Article

Ulumuddin

Journal of Islamic Legal Studies
1(2) 68-91

Ulumuddin Prodi HKI FAI UMM
ejournal.umm.ac.id/index.php/ulum

Maqāṣid al-Sharī'ah Critique of Nahdlatul Ulama's *Fiqh* of Disability

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Abstract

This article critically examines the implementation of the concept of *maqāṣid* in the construction of the Nahdlatul Ulama's (NU) *fiqh* of disability. It purposes to intellectually confirm whether the mode of Islamic legal interpretation (*ijtihād*) of the construction has been influenced by the horizon of the thought of *maqāṣidi* (the higher objective of Islamic law) or has not. This confirmation is essential, since it seems that the *fiqh* of disability produced by Lembaga Bahtsul Masail NU/LBMNU (the Islamic legal body) is humanistic and egalitarian. However, both inclinations are the result of intellectual elaborations within the circle of NU Muslim jurists ('*ulama'*) – those who have taken a position on the side of *maqāṣid* legal consideration? Engaging closely with this issue, this article claims that there is no study that specifically examining the *maqāṣid al-sharī'ah* in the NU's *fiqh* of disability. This article arguably asserts that the NU's *fiqh* of disability has been enlightened by the *maqāṣidi* perspective and it is highly likely consistent in considering the virtue of *maṣlaḥah* (the public good) as the ultimate goal of *maqāṣid*, especially for disabled people. This consistency can be identified from the NU's fatwas (Islamic legal opinions).

https://doi.org/10.22219/ulumuddin.v1i2.13100

Abstrak

Artikel ini membahas tentang implementasi *maqāṣid* dalam konstruksi fikih disabilitas NU. Artikel ini bertujuan mengkonfirmasi apakah hasil *ijtihād* dalam kontruksi fikih tersebut dipengaruhi oleh horizon pemikiran *maqāṣidi* atau sebaliknya. Hal ini penting, karena tampaknya fikih disabilitas yang dirumuskan oleh Lembaga Bahtsul Masail Nahdhatul Ulama (LBMNU) tampak humanis dan egalitarian. Tetapi, corak yang demikian apakah merupakan hasil dari elaborasi intelektual di kalangan para Ulama NU yang menaruh perhatian besar pada pertimbangan *maqāṣid*? Berkaitan dengan isu ini, artikel ini mengklaim bahwa belum ada studi yang membahas secara spesifik terkait implementasi *maqāṣid al-sharī'ah* dalam buku yang bertajuk "Fikih Penguatan Penyandang Disabilitas". Artikel ini secara argumentatif menegaskan bahwa sebenarnya konstruksi fikih disabilitas dipengaruhi oleh horizon pemikiran *maqāṣidi* dan tampaknya secara konsisten mempertimbangkan kemaslahatan bagi penyandang disabilitas sebagaimana tampak baik secara eksplisit maupun implisit dalam fatwanya.

Keywords: *Fiqh* of disability; *maqāṣid al-sharī'ah*; Jasser Auda; Lembaga Bahtsul Masail Nahdlatul Ulama (LBMNU); *maqāṣidi* perspective; *ijtihād*.

Introduction

Nahdlatul Ulama' (NU) is the largest traditionalist Muslim organisation in Indonesia. It has contributed to tunnel the stymie of the Islamic *fiqh* to solve current challenging problems. One of its significant milestones is the publication of the book of the *fiqh* of disability (Fikih Penguatan Penyandang Disabilitas) in 2018. This book involves the issue of disability in the field of religious rituals, economy, social and politics. It seems to be a manifestation of NU religious progressivism through the way of filling the gaps of the Islamic legal thought for the disabled Muslims.

Conceptually, each legal problem in Islamic tradition has appeared is not always solved by the texts of law. Muslim jurists and legal scholars have realised that the texts of law are limited, while at the same time, the dynamics and problems of law have evolved rapidly (unlimited). As a consequence, the "limited" tends to be impossible to handle the "unlimited". Accordingly, the most rational breakthrough of the impossibility is encouraging *ijtihād*. *Ijtihād* that has oriented to solve the problems might be not in its textualist mode. It, as this article claims, needs to be more rational and spiritually promoting the values of *maṣlaḥah* (the public good). In this context, *maqāṣid al-sharī'ah* tends to be positioned the paradigm of *ijtihād*, or even an approach of the implementation and the advancement of *ijtihād*.

Maqāṣid al-sharī'ah is an object of study for legal scholars of both classic and modern era. *Maqāṣid* for them, generally is a more possible bridge to achieve the practical public good and order (*maṣlaḥah*). Meanwhile, the *maṣlaḥah* is the highest ideal of the Islamic law rules for society. This *maqāṣid*-based *ijtihād* (*ijtihād maqāṣidi*) needs persistent and serious efforts, and also a proper methodology which are able to condition the emergence of trajectory of Islam as a problem-solving religion. In dealing with this orientation, the *maqāṣid* approach will be used to be an instrument of facing contemporary problem of law, such as the *fiqh* that is suitable for people with disability.

The approach instrumentalised in this study is the modern concept of *maqāṣid al-sharī'ah*. Although some Muslim legal scholars have conceptualised the *maqāṣid*, such as al-Juwayni, al-Ghazali, al-'Izz Ibn Abd al-Salam, Syihab al-Din al-Qarafi, Syams al-Din Ibn al-Qayyim and Abu Ishaq al-Syatibi, the concept evolved in this study is that the *maqāṣid* developed by a progressive Muslim legal scholar, Jasser Auda. Yet, this study has elaborated the Jasser's *maqāṣid* further in order to ensure that it would become more reflexive, adaptable and flexible primarily to analyse the result of the law making (*istinbaṭ*) of the NU's *fiqh* of disability.

