari'ah*.

¹⁷ Nurjaman et al, "Membedah Kedudukan Maqāṣid Shari'ah Dalam Fatwa MUI Tentang Jual Beli Emas Secara Tidak Tunai Menurut Teori Pendekatan Sistem Jasser Auda," n.d.

dimensional view always leads to infinite contradictions, namely contradictions between one sentence and another, which is called *ta'ārud al-adillah*. Therefore, through a multidimensional element, Jasser Auda provides a set of visions for two contradictory statements by including the scope of *Maqāṣid Shari'ah*, in order to allow for the adjustment of two clearly contradictory arguments. Islamic law is more resilient in dealing with modern or contemporary issues. Even if the argument's provisions are no longer used, they can be reused through multidimensional elements with the provision that *Maqāṣid Shari'ah* is achieved in these elements.

6. Elements of Meaning

What is meant by the element of purposefulness (*al-Maqāṣidiyyah*), is an element which requires the existence of an interrelated relationship between one element and another. By going through this element, Jasser Auda gave an explanation that the five elements described above must have an interrelated relationship with the aim of creating an element of meaning. Because this intentional element is the most essential element in the system of thinking, in the absence of these five elements, the way of thinking cannot be perfect. This element is a result that can be concluded from the combination of the five elements described earlier. From this understanding, Jasser Auda can develop a *Maqāṣid Shari'ah* theory based on a systems approach.¹⁸

Results and Discussion

Day by day, contemporary issues or problems are becoming more complex and need to be addressed with the right nature of law and in harmony with Sharia law. So, to solve various problems, Muslims are required to perform *ijtihād*. However, in achieving *ijtihād*, there are terms and conditions that apply to it. So not everyone uses *ijtihād* to solve these different problems. The most certain way is to carry out *ijtihād* together by establishing a *fatwā*.

Indonesia, which has a sovereign state, has a special body or institution related to this matter. One of them is the Indonesian Ulema Council or MUI which consists of scholars from various mass organizations in Indonesia.¹⁹ So that when there is an issue regarding a topic that requires legal provisions for the general public, it can be submitted to the Indonesian Ulema Council. Published fatwas provide solutions to various problems and serve as a medium to answer contemporary problems.²⁰ In addition, fatwas can guarantee legal status, so

¹⁸ Nurjaman et al.

¹⁹ Marlisa Elpira and Marli Candra. "Urgensi DSN-MUI Sebagai Otoritas Pengawas Shari'ah Lembaga Keuangan Shari'ah". *El-Qist: Journal of Islamic Economics and Business (JIEB)* 10, no. 1 (May 21, 2020): 22–38. Accessed January 9, 2023. <http://jurnalfebi.uinsby.ac.id/index.php/elqist/article/view/270>.

²⁰ Amin, *Fatwa Dalam Sistem Hukum Islam*.

without these fatwas, problems cannot be resolved and cause confusion in society. When formulating Fatwas, the Indonesian Ulema Council always pays attention to specific rules, including the rule "reaching *Maṣlahah* and rejecting *Maḥsadah*".²¹ Therefore, indirectly the Indonesian Ulema Council always pays attention to the advantages of *Maqāṣid Shari'ah* in all the fatwas it decides. Therefore, the *Maqāṣid Shari'ah* theory echoed by Jasser Auda, which was previously given as an indicator or standard for finding *Maqāṣid Shari'ah* in legal provisions that have been or will be enforced. So to prove this, how does the system approach theory determine *Maqāṣid Shari'ah* by analyzing one of the MUI fatwas, namely fatwa number 79/DSNMUI/III of 2011, concerning qard using customer funds.

The results of the provisions of the fatwa state that *Qarḍ* using customer funds is legally permissible provided that the *Qarḍ* contract is carried out as a means or complement for other transactions that use *mu'āwadah* contracts (exchanges and can be commercial in nature) in products that aim to gain profit.²² Contracts or products that use a *Qarḍ* contract as a means or complement for the *mu'āwadah* contract, as referred to above are included among others in:

1. DSNMUI Fatwa No: 26/DSNMUIII/2002 regarding Gold *Rahn*;
2. DSNMUI Fatwa No: 29/DSNMUIVI/2002 concerning Financing of Hajj Management for Islamic Financial Institutions;
3. DSNMUI Fatwa No. 31 concerning Transfer of Debt;
4. DSNMUI Fatwa No42/DSNMUI/V/2004 concerning *Shari'ah* Charge Cards;
5. DSNMUI Fatwa No54/DSNMUI/X/2006 concerning *Shari'ah* Cards;
6. DSNMUI Fatwa No67/DSNMUI/III/2008 concerning *Shari'ah* Factoring.

