Thoughts of Contemporary Islamic Law Figures; Jaser Audah with his System Approach or System Approach

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ARTICLE INFO	ABSTRACT
Volume: 2	The main problem in the development of Islamic law is the failure to distinguish between texts and interpretations, the strong atomistic and binary approaches. Instead of contributing to contemporary problems, he is trapped in polemics of right and wrong, causation, qath'i zhani, men and women; rejects the role of other sciences (science, social science, philosophy) in the development of Islamic law. Through a systems approach, Jasser Audah offers a more 'multidimensional' approach and a more 'whole' approach. The Audah system approach is in harmony with the objectives of Islamic law or realizing maqasid by maintaining openness, renewal, even the validity of ijtihad must be measured to what extent it realizes maqasid.
KEYWORDS	
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1. Introduction

Research on Islamic law, normative (Qur'an) and empirical (Muslim practice), has not been fully utilized. This is based on the reason that the Al-Qur'an (and also Hadith) is the main source, principal, and principle in Islamic law. (F. von Benda-Beckmann, 1989). The rules are final and there is no need for reasoning to tamper with the rule of law. If something is inappropriate or disrupts the current sense of justice in society, the problem lies with society as the object of law, not with the source of the law. There needs to be another alternative, not to question the provisions of Islamic law, but to conduct studies to contextualize the spirit of Al-Qur'an reform in making changes. It is from this perspective that the systems approach is an alternative for uncovering maqasid sharia from the laws of the Qur'an. Furthermore, it is used as the basis for the implementation of Islamic law in the present.

The term a system approach is a new vocabulary that is rarely found in discussions of classical Islamic law. The system approach is a contemporary approach that was born from a modern world. Its originator, Jasser Audah, invites us to question and discuss Islamic law in the context of the present (global) world. (Jasser Audah, 2015)
According to Jasser, Muslims now live in the midst of a growing and almost comprehensive globalization era. The nation-state system, the interconnected world economy, the shrinking of the world through global communications and transportation systems are the real manifestations of the engine of globalization. Globalization provides a new perspective and contemporary challenges that must be faced by the history of Muslims. So that globalization becomes the main problem that must be faced by Muslims. (Zaqzouq, 2001).
The problems facing the Islamic world are political participation and democratization, failed economic and educational systems, threats of religious extremism (fundamentalis). According to survey results United Nation Development Programme

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(UNDP) Mentioned that the human growth index in a world with a predominantly Muslim population shows a very low level. The low growth index is caused by several important factors, including illiteracy, (Zaqzouq, 2001). Education, economic and political participation, women's empowerment and their participation on the political stage or in the public sphere. (Jasser Audah, 2008)

Such a reality in the Islamic world intrigued Jasser Audah to re-question Islamic law; where is Islamic law now? How can Islamic law be able to play a positive role in responding to the crisis being faced by the Islamic world? Is there a problem in Islamic law. According to Audah the development concept adopted by the development report PBB far more comprehensive than economic development. According to the development program report PBB (UNDP), Many Muslim-majority countries are at a lower level than developed countries in the human development index. The development report is based on more than 200 indicators, including measures of political participation, literacy, enrollment in education, life expectancy, access to clean water, employment, standard of living and gender equality. But some Muslim-majority countries, especially oil-rich Arab countries, show disparities, according to the UN report, between their level of national income and gender equality, which include women's political participation, economic participation and power over resources. (United nation development programme UNDP, 2004)

2. Literature Review

2.1 The Development of Islamic Legal Thought
Talking about the scientific philosophy of Islamic law today cannot be separated from the careful historical map of the development of Islamic thought starting from the era of Traditionalist Islam, Modern Islam to Postmodern Islam. Jasser Audah made a map of the development of Islamic thought in his book.