This article argues that NU or LBMNU - as a legal body that has had authority in constructing the *fiqh* of strengthening the roles of the disabled people – has been

inspired by the *maqāṣid al-sharī'ah* considerations at fabricating its fatwas. This article systematically will discusses the concept of *maqāṣid*, Jasser's thought of *maqāṣid*, the elaboration of Jasser's concept, NU's *maqāṣid al-sharī'ah* and the *maqāṣidi* critique of the NU's *fiqh* of disability.

The *maqāṣid*

The "*maqāṣid"* originally comes from Arabic, a plural form of the word *"maqṣad"*. It means purpose, objective, ideal or goal. The *maqāṣid* as a specific term of the Islamic legal tradition is the higher objective of Islamic law. Some Muslim jurists (*fuqahā'*) understand that it equals to the term of *"maṣālih"* (the public good). While one of them, Abdul Malik al-Juwaini,[1] highlights it as *"maqāṣid"* or *"al-maṣālih al-'āmmah"* (the public good and order), Abu Hamid al-Ghazali underlines it as "*al-maṣlahah al-mursalah"*. The terminologies, furthermore, are developed by Fakhruddin al-Razi and al-Amidi.[2]

Regarding the definition of *maqāṣid al-sharī'ah*, Ahmad al-Rasyuni, the commentator of the Islamic legal discourse, states that one of pioneers of this concept, Abu Ishaq al-Syatibi does not describe obvious limitations or conceptual boundaries. Among the classical legal philosophers (*uṣūliyūn*) who concern about the discourse, do not also define it clearly. Accordingly, it invites the modern scholars to attempt to offer more obvious definitions.[3] One of the modern scholars in this context is Ibn 'Ashur, who contends that the *maqāṣid al-sharī'ah* is *maqāṣid al-tashrī' al-'ammah* (the objectives of the general law). Furthermore, he states "…the objectives of the general law are manifested substantially and legally in the rules of the general matters, not specifically in the special cases of law." (…*maqāṣid al-tashrī' al-'āmmah hiya al-ma'ānī wa al-hikam al-malḥūẓah lil-shāri' fī jamī aḥwal al-tashri' aw mu'ẓamihā, biḥaythu lā takhtaṣṣu mulāḥaẓatuhā bilkawn fī naw' khāṣ min aḥkām al-sharī'ah*).[4] 'Allal al-Fasi, in addition, states that the *maqāṣid al-sharī'ah* is the purpose of the Islamic law, and intrinsically contains divine virtues in any legal aspect of its rules (*al-murād bimaqāṣid*

[1] According to Jasser Auda, Abd al-Malik al-Juwaini is one of the Ulamas in the early period of Islam contributed to development of the concept of *maqāṣid.* Jasser Auda, *Membumikan Hukum Islam Melalui Maqashid al-Syari'ah* (Jakarta: Mizan, 2015), 33.

[2] Jasser Auda, *Maqāṣid al-Sharī'ah dalīl li al-Mubtadi'īn* (London: Al-Ma'had al-'Ālamy li al-Fikr al-Islām, 2011), 15-16.

[3] Ahmad al-Raysuni, *Naẓariyah al-Maqāṣid 'inda al-Imām al-Shāṭibi* (Herndon: Al-Ma'had al-'Āly li al-Fikri al-Islāmi, 1995), 17.

[4] Muhammad al-Thahir ibn Asyur, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Cairo: Dār al-Kutub al-Mishri, 1946), 82.

al-sharī'ah; al-ghāyah minhā; wa al-asrār allatī waḍa'ahā al-shāri' 'inda kulli ḥukm min aḥkāmihā).[5] Wahbah al-Zuhaili offers that the *maqāṣid al-sharī'ah* is meanings and purposes of the whole or partial divine rules, or the objectives and the virtues of Islamic law (*maqāṣid al-sharī'ah hiya al-ma'āni wa al-ahdāf lil-shar' fī jamī aḥkāmihā aw mu'ẓamihā, aw hiya al-ghāyah min al-sharī'ah, wa al-asrār allatī waḍa'ahā al-shari' 'inda kulli ḥukm min aḥkamihā*).[6]

All the definitions above seems to be representative to understand the definition of *maqāṣid* among the legal philosophers (*uṣūliyūn*). Thus, it can be conceptually synthesised that the *maqāṣid al-sharī'ah* is the intrinsic meanings and objectives of Islamic law granted by God in which substantially has oriented to achieve the public good and order of all His creatures.

The development of *maqāṣid al-sharī'ah*

The *maqāṣid al-sharī'ah*, before has been sophisticated to become a systematic concept and values, it had been substantially inherent within the moral-practical live of Muslims in the period of the companion of the Prophet Muhammad PUBH (*ṣahabah*). For instance, the Caliph of Umar ibn Khattab, once he had been asked by the Prophet's companions to give some conquered lands (spoils of war or *ghanīmah*) in Egypt and Iraq to Muslim soldiers. They had striven their rights, because the Qur'anic verses explicitly allow the soldiers of *mujāhid* to have *ghanīmah.* Umar strongly had rejected their request, however. He had legitimated his rejection based on the other verses that have more general meaning emphasising that God has the higher objective to warn and prevent Muslims of being dominating the wealth and practicing the destructive capitalism.[7]

Nevertheless, Umar had not merely implemented the *maqāṣid* approach in dealing with his fatwas. For example, while Umar had been asked for the reason of Muslims to practice the ritual of surrounding Ka'ba during the *hajj* (*ṭawwaf*) with baring the shoulder – at that time, Muslims had succeed in controlling Makkah, he had answered that it was the pragmatic strategy to increase their political and military bargaining. It was because, although Muslims were the winner of the conquering of Makkah, their economic and political power had been weakened due to living in Madinah for long enough time. Accordingly, the Prophet had instructed their soldiers and his

[5] 'Allal al-Fasi. *Maqāṣid al-Sharī'ah al-Islāmiyyah wa Makārimuha* (Beirut: Dār al-Gharbi al-Islāmi, 1993), 7

[6] Wahbah Zuhaili, *Uṣūl al-Fiqh al-Islāmi* (Damascus: Dar al-Fikr, 1986), 1017.