Of course a *Qarḍ* agreement with customer funds is not something that is immediately permissible, but there are details on the *Ijtihād* discussion of the Indonesian Ulama Council, quoting various texts and opinions of the oldest scholars, and always paying attention to the benefit. Therefore, to facilitate a detailed discussion, the author tries to analyze legal provisions using elements of Jasser Auda's systems approach theory.

With regard to cognitive elements (*al-Idrākiyyah*), it states that *Qarḍ* transactions using customer funds are permissible. This relates to the realm of *mu'amalah māliyyah* of *fiqh* discussion. While the *naṣṣ* provisions used as guidelines by the Indonesian Ulema Council include:

First, Qs. An-Nisa' verse 29 concerns the prohibition of eating one another or taking the property of fellow human beings in an incorrect or false way, except

²¹ Ahmad Jajuli, *Kaidah-Kaidah Fikih Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah Yang Praktis* (Jakarta: Prenadaedia Group, 2016).

²² Bakhrul Huda, "Analisis Keabsahan Penyaluran Harta Zakat Dalam Bentuk Al-Qarḍ Al-Hasan: Studi Atas Materi Ijtima' Ulama Komisi Fatwa MUI 2021". *Management of Zakat and Waqf Journal (MAZAWA)* 3, no. 2 (March 28, 2022): 66–86. Accessed January 9, 2023. <http://jurnalfebi.uinsby.ac.id/index.php/MAZAWA/article/view/805>.

by means of trade which must be voluntary, among others.²³ Second, QS. al-Mā'idah verse 1 regarding the recommendation to fulfil contracts. Then the Hadith of the Prophet, narrated by Ibn Majah from Ubaadah bin Samit, narrated by Ahmad from Ibn Abas, and narrated by Imam Malik from Yahya who said that *Rasūlullāh* pbuh stated: It is not permissible to harm and harm others and it is also not permissible (too) to repay losses caused by others with the danger of actions that harm him. From this presentation, it becomes a guideline between the provisions of *Fiqh* and revelation, namely texts.

Based on the argument used by the Indonesian Ulema Council as the basis for establishing law, it must fulfil the overall element (*al-Kulliyyah*), namely that what is used as a text is not linked to only one text but also contains *fiqh* rules relating to the legal position that applies whether or not illat exists, customs or habits that form the basis for the enactment of laws and their cancellation.²⁴ In every activity, *mu'amalah* has an original law, namely that it is permissible as long as there is no argument that forbids it and also the rule of *Fiqh* which says that every difficulty brings ease.²⁵

Regarding the element of openness (*al-Infītāhiyah*), the MUI scholars explained that from various opinions of previous scholars, one of them was that it was permissible for *Qarḍ* to use customer funds. According to Wahbah al-Zuhaili²⁶ stated that *Ma'qūd 'alayh* (object of the contract) or the purpose of the *muḍārabah* contract is *al-ribh* (profit). Anyone and using anyone, because the contract is absolute; because the purpose of *muḍārabah* is to build profits. And according to Muhammad 'Abd al Munim Abu Zaid²⁷ stated that the realization of profits is the main goal of *muḍārabah* transactions; and this can be realized in the process of commerce and other muamalah activities.

So according to the element of openness of the MUI scholars who have explained in explaining the views of the previous or classical scholars regarding this matter, it is decided that:

1. First, *Qarḍ* is a contract for channelling funds by Islamic financial institutions to customers as debts and receivables with the stipulation that the customer must return the funds to the Islamic financial institutions at an agreed time.
2. Second, Customer Funds are funds given by customers to Islamic financial institutions in savings products, current accounts, deposits using *wadī'ah* contract or *muḍārabah* as referred to in the DSNMUI fatwa No01/DSNMUI/IV2000 concerning Current Accounts, DSNMUI fatwa

²³ Departemen Agama RI, *Al-Quran Dan Terjemahnya* (Surabaya: Mekar Surabaya, 2010).