The first is Islamic Traditionalism. There are four variants as follows; 1) Scholastic Traditionalism, with the characteristic of adhering to one of the traditional schools of fiqh as the highest source of law, and only allowing ijtihad, when there are no longer any legal provisions on the school adhered to. 2) Scholastic Neo-Traditionalism, being open to more than one madhhab to be used as a reference regarding a law, and not limited to one school of thought. There are several types of open attitude that are applied, ranging from attitudes towards all schools of fiqh in Islam, to an open attitude towards Sunni or Shia schools only. 3) Neo-Literalism, this tendency is different from classical literalism (namely the Zahiri school). This neo-literalism occurs in both Sunni and Shia. The difference with the old literalism is that classical literalism (such as Ibn Hazm's version) and neo-literalism is that classical literalism is more open to various hadith collections, while neo-literalism only depends on hadith collections in one particular school of thought. However, this neo-literalism agrees with classical literalism in that they both reject the idea of including purpose or maqasid as a legitimate source of law. An example of neo-literalism today is the Wahhabism. 4) Ideology-Oriented Theories. This is the flow of traditionalism that is closest to post-modernism in terms of criticizing modern 'rationality' and values that are 'euro-centricity', 'west-centricity' bias. One of the attitudes of this sect is their rejection of democracy and the democratic system, because it is considered to be fundamentally contrary to the Islamic system. (Abdullah, 2011)

Second, Islamic Modernism. The common characteristic of the leaders of this style of thought is to integrate the Islamic and Western education they have received, to be mixed into a new offer for Islamic reform and re-interpretation. There are five variants, among others; 1) Reformist Reinterpretation. Also known as 'contextual exegesis school' or using Fazlur Rahman's term 'systematic interpretation'. 2) Apologetic Reinterpretation. The difference between reformist reinterpretations and apologetic reinterpretations is that reformists aim to make real changes in the practical implementation of Islamic law; whereas apologetic is more about justifying a certain status quo, 'Islamic' or 'non-Islamic'. Usually based on a certain political orientation. 3) Dialogue-Oriented Reinterpretation/Science-Oriented Reinterpretation. This is a modernist school that takes a new approach to reinterpretation. They introduced 'a scientific interpretation of the Qur'an and Sunnah'. In this approach, 'rationality' is based on 'science', while the verses of the Koran and hadith are reinterpreted to conform with the latest scientific discoveries. 4) Interest-Oriented Theories. A This maslahah-based approach tries to avoid the weaknesses of an apologetic attitude, by reading the texts, with an emphasis on the problems to be achieved. 5) Revision Proposal. This tendency seeks to revise Usul al-Fiqh, overriding objections from neotraditionalists and other fundamentalists. Even the figures who are classified as Usul Revisionist stated that 'no significant development in Islamic law can be realized, without developing Usul a-Fiqh from Islamic law itself.

Third, Post-modernism. A common method used by this tendency is 'deconstruction', in the Derriida style. 1) Post-Structuralism. Trying to liberate society from the authority of nass and applying semiotic theory (the theory which explains that "Language does not refer directly to the reality) to the text of the Koran, in order to separate the implied forms of implication (separate the implication from the implied) 2) Historicism. Assesses the Koran and hadith as 'cultural products' and suggests that the declaration of modern human rights be used as a source of ethics and legal legislation. 3) Critical-Legal

Studies (CLS). It aims to deconstruct the position of 'power' which has influenced Islamic law, such as powerful Arab tribes and "male elitism". 4) Post-Colonialism. Criticizing the classical orientalist approach to Islamic law, as well as calling for a new approach that is not based on 'essentialist fallacies' (prejudices) towards Islamic culture. 5) Neo-Rationalism. Using a historical approach to Islamic law and referring to the mu'tazilah schools of thought in terms of rational reference to support their understanding. (Abdullah, 2011)

The results of research on the three trends of Islamic law above are stated as follows: "The current implementation (or rather, the application) of Islamic law is more reductionist than holistic, literal rather than moral, one dimensional rather than multidimensional, binary rather than multivalued, deconstructionist rather than reconstructionist, and causal than teleological." (Jasser Audah, 2013)

2.2 Maqasid Syariah

Research on sharia maqasid experienced major developments during the time of al-Syathibi (d. 790 H/1388 M) with his book Al-Muwafaqat and was confirmed by history as the founder of maqasid sharia. It was after al-Syathibi time that Ibn Asyur (d. 1325 H/1907 AD) appeared with his work Maqasid al-Syariah al-Islamiyah. Then came contemporary Muslim scholars who also conducted research on maqasid sharia such as Rashid Rida (d. 1354 H/1935 AD) who according to him maqasid in the Quran includes, "reforming the pillars of faith, socializing Islam as a religion of natural nature, upholding the role of reason , knowledge, wisdom and sound logic, freedom, independence, social, political and economic reform, as well as women's rights.