[7] Jasser Auda, *Membumikan Hukum Islam Melalui Maqashid al-Syari'ah* (Jakarta: Mizan, 2015), 41-42.

companions to do *ṭawwaf* in order to show off their power. However, in this special case, Umar had not evolved *maqaṣid*, and tended to encourage his fellow Muslims that "We would not discontinue anything that we are always doing in the Prophetic era."[8] In understanding this case, Jasser argues that Umar had implemented *maqāṣid* rationally, pragmatically and contextually. As a special note, this *maqāṣid* would be highly possible to implement in the field of non-religious matters and the civil transaction (*mu'āmalah*) and not for rituals *per se* (*ibādah*).[9]

Furthermore, Jasser tries to trace the concept of *maqāṣid* of the third to fifth century of Islam (Hijriyah). He finds some Muslim legal scholars those who had concerned about the discourse of Islamic law that connects to the notion of philosophy and wisdom (*hikmah*) or *maqaṣid*, such as Al-Tirmizi al Hakim, Abu Zaid al-Balkhi, Al-Qaffal al-Kabir, Ibn Babawaih al-Qummi and al-Amiri al-Failasuf.[10] Regarding this part, al-Rasyuni adds the names such as Abu Mansur al-Maturidi and al-Baqilani.[11] In general, those scholars had not studied the concept of *maqāṣid* in such systematic way, due to it had not been placed yet to become a specific object of study, in spite of the fact that their works had dealt with the implementation of the thought of *maqāṣid.* The example of the latter work is al-Tirmizi al-Hakim's book "*Al-ṣalah wa Maqāṣiduhā"* (Prayer and Its Objectives).[12]

In the fifth to eight Hijriyah, some Muslim legal scholars had contributed to develop the concept of *maqāṣid al-sharī'ah*, namely Abu al-Ma'ali al-Juwaini, Abu Hamid al-Ghazali, al-Izz Ibn Abd Salam, Syihab al-Din al-Qarafi, Syams al-Din Ibn al-Qayyim, and also the prominent theorist, Abu Ishaq al-Shātibi. They had developed the *maqāṣid* in three directions: the first is built from *maṣlahah al-mursalah* – a method of *ijtihād* in the Islamic legah theory (*ushūl al-fiqh*) – and then, it has been transform to be the fundamentals of Islamic law; the second starts from the notion of the virtues of law (*hikmah*) and it has been altered to be the legal maxims (*qawāid al-ahkām*); and third is the scriptural feature of postulation (*ẓanniyah*) to be elaborated to become the feature of certainty (*qat'iyyah*).[13]

[8] Jasser Auda, *Membumikan Hukum Islam,* 43-44.

[9] Jasser Auda, *Membumikan Hukum Islam,* 44.

[10] Jasser Auda, *Membumikan Hukum Islam,* 46

[11] Ahmad al-Rasyuni, *Naẓariyah al-Maqāṣid*, 43 and 45.

[12] Jasser Auda, *Membumikan Hukum Islam,* 46; Ahmad al-Rasyuni, *Naẓariyah al-Maqāṣid,* 40.

[13] Jasser Auda, *Membumikan Hukum Islam,* 54-55.

Jasser Auda's *maqāṣid*

In a simple way, Jasser offers two formulations in order to encourage the concept of *maqāṣid* to become more lively and dynamic. It is important, due to potentially being able to solve the contemporary challenges. First, the concept of *maqāṣid*, according to Jasser should be developed from its basic understanding of "protection and preservation" into "development and respecting human rights."; [14] second, the concept should be oriented to cover the issues of the modern human development.

First, in dealing with the idea of transformation from the virtues of "protection" and "preservation" to "development" and "respecting human rights", *maqāṣid al-sharī'ah* needs to be contextualised following the reality that has faced. This transformation is a key feature to modify *maqāṣid* to become more lively and problem-solving oriented.

Abu Ishaq al-Syatibi asserts that the imposition of Islamic law is to protect and preserve the objectives of *al-sharī'ah* in the framework of the divine creation.[15] His view follows al-Ghazali's concept, mainly while the protection of offspring (*hifẓ al-nasl*) has been put to become one of objectives (*maqāṣid*) of Islamic law in its primary level. It has been also developed from al-Juwaini's concept of the protection of sexual privates and dignity (*hifẓ al-furūj*). This concept has been excavated and reinterpreted by al-Juwaini from al-'Amir those who described the *maqāṣid* as the necessity to "sentence any act of sexual immorality" in the field of the Islamic criminal law. The concept that originally comes from al-'Amiri, is recognised as the protection of offspring (*hifẓ al-nasl*). This conceptualisation is also discussed by al-Syatibi, in his monumental work, *al-Muwāfaqāt*.[16]

From the concept of *hifẓ al-nasl* above, Ibn Ashur reinterprets and advances a kind of rational *ijtihād* to the concept of *maqāṣid* that emphasises the virtues of family and morality in Islamic law. His effort of transformation and development of the *maqāṣid*, has scholarly attracted Jasser to develop the *maqāṣid* and its eloquent elaboration with the concept of "value" and "system".[17]

Furthermore, the development that had been encouraged by scholars since al-Juwaini to Ibn Ashur, Jasser argues that *hifẓ al-nasl* which highlights the essential of "the protection and preservation of offspring," should be transformed to "care with family

[14] Jasser Auda, *Membumikan Hukum Islam,* 56.

[15] Abu Ishaq al-Syatibi, *Al-Muwafaqāt fī Uṣūl al-Sharī'ah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), 221.

[16] Jasser Auda, *Membumikan Hukum Islam,* 56.