²⁴ Imaam Jalaluddin Abduraman Al-Suyuthi, *Al-Asyba Waa Al-Nazair* (Beirut: Dar AKitab, 1983).

²⁵ Al-Shuyuthi, "Al-Ashybah Waa Al-Nazhair" 1 (n.d.): 194.

²⁶ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Waa Adilatuh*, IV Edisi R (Dasyiq: Dar al-Fikr, 2004).

²⁷ Muhmad Abd AlMun'iim Abu Zaiid, *Nahwa TathwirNizham Al-Mudarabah FialMasarif Al-Islamiyyah* (alQahirah: Maktabah alMa'had alAlamai li-alFikr alIslami, 2000).

No02/DSN-MUI/IV2000 concerning Savings and DSNMUI fatwa No03/DSNMUI/IV2000 concerning Deposit.

3. Third, regarding the provisions for the distribution of *Qarḍ* funds with *Qarḍ* contract, Customer funds in Islamic Financial Institutions, are divided into two types:
 - a. *Qarḍ* contracts that stand alone for social purposes solely as referred to in the DSN MUI Fatwa No19/DSN-MUI/IV2001 concerning *Qarḍ*, are not products or accessories for other transactions in products that aim to gain profit. So in this *Qarḍ* contract, it is not permissible to use customer funds.
 - b. *Qarḍ* contracts are made as a means or compliment for other transactions that use *mu'āwadah* (exchange and commercial) contracts on products that aim to gain profit or profit. Therefore, in this contract, it is permissible to use customer funds. Profits or income from contracts or products using *mu'āwadah*, which are complemented by the contract *Qarḍ* as described in this contract, must be distributed to customers depositing funds according to a predetermined contract.

Based on this, the element of linkage (*al-Harākīriyah al-Mu'tamadah tabādulliyyan*) can be seen from the conclusion of the presentation that *Qarḍ* contracts using customer funds are legally permissible because in order to respond to customer needs, Islamic financial institutions (LKS), especially Islamic banking, require products that use a *Qarḍ* as a means or complement to other transactions, such as Rahn products, Islamic Financial Institutions Hajj Management Financing products, Sharia Charge Card products, Debt Transfer products, Sharia Credit Card products, Sharia Factoring products, and others. Therefore *Qarḍ* contracts often need to use customer funds to carry out the above transactions. So that the determination of the MUI fatwa allowing the practice of *Qarḍ* using customer funds, has a good influence on the range of enactment of existing products in Islamic Financial Institutions / Islamic Banking.

Matters related to the element of multidimensionality (multidimensionality/*ta'addud al-ab'ad*), determining the outcome of the MUI fatwa decision which draws attention to the benefit of determining a *Qarḍ* contract using customer funds. From various arguments, the hadiths of the Prophet pbuh, as well as the opinion of the scholars who allowed it as well as for this determination can be used as a benefit which is the basis for the MUI's considerations in establishing this fatwa.

So that paying attention to the sequence of systems approach analysis in Fatwa DSN-MUI number 79 of 2011 can be integrated through the last element, namely the element of meaning (*al-Maqāṣidīyyah*) as a result of determining the *Qarḍ* contract rules using customer funds, of course, paying attention to the

dissection of the argument, the opinion of the *ijtihād* scholars of the text and the reality of the need and provide benefits to the life of today's society. So the contract may be carried out by taking into account the agreed terms, conditions and limits and not contradicting Sharia principles.

Conclusion

System theory, presented by Jasser Auda, can provide a particular view for scholars to study *Maqāṣid Shari'ah* with different views from each of the legal provisions that have been established or enforced. It means that the Systems Approach theory has elastic properties that can be implemented. Regarding the DSN-MUI Fatwa No. 79 of 2011 concerning *Qarḍ* using customer funds can be applied through Jasser Auda's systems approach theory because it fulfils the elements of system theory, which has six elements that are used as guidelines, namely: Cognitive elements, openness, wholeness, hierarchical interconnectedness or mutual relatedness, meaningfulness, and multidimensionality. The system theory approach is a benchmark in determining the utility of *Maqāṣid Shari'ah*. With the size of the theory, limiting all contemporary events or issues that are related to law and can be applied following the correct part can be felt by anyone in a wide area, as well as legal provisions that are relevant and have strong substance and are following legal principles of Islam.

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