Muhammad al-Gazali (d. 1416 H/1996 AD) He included "justice and freedom" in the Maqasid at the level of necessity, Yusuf al-Qaradawi (1345 H/1926M) conducted a survey of the Quran and drew conclusions about the existence of the main goals of Shari'a following: "Preserving the true faith, preserving human dignity and rights, inviting people to worship Allah SWT, purifying the human soul, improving morals and noble values, building good families, treating women fairly, building a strong Muslim nation, and invites to human cooperation. Taha Jabir al-'Alwani (1354 H/1935 AD) studied the Quran to identify its main and dominant aims/purposes. He concluded that these intentions were the Oneness of Allah SWT (al-Tawhid), the Sanctity of the human soul (Tazkiyah), and Developing human civilization on earth ('Imran). (Jasser Audah, 2008)
Maqasid sharia understanding can also analyze the conflicts of Islam and nationalism in India, Morocco and Indonesia with the main focus on regional unity, constitution, language and religion as a result of the dissolution of the caliphate (1924), (Yudian Wahyudi, 2007).

2.3 Jasser Audah Systems Approach

Systems is a new, independent discipline, involving a number and various sub-disciplines. Systems Theory and Systemic Analysis are an integral part of the Systems approach. Systems theory is another type of philosophical approach that is 'anti-modernism' (anti-modernity) in nature which criticizes modernity in a way that is different from the way that is usually used by postmodernity theories. The basic concepts commonly used in Systems approaches and analysis include looking at the problem as a whole (Wholeness), always being open to various possibilities for improvement and refinement (Openness), interrelated values (Interrelated-Hierarchy), involving various dimensions. (Multidimensionality) and prioritizing the main goal (Purposefulness). (Jasser Audah, 2008)
Still related to Systems as a new discipline is what is called Cognitive science, namely that any scientific concept - religious or non-religious - always involves intervention or the intervention of human cognition (Cognition). Concepts such as classification or categorization as well as the cognitive nature of law will be used to develop the fundamental concepts of Islamic legal theory. (Anwar Abbas, 2010)

3. Methodology

This article study uses a descriptive qualitative method of literature study. The data collection technique is through literature review such as journals, articles, websites, books related to the problems the researcher wants to study. The analysis technique used in this study is that the first is grouping data from books according to the theme and then analyzing it based on the content and then interpreting it will draw conclusions.

4. Results and Discussion

4.1 Biography Jasser Audah (1966- Now)

a. `Setting Sosio-Historis

Jasser Audah was born in 1966 in Cairo, Egypt. As someone who was born into a religiously devout family, since childhood he has been accustomed to traditional Islamic sciences. Plus, he lives in a country which in the history of Islamic civilization is known as a country with an academic climate, a source of religious knowledge – which in many ways has produced great thinkers – no doubt. He is the nephew of Abdul Qadir Audah, a Muslim Brotherhood (IM) figure, author of the book al-Tasyri'al-Jinai al-Islami, which for some circles is a source of reference when talking about Islamic criminal law. Jasser Audah is a Muslim intellectual who himself is in touch with two traditions at once: western and eastern; traditional and modern. Since young, Jasser has been accustomed to recite the Koran traditionally at the Al-Azhar Mosque, which allows him to access classical turast thoughts. In addition to studying traditionally at the Al-Azhar mosque, he also studied at the Department of Communication Studies, Cairo University, Egypt, at the first and second level. (Jasser Audah, 2008)

b. Intellectual Career

In enriching his style of thought, Jasser Audah was not only content with only gaining knowledge from Egypt, but he also received a B.A degree from the Department of Islamic Studies at the Islamic American University, USA, in 2001, and a Master of Jurisprudence obtained from the American Islamic University, Michigan , on the focus of the study of Maqashid Syariah in 2004. He obtained his Ph.D from the University of Waterloo, Canada, in a study of System Analysis in 2006. And his second Ph.D degree was obtained from the university of Wales, England, in the concentration of Islamic Law Philosophy in 2008 .