[17] Jasser Auda, *Membumikan Hukum Islam*, 56-57.

and parenting," and even to "the social system of the Islamic civilisation." Meanwhile, the protection and preservation of mind (*hifẓ al-'aqli*) has changed to become "the development of scientific thought," "the development of scholarship milliu," "the prevention of captive mind," and even "minimising the wave of immigration among influential experts, scholars and talented men." The protection and preservation of dignity (*hifẓ al-'irḍ*) has been urged to build the concept of "the protection and preservation of human dignity and human rights," while the protection and preservation of religion (*hifẓ al-dīn*) to become "the freedom of religion or belief and the freedom of expression." The last but not least, the protection and preservation of wealth and property (*hifẓ al-māl*) has changed to be "the economic development and empowerment" and also "eradication of poverty and disparity."[18]

Second, Jasser initiates the human development as one of the fundamental parts of *maqāṣid*. His initiation is based on the development report of the United Nation (*UN Development Report*) that factually has depicts the reality of Muslim states having lower position in terms of the Human Development Index (HDI). Although some of them have reached the higher positions in terms of the per capita income, such as Brunei, Qatar and United Arab Emirates, some others have remained in the lower positions and their people have struggled to face the problem of poverty and disparity.[19]

For Jasser, the human development is the most crucial theme that must also be responded by the Islamic law, mainly its aspect of *maqāsiḍ*. According to Jasser, it is important due to there have been more than 200 indicators of study in the field (human development), most of them are in line with the *maqāṣid*. The evidence of the parallelism between the indicators of human development and the *maqāṣid* have covered the issues of the level of political participation and democratisation, literacy, engagement with education and the higher education, the life expectancy, the access to clean water, the employment and the life standard. It means that, through this intellectual elaboration, it can ensure the practical position of Islamic law which is more progressive and adaptable in responding current challenging realities.[20]

Therefore, the *maqāṣid* in the Jasser's means the higher objectives of Islamic law which tend to be progressive-futuristic and humanistic. The *maqāṣid* for him, is not only a method of law making (*istinbaṭ*), legal consideration and the Islamic idea of protection and preservation, but also the advancement orientates at respecting

[18] Jasser Auda, *Membumikan Hukum Islam*, 320

[19] Jasser Auda, *Membumikan Hukum Islam*, 57-58.

[20] Jasser Auda, *Membumikan Hukum Islam*, 58.

human rights, human dignity and human development. Accordingly, it is projected to be able to increase the level of human development in Muslim countries and guarantee the realisation of the public good and order based on more than 200 indicators of the UN Development Program (UNDP).

Elaborating the Jasser's *maqāṣid*

Although the Jasser's *maqāṣid* emphases the progressivism and future-oriented nature, practically it absorbs the system approach. It means emphasising the essentials of integralism, multidimensionality and interconnectedness. It encourages that while subs of system have been synergised each other to become the unity, their branches have remained in working on their own functional tracks and roles. Both groups of subs of system and the branches have conditioned and being conditioned and not negated or being negated each other.

In the context of Jasser's *maqāṣid,* it has formulated the system that urges to maintain the dynamic nature of the *maqāṣid*, mainly at facing the persistent changes of space and time, as well as problems. In formulating this system, there have been sixth entities that need to be integrated: the cognitive nature system, wholeness, openness, interrelated hierarchy, multi-dimensionality and purposefulness.[21]

The cognitive nature

This system is put at the beginning of hierarchy, because it connects to the metaphysical problem of the Islamic law in general or specifically the *fiqh* (jurisprudence). While both the Islamic law and *fiqh* have been understood the divine law that absolutely must be imposed, this system has advanced the critical awareness among the legal scholars to understand that both are rationally made by man. Accordingly, it has liberated the creative mind of man from the fetters that have strongly grasped.

Theoretically, the *fiqh*, according to the Islamic legal theorists (*uṣūliyūn*) is the concept covering the Islamic law and rules that have been constructed from specific arguments and scriptural bases. This concept not only deals with the certainty, but also uncertainty. It is because the specific arguments and scriptural bases elaborated have touched the practical things (*'amaliyah*) and the special cases (*furū'iyyah*) which tend to be tolerant to the presumption (*ẓanni*). Consequently, taking side of this argument, some *uṣūliyūn* argue that the *fiqh* seems to have the uncertainty.[22]

[21] Jasser Auda, *Membumikan Hukum Islam*, 86.

[22] Wahbah Zuhaili, *Uṣūl al-Fiqh al-Islāmi*, 19.

Al-Qadhi al-Baidhawi, however, against the *uṣūliyūn*'s argument, states that the *fiqh* has never been uncertain (*ẓanni*), but certain (*qathi*). He argues, furthermore, while the law maker (*mujtahid*) considers a legal position of a certain case and he or she has sense of presumption – but his or her prediction is strongly believed, the position resulted must be declared and implemented.[23] Yet, the law that has been allegedly believed as the right one and just, seems to be non-universal and not always agreed by other law makers. It obviously has invited different opinions (*ikhtilāf*) among the legal scholars. Accordingly, the *fiqh* is the law produced by man which inherently tends to be relative and mundane. Since it contains weaknesses and limitations, it is not impossible to verify as not the representative of the God's will, unless its position as merely a truth claim.

In this context, the Jasser's concept has attempted at transforming the paradigm of *fiqh* claiming as the God's law to be cognitively a result of human creativity (*mujtahid*). The law maker has constituted a certain legal position from certain-selected scriptural sources of the Qur'an dan hadith. Regarding this issue, the consensus (*ijma'*) has been categorised as not a valid part of reference of the Islamic law, but the consultative mechanism, or systemically, it is a methodological instrument to select the multiparticipant legal opinions. To support this argument, once Ibn Taimiyah has argued that there are a lot of *ijma'*-based legal claims made by Ibn Hazm which are not right covering the crucial issues such as rejection of *ijma'* will encourage apostacy, woman is not allowed to be the imam of the collective prayer for men and others.[24]

Wholeness

The concept of system affirms that all aspects in Islamic law have connected. It is because all parts of the aspects have characters that are suitable for constructing unity and ensuring wholeness.[25] As Retna Gumanti reflectively comments on the Jasser's formulation regarding the affirmation on the concept of system, "causality" within the system seems not to express such partial orientation, but the wholeness of united pictures. As a consequence, each part of the system, since it has a connected function each other, it should be viewed as the "dynamic" wholeness.[26]

[23] Wahbah Zuhaili, *Uṣūl al-Fiqh al-Islāmi*, 20.

[24] Jasser Auda, *Membumikan Hukum Islam,* 252-253.

[25] Jasser Auda, *Membumikan Hukum Islam,* 87.

[26] Retna Gumanti, *Maqashid al-Syari'ah Menurut Jasser Auda (Pendekatan Sistem dalam Hukum Islam)*, *Jurnal al-Himayah* 2 (1) (2018): 110.

Practically, according to Amin Abdullah, this system has fundamentally influenced the bases of the mode of law making. It, specifically, urges to support the advancement of the Islamic legal theory (*uṣūl al-fiqh*) – as methodology of law making – and to solve the problem of the inclination to implement the reductionistic and atomistic approach.

The atomistic approach might be analytically evaluated from classical Muslim scholars who had approached the 'legal' references of the scripture in solving the problem they had faced, but they had ignored to look at the other references. This approach is highly likely problematic due to its over-engagement with the legal-textualism (or legal-centrism). To solve the problem, it is important to open the alternative way of the legal interpretation. Legal scholars need to implement the principle of holism in which has played the roles of thematic exegesis covering not only mere the legal references, but also social, cultural, political, economic and other references. This principle seems to be more comprehensive to solve problems of law.[27]

Openness

The Islamic concept of "Relevance in any place and time" (*ṣālih fī kulli makān wa zamān*) cannot permanently ensure its position without any open-mindedness and openness among Muslim legal scholars in evolving *ijtihād.* This concept has been understood to justify the dynamic and openness of *ijtihād*, since the Islamic revelation given to Muhammad PUBH had ultimately completed during the prophetic era. To express the matter of openness of *ijtihād*, Muslim legal theorists assert the specific legal proposition that Islamic legal texts are limited, while the legal problems have evolved persistently. As a consequence, in dealing with the problems have emerged, such "opened" *ijtihād* is needed. An open-minded *faqīh* (Muslim jurist) while confronts current issues of law he or she has to be able to consider and decide any better and clearer legal position. It is important to ensure the ideal character of Islamic law which is dynamic.

This system of openness offers two mechanisms to condition Islamic law to become relevant and life: *first*, the transformation of law should be followed by the changing of jurists' worldview. This worldview has been influenced and formed from the context of the jurists such as religious beliefs, the concept of self, geography, environment, politics, society, economy and language. This context has conditioned the jurists' *ijtihād*, due to its roles of worldview are significant mainly in constructing

[27] Amin Abdullah*, Fresh Ijtihad: Manhaj Pemikiran Keislaman Muhammadiyah di Era Disrupsi* (Yogyakarta: Suara Muhammadiyah, 2020), 97.

Islamic law. [28] Their worldview should be scientific-based and considering realities. For instance in interpreting the maximum of the period of pregnancy, the reality about it is only understood by the scientific method which is a part of the worldview. [29] Accordingly in the process of *ijtihād*, jurist needs to learn and discuss with experts that concern about the scientific issue that its legal opinion must be constituted.

Second, philosophical openness. Historically, in the struggle of Islamic thought, philosophy has a bad image among Muslims, philosophy has been declared haram by some scholars, such as Ibn Aqil, al-Nawawi, al-Suyuthi, al-Qusyayri, Ibn Ruslan, al-Shirbin, and Ibn Shalah. Ibn Salah's fatwa is widely quoted in philosophical discussions, resulting in the torture of a Muslim scholar and philosopher and his books being burned for violating the fatwa, namely Ibn Rushd.[30]

This system expects the openness of the faqih to take advantage of the contributions made by philosophers, especially medieval Muslim philosophers who have contributed in philosophy and logic. For example, considering Ibn Sina's version of time, al-Farabi's blasphemy of Induction, Ibn Rushd's openness to all philosophical investigations, as well as Ibn Hazm and Ibn Taimiyah's critique of the Aristotelian analogy, it is hoped that Islamic law will be able to develop, reform and survive throughout the ages.[31]

Interrelated hierarchy

Amin Abdullah explains that this system would fix two things regarding the construction of the *maqāṣid al-sharī'ah*. [32] *The first is the range of the maqāṣid* fixation. The construction of the traditional *maqāṣid* that had been developed by the classical jurist in the past seems to be particular or narrow. As a consequence it limits the range of the *maqāṣid al-sharī'ah*. To integrate and ensure that its connections are engaged each other, Jasser Auda classifies into three levels: 1. The general *Maqāṣid*, that is *maqāṣid* covering any higher public goods and general in all parts of Islamic law, such as justice and convenience; 2. The special *Maqāṣid*, which is covering the specific public goods such as child welfare in the family, protection from crimes in criminal law, and protection from monopoly in economic law; 3. The partial *Maqāṣid*

[28] Jasser Auda, *Membumikan Hukum Islam,* 262-263.

[29] Jasser Auda, *Membumikan Hukum Islam,* 268.

[30] Jasser Auda, *Membumikan Hukum Islam,* 269.

[31] Jasser Auda, *Membumikan Hukum Islam,* 329.

[32] Amin Abdullah*, Fresh Ijtihad*, 98-99.

that aims to explain further meanings behind the texts of the Islamic law, such as the aim to ease anyone who is sick and allowing she or he not to fasting.[33]

Second, fixation individuals that are around the *maqāṣid*. The traditional *maqāṣid* seems to be individual. Due to this system the *maqāṣid* covers the social dimension of society which is multicultural and even it has been claimed that covers the global humanity.