He has held several important positions, including Associate Professor at the Faculty of Islamic Studies in Qatar (QFTS) with a focus on Public Policy studies in the Islamic Studies Program. He is a founding member of the International Union of Muslim Scholars, based in Dublin; member of the Academic Council of the International Institute of Islamic Thought in London, England; member of the International Institute for Advanced Systems Research (IIAS), Canada; supervisory member of the Global Center for Civilization Studies (GCSC), UK; member of the Executive Council of the Association of Muslim Social Scientists (AMSS), UK; member of the Forum Against Islamophobia and Racism (FAIR), UK and consultant for Islamonline.net. (Jasser Audah, 2013)

Now Jasser Audah is the director and founder of the Maqashid Research Center at the Philosophy of Islamic Law in London, England. And became a visiting lecturer for the Faculty of Law at the University of Alexandria, Egypt, the Islamic Institute of Toronto, Canada and the Academy of Islamic Jurisprudence, India. He lectures on Islamic law, philosophy, and materials related to Muslim minority issues and policies in several countries around the world. He is a contributor to policy reports relating to Muslim minorities and Islamic education to the UK's Ministry of Society and Higher Education Funding Council. (Jasser Audah, 2013)

4.2 Jaser Audah System Analysis Approach

System theory can be traced in the process of changing the paradigm of philosophy, especially Greek philosophy related to theological theory, (Musa Asy'arie, 2010). Philosophy and systems theory emerged in the second half of the twentieth century as the antithesis of modern philosophy and postmodern philosophy. Systems theory and philosophy are important because they reject the 'reductionist' view of the modernists, who assume that all human experience can be analyzed using a causal approach. This theory also rejects the views of 'deconstruction' and 'irrationality' of postmodernists who tend to be 'meta-narrative'. The thesis of the two previous schools of philosophy was refuted by arguing that, the world is not a determining machine or a creation which cannot be totally known, complexity can be explained not only through causation or 'non-logocentric irrationality', and problems that exist in the world can be solved not only through technological acceleration alone or nihilism views. (Musa Asy'arie, 2010)

According to Audah, the importance of 'Islamic system philosophy' is because philosophy is always related to logic, which is 'the heart of reasoning about law'. While Systems is a new independent scientific discipline that includes a number of sub-disciplines, such as cognitive science and cognitive culture. If later this is applied in the development of Islamic law, then cognitive science can be used to develop Islamic legal theory, while cognitive culture can be used to develop the concept of al-'urf. Audah introduced a theory he called systems theory (Musa Asy'arie, 2010), which actually has similarities to the views of Western system theory thinkers such as Ludwig Von Bartalanffy, Russell L. Ackoff, and Kenneth Boulding. However, as he claims, the difference between the system theory he proposes and other system theories is that, if the existing system theory is more oriented towards the physical world of problems, therefore it cannot be applied to the world of (Islamic) philosophy and law, then the originality of the system theory the proposal lies in the nature of openness or legal interaction with the outside environment. In addition, the essential difference that is built lies in its ability to dialogue texts with the realities of

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Muslim community life or, borrowing Amin Abdullah's term, always looks to asbab al-nuzul Jadid which he calls the dynamics of change. The systems theory he proposed had the following characteristics:

a. *Cognitive Nature*

Islamic thinkers view Islamic law as the result of human thought and reflection (ijtihad) on texts, and then try to find hidden meanings and practical implications. Thus it can be said, Islamic law is a matter of human knowledge, understanding, and interpretation, more than a literal manifestation of God's commandments. The logical consequence is that the product of Islamic law is no longer a sacred item that is not touched by the human dimension, but is always in dialogue with the development and progress of human science. To clarify this, consider the following figure: (M. Faisol et. al, 2012)

b. *Wholeness System Display Analysis (Overall)*

Systems analysis always looks at a problem holistically. This is different from the atomistic approach which is based on uncertainty (zhanni al-dilalah), namely looking at a problem using 'horse glasses', without color and without a clear spectrum. This is clearly contrary to the approach based on certainty (qath'i al-dilalah). The theoretical implication of this kind of view is that the atomistic approach always views things in a cause-and-effect position. Meanwhile, the systems approach views every cause and effect as one part of the whole. The stressing point here is group relations (between divisions). Thus, if there is a disturbance in one part, surely the other parts will also be disturbed.

c. *Openness and Self-Renewal Analysis*

In the perspective of Islamic law, there are two mechanisms to maintain these two characters: 1) Changing habits and their worldview fuqaha or natural intelligence (cognitive culture) as a mechanism towards openness and self-renewal in Islamic law, and 2) Using a philosophical basis openness as a mechanism for self-renewal in the Islamic legal system. (Riyanto Waryani Fajar, 2014)