Multidimensionality

Contradictions between texts (*ta'āruḍ*) have been challenged by *mujtahid*. Due to the contradictions among jurists constitute ways to solve the problem. Regarding this solving problem, according to Shafi'i, Maliki, Hambali dan Dzahiri state that the hierarchy of approaches that can be applied is *al-Jam'u wa al-tawfīq* (compromise)*, al-tarjīḥ* (selection)*, al-naskh* (abbrogation)*,* and *al-tasāquṭ al-dalīlayn* (leaving both the judgments)*.*[34] Accordingly, Jasser Auda offers the system that aims to expand the involvement of a *mujtahid*, and elaborate a new dimension, namely maqāṣid to eliminate contradictions. As a consequence, the judgments and arguments that are found to be contradictory each other, will be understood as being non-contradictory, because the *mujtahid* puts each text properly in the relevant situation and condition.

Purposefulness

Sharī'ah that is imposed on Muslims cannot be separated from the goals that are substantially oriented to be the benefit of humans both in this world and in the hereafter. [35] Jasser Auda asserts that *maqāṣid* is not just a method and the fundamentals of *sharī'ah* or the wisdom behind it, but it should be a perspective that is applied and taken into consideration in process *ijtihād*. The application of *maqāṣid* is used as a basis in determining whether the arguments will be dealt with the *takhsīs* (specialisation) or *ta'wīl* (exegesis), verifying the validity of the *mafhūm al-mukhālafah* of a proposition or argument. So, in consideration of the *ijtihād,* the *mujtahid always* makes *maqāṣid* as a perspective.[36]

Thus, as a concept, *maqāṣid* has evolved depending on the context of the times. In other words, the renewal of *ijtihād* is not only applicable at the level of *fiqh*, but also methodology (*uṣūl al-fiqh*). Jasser, with his six approaches of system that are

[33] Jasser Auda, *Membumikan Hukum Islam,* 36-37.

[34] Wahbah Zuhaili, *Uṣūl al-Fiqh al-Islāmi*, 1182-1184.

[35] Abu Ishaq al-Syatibi, *Al-Muwafaqāt fī Uṣūl al-Sharī'ah,* 220.

[36] Jasser Auda, *Membumikan Hukum Islam,* 297-298.

integralistic-multidimensional and interconnected, contributes to making Islamic law progressive and responsive to the current contextual situation.

The NU's *Maqāṣid*

Explicitly, NU does not use the *maqāṣid al-sharī'ah* as a special term at its congressional result, but *maṣlahah 'āmmah* (the public good). *Maṣlahah 'āmmah* is understood as the human interest consists of the value of benefits and the absence of harmful things.[37] However, *maṣlahah 'ammah* that is offered should be in accordance with the higher objective of the *sharī'ah* (*maqāṣid al-sharī'ah*), those are five rights that need to be preserved: the preservation of the freedom of religion, the preservation of life (and the human dignity), the preservation of mind and conscience, the preservation of family and offspring, and the preservation of property.[38] Ultimately, the *maṣlahah 'āmmah* should be dealt with the principles of justice, freedom, and equality before the law.[39]

The term of *maṣlahah 'āmmah* grasped by NU is the concept that is in line with the *maqāṣid al-sharī'ah* in general. It is based on the al-Ghazali's argument that acts of preserving religion, self, mind and conscience and property are so-called *"maṣlahah"* and avoiding them are *"mafsadah"*.[40] As mentioned before, on the concept of *maqāṣid*, Muslim jurists have used various terms, although substantially they are the same: *maqāṣid al-sharī'ah.*

Maṣlahah 'ammah has a position as a basis of consideration at making the law or policy which relates to the effort of facing challenging realities of the society. In addition, it is important to prevent anyone (Muslim jurists) to apply the *maṣlaha 'āmmah* based on the individual desire and/or interest of a certain group, because the *maṣlahah 'āmmah* itself must be validated by the rightness of the law (*syara'*).[41]

Beside the *maṣlahah 'āmmah* must be in harmonious with the higher objective of Islamic law, NU states that the *maṣlahah 'āmmah* purposes to serve the public good,

[37] Nahdatul Ulama, *Ahkamul Fuqaha: Solusi Problematika Aktual Hukum Islam, Keputusan Muktamar, Munas dan Konbes Nahdatul Ulama (1926-2004 M)* (Surabaya: Lajnah Ta'lif Wan Nasyr (LTN) NU Jawa Timur, 2004), 625.

[38] Nahdatul Ulama, *Ahkamul Fuqaha*, 625.

[39] Nahdatul Ulama, *Ahkamul Fuqaha*, 627.

[40] Abu Hamid Muhammad ibn Muhammad al-Ghazali al-Thusi, *al-Mustashfa* (Beirut: Dār al-Kutub al-'ilmiyyah, 1993), 174.

[41] Nahdatul Ulama, *Ahkamul Fuqaha*, 624-625.

not for any individual. It is not allowed to undermine the public good and also the higher objectives than it. Accordingly, it should be *ḥaqīqīyah* (more concrete) and not *wahmiyah* (hypothetical), and not being contradictory with al-Qur'an, hadith, ijma', and qiyas.[42]

In a simply word, due to the NU's congressional outcome, the Lembaga Bahtsul Masail Nahdlatul 'Ulama (LBMNU) as a religious institution that has an authority to constitute the fatwa on the ummah problems, seems to always put the *maqāṣid al-sharī'ah* as a fundamental at making law or policy. The *maṣlahah 'āmmah*, according to the NU, tends to drive the *maqāṣid al-sharī'ah* as a consideration and even paradigm or fundamental worldview to making law that aims to ensure that the law is *ṣālih fī kulli makān wa zamān* (relevant in anytime or context).

It is highly likely that the NU's *maqāṣid* in general is similar with the *maqāṣid* reformulated by Jasser. What is different from the NU's version, Jasser applies the system approach to open any trajectory of development and improvement primarily in terms of methodology aiming to guarantee its adaptability at facing the changing realities (following the time and contextual situation). So, it has been claimed that the Jasser's *maqāṣid*, which is progressive-futuristic and humanist, is not contradictory against the NU, although dealing with the special case of the human development has not become a concern yet by the NU's *maṣlahah 'ammah*. It seems that both may conceptually complete each other.

The *maqāṣid* critique of the NU's *fiqh* of disability

The construction of *fiqh* of strengthening individuals with disabilities is an embodiment of NU's humanism, as an effort to solve the problems of the people, especially for those with disabilities. It is because the fatwas that are presented in every issue raised always consider the public good. For example, regarding the prayer of a person with a disability holding a stick which is evidently unclean at the tip, LBMNU allows and validates his or her prayer by following the Hambali school of legal thought. Indeed, as it is known, NU is one of the organizations that explicitly adheres to the Shafi'i madhhab, and in the Shafi'iite it is not allowed to pray carrying unclean things (excrements).[43] Moving from one of madhhabs to another that takes a side of

[42] Nahdatul Ulama, *Ahkamul Fuqaha*, 626.

[43] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas* (Jakarta: LBMNU 2018), 81.

the public good is an implementation of the worldview of *maqāṣid al-sharī'ah* by LBMNU.

That is relevant with Ahmad Imam Mawardi's thought, that:

> "Commands and prohibitions from the text side are the same in terms of the strength of their arguments, the difference between whether they are statutory *wajib* or *sunnah*, and between *haram* or *makruh* cannot be known from the texts, but from the meaning and analysis in terms of their benefit and to what degree it occurs."[44]

Based on the thought, it is reasonable for LBMNU to do the *talfīq* (taking consideration of believing in another legal madhab; changing the madhab), mainly due to taking a side of serving the public good of individuals with disabilities. Accordingly, although the LBMNU uses the method of *qaulī* in its *istinbaṭ* (the process of making law), the nuance and the paradigm of *maqāṣid* are always put as its primary consideration.

Although the case of changing madhab (*talfīq*) in the context of individuals with disabilities has been discussed specifically, and the basic concept of the legal status of the *talfīq* should be avoided,[45] LBMNU considers to allow to use it (*talfīq*), due to the arguments of the public good and interest that are needed. The NU's openness to the practice of *talfīq*, according to Muhamad Adib, in the classical thought of Shafi'ite, *talfīq* is suggested to avoid in the context of the conversion of madhab either for the temporal or the long lasting context. Yet, practically, NU's scholars seem to be relatively not engaged with the suggestion. The very evidence of this non-engagement, they choose the alternative suggestion that allows to refer to the second opinion (*qaul thāni*), although it is weaker than the first (*qaul marjūh*). However, there is an essential requirement to deal with the alternative, that should be based on the consideration of the public good.[46] Any consideration to the thing that would be burden or otherwise, refers to al-Sya'rani on his *"al-Mizan al-Kubro"*, is actually

[44] According to Mawardi, "Perintah dan larangan dari sisi teks adalah sama dalam hal kekuatan dalilnya, perbedaan antara apakah ia berketetapan hukum wajib atau sunah, dan antara haram atau makruh tidak bisa diketahui dari nash, tetapi dari makna dan analisis dalam hal kemaslahatannya dan dalam tingkatan apa hal itu terjadi." Ahmad Imam Mawardi, *Fikih Minoritas: Fikih al-Aqlliyat dan Evolusi Maqashid al-Syari'ah dari Konsep ke Pendekatan* (Yogyakarta: LkiS, 2010), 215.

[45] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 121.

[46] Muhammad Adib, *Kritik Nalar Fikih Nahdatul Ulama* (Malang: KIRISUFI, 2018), 91.

consistent with the meaning of the public good and interest.[47] Therefore, in this context, the *talfiq* has become a part of the framework of the the NU's legal thought (*Fikrah Nahdliyyah*).[48]

The fatwas in the construction of NU's legal thought on the strengthening people with disabilities, explicitly applies the trilogy method, namely *qaulī*, *qiyasī*, and *manhajī*. Furthermore, the application of the method, does not undermine the consideration of the *maqāṣid al-sharī'ah* that aims to guarantee the public good.

Muhammad Adib states that in the procedure of selecting the legal opinions (*qoul/wajh*), it plays the role of the implementation of the elements of the consideration of the public good that closely relates to the social reality.[49] That is why, it has become the primary consideration[50] as the 31st NU's congress decided it, especially at the moment of seminar on the system of making Islamic law in the perspective of LBMNU (*Sistem Pengambilan Keputusan Hukum Islam dalam Bahtsul Masail di Lingkungan Nahdatul Ulama*).[51] The evidence of the consideration has been depicted at the fatwa of shortening between two prayers due to the problem of accessibility (*menjamak shalat dengan alasan aksesibilitas*),[52] LBMNU argues that postponing one prayer from the right time to the next time of another prayer because of the problem of accessibility of the public facility or one finds it difficult to have user-friendly facility for people with disabilities, is allowed. The *fatwa* is based on the thought of Ibnu Mundzir, although he himself does not being categorised by NU as an official legal jurist that comes from the prominent Sunni's legal thoughts (madhabs). Accordingly, the nuance of the consideration of the *maqāṣid al-sharī'ah* serving the public appears clearly.

Furthermore, the concept of *maṣlahah 'ammah* leads to the principles of justice, independence and equality which were explicitly stated by LBMNU at the beginning of the discussion on "The Problems of Disability in *Fiqh*" (*Masalah Disabilitas dalam*

[47] Muhammad Adib, *Kritik Nalar Fikih Nahdatul Ulama,* 62.

[48] Muhammad Adib, *Kritik Nalar Fikih Nahdatul Ulama,* 93.

[49] Muhammad Adib, *Kritik Nalar Fikih Nahdatul Ulama,* 259.

[50] Muhammad Adib, *Kritik Nalar Fikih Nahdatul Ulama,* 259.

[51] Nahdatul Ulama, *Ahkamul Fuqaha*, 712.

[52] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 107-109.

Fikih).[53] This shows that every problem that has been solved by LBMNU through the construction of *fiqh* for strengthening individuals with disabilities must consider the public good and the three principles. It is manifested in its fatwa regarding the financial institutions that refuse loan requests for people with disabilities without a survey and they (the people) are considered incapable because of their disabilities. In this case, LBMNU argues that this is a form of *istihzā'* and being contrary to the principle of justice.[54]

The LBMNU's argument is actually in line with the proposal of the development of *maqāṣid* initiated by Jasser Auda.[55] For him, the *maqāṣid 'āmmah* should be added to the principles of justice and convenience. Thus, in the construction of *fiqh* it seems to always be considered as a basis, even though it is not explicitly stated.