The Islamic legal system is an open system. Even so, there are still some jurists who think that the door to ijtihad is closed at the ushul level, causing Islamic law to be in a closed system which causes Islamic law to die. But the schools of Islamic law and the majority of jurists throughout the centuries view that ijtihad is necessary for Islamic law because texts are limited, while events/events continue to develop and are unlimited. (Ilyas Supena and M. Fauzi, 2002)

Based on that, the methodology of Islamic law basically develops certain mechanisms related to new events, or in system theory terminology it is called ‚interaction with the environment'. Examples are qiyās, mashlahah, and i'tibar al-'urf. This shows that this mechanism needs more development, in order to provide flexibility to Islamic law, so that it can keep up with changes that are happening at the moment. The mechanism and level of 'openness' will be the characteristics used in developing and critically analyzing the ushul system and sub-systems. The real example is: the consent granted in the marriage contract does not use Arabic, this shows an openness and renewal in law.

d. *Analysis of the Display of Islamic Law towards Multidimensional*

The very important thing to understand is how to position the text. In the knowledge of traditional scholars, according to the understanding found in classical books, the concept of theorem of texts is divided into two: qat'i (certain) and zhanni (uncertain). Then this qath'i text, by traditional scholars is divided into three, as Jasser Audah observed, namely qath'iyyat al-dilalah (definite appointment), qath'iyyat al-tsubut (certain authenticity), and al-qath'i al- mantiqi (the logic is certain).

In fact, the concept of qath'i was formulated by traditional scholars based on their conjecture, which was later stated as "definite truth". According to Jasser, currently to measure a 'truth' should be measured by: whether supporting evidence is found or not? The more supporting evidence, the stronger the level of 'certain truth'. (Jasser Audah, 2013)

In addition, there are also problems in the term ta'arudl al-adillah (contradictions between texts). Because, actually the contradiction is only from the side of language, not from the side of logic which is always associated with the time when the text was formulated. If this side of logic is used, the reference is: whether 'in substance' there is a conflict or not between the texts. Therefore, the sociological historical aspect should play a role and be involved in addressing the problem of ta'arudl al-adillah (inter-text contradiction). To overcome this problem, fiqh scholars should use the maqashid framework, which is to take a priority scale on texts by taking into account existing social conditions and not considering one text to contradict another. (Jasser Audah, 2013)

e.   Analysis of the appearance of Purposeful Islamic Law (Purposefulness)

Goal-oriented and purposefulness are common features in systems theories. However, Gharajedaghi, following Ackoff, distinguishes between goals in the sense of adhaf (goal-seeking system) and goals in the sense of ghayah or Maqashid (purpsoe-seeking system). What is meant by a goal-seeking system when it mechanically produces the same meaning from the same environment so that there is no choice to shift that meaning in achieving the goal, and cannot obtain different results because the results have been programmed more or less. Meanwhile, the purpsoe-seeking system/Maqashid is if:

a. Obtaining the same result in different ways in the same environment

b. Obtaining different results in the same environment or different environments. (M. Faisol et. al, 2012)

Thus in a purpose-seeking system there are variations in the choice of meaning to obtain goals and can obtain different results from the same environment as long as the differences in results are intended to achieve goals. (Jasser Audah, 2013)

5. Conclusion

The maqasid approach to Islamic law is a holistic approach, an approach that refers to general principles (commnon ground) which are not limited to one text or one particular proposition, but refers to all texts or all propositions (multidimensionality) and integrity, openness to knowledge other sciences (science, social and philosophy), conflicts between arguments, qath'i zhanni, cause and effect, can be bridged, even Islamic law can contribute to contemporary issues such as the role of women, human rights and so on. With this approach the weaknesses of the binary, atomistic, reductionist and historical approaches can be found a way out.

Jasser Audah has a major contribution in the reform of the methodology of Islamic law. In one of his works, Maqashid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach. In this book, Audah attempts to discuss three sciences at once: maqasid al-shari'ah, ushul fiqh, and system philosophy. These three knowledges were previously separate and not connected to one another. Interestingly, Jasser was able to make it into one unit and integrated with each other.

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