Implicitly, indeed the *maqāṣid al-sharī'ah* is always used in colouring every *fatwa* presented in the construction of the *fiqh*. It is important to strengthen the position of the people with disabilities. However, there are several fatwas that need to be reconsidered both in terms of the public good and interest. These fatwas, for example, relate to "The law of being an Imam of prayer for the deaf and mentally disabled" (*Hukum menjadi imam shalat bagi disabilitas rungu dan grahita*). LBMNU argues that it is possible and permissible for people with hearing impairments to perform an Imam of prayer, but for those who have mental disabilities are adjusted to their level of awareness.

In this specific case, it should be explained and emphasized further that for people with hearing impairments, several requirements need to be fulfilled, such as having a strong memorization of al-Qur'an, their performance is only limited to prayers that the procedure of reading al-Qur'an is not aloud (*shamitah*). It does not mean to burden or negate the principle of justice or equality. It is because when they have been totally allowed without any requirement, it will cause greater harms. For example, when they forget to read the Surah al-Fatihah or even they are mistaken to perform the prayer, it is feared that it will be difficult to remind and potentially bring misfortune in prayer (not solemn). Accordingly, according to Ahmad Imam Mawardi,

[53] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 67.

[54] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 128.

[55] Jasser Auda, *Membumikan Hukum Islam*, 36.

one of the rules of *maqāṣid al-sharī'ah* is that it is necessary and to be a main priority to avoid harm than to take benefits.[56]

The discussion above is consistent with the permissibility of the deaf and dumb to drive a motorcycle on condition that they modify their vehicle that has the tools to identify and pinpoint hazards.[57] Suggesting this special condition serves to avoid harm or damage that will occur, because avoiding harm or damage takes precedence over getting profits or benefits. Accordingly, it might be understood that this consideration within the *fatwa* emphasises not only the essentials of profits or benefits, but also efforts of avoiding harm or damage.

Furthermore, regarding the development of *maqāṣid al-sharī'ah* towards the protection of human rights, the NU releases its several conclusions, arguments and commentaries on the issue of human rights and its significance with the five principles of Islamic law (*uṣūl al-khams*); *ḥifẓ al-dīn* (the protection of religion), *ḥifẓ al-nafs wa al'irḍ* (the protection of human rights and dignity), *ḥifẓ al-'aql* (the protection of mind and reason), *ḥifẓ al-nasl wa ḥifẓ al-mal* (the protection of offspring and property).

The first, *ḥifẓ al-dīn* is interpreted as guaranteeing the right of Muslims to protect and maintain their religion, as well as fully guaranteeing all religious differences, guaranteeing religious freedom, and prohibiting forced religious conversion of any religion. The second, *ḥifẓ al-nafs wa al-'irḍ* is defined as guaranteeing the right of every human live, to live a decent and prosperous life. In this context, Islam demands the realization of justice, the right to a decent life, work, independence, safety and non-discrimination. The third, *ḥifẓ al-'aql* means to guarantee the freedom of thought and conscience, freedom of speech and expression, and to prohibit all forms of destruction of the mind. The fourth, *ḥifẓ al-nasl* aims to guarantee the individual privacy, the protection of their life and work, securing better future and to forbid the destructive behaviour that eliminates the *ḥifẓ al-nasl* such as free-sex, adultery and so on. The fifth, *ḥifẓ al-māl* is oriented to guarantee and protect the ownership of property and to prohibits any acts of confiscation of other people's property rights in all forms.[58]

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[56] Ahmad Imam Mawardi, *Fikih Minoritas: Fikih al-Aqlliyat dan Evolusi Maqashid al-Syari'ah dari Konsep ke Pendekatan*, 231-232.

[57] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 178.

[58] Nahdatul Ulama, *Ahkamul Fuqaha*, 642-643.

The NU's thought of human rights seems to different from the five principles proposed by Jasser Auda, especially the *ḥifẓ al-nasl*. Jasser offers that it must not limited to the protection of offspring in the sense of individualism, but covers the protection of family and its development in general. In the context of the *ḥifẓ al-māl*, Jasser emphasises the broader social protection that is aware of the priority issue of social and economic development, promotes the human well-being and welfare, eliminates the disparity between the poor and the rich.[59] Although between these two are different, both are complementary that substantially contributes to the agenda of the protection of human rights.

The protection of human rights is realised in the mentioned construction above. As Knut D. Asplund suggests, the human rights principles must cover the values of equality, justice and non-discriminatory. In addition, the realisation of these principles is obligatory for Muslims.[60] The realisation of these principles is represented by various NU's fatwas. For instance, "The discussion on the issue that puts the people with disabilities to have lower jobs," NU insists to prevent any company that limits the job criteria and quotas for people with disabilities only as office boy, pantry, delivery officer and others.[61] In its fatwa, in spite of the fact that NU does not explicitly make justification based on human rights, implicitly the fatwa consists of it.

In dealing with the human development, there are some indicators that is initiated by UNDP in the context of the human development index: political participation, literacy, participation in education, life expectancy, access to clean water and gender equality.[62] From these indicators, there are four entities that have been realised within the concept of the *fiqh* of disability, those are the indicator of political participation, literacy, participation in education and the life expectancy.

The first, the indicator of the political participation has been realised in the NU's fatwa on the theme "The discrimination over the requirement of political involvement (is not allowed for anyone with the physical and spiritual limitations)." NU argues that the requirement emphasising merely on the standards of the physical health will negate the political rights of the people with disabilities, mainly that any category

[59] Jasser Auda, *Membumikan Hukum Islam,* 320.

[60] Knut D. Asplund, *Hukum Hak Asasi Manusia* (Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia, 2008), 39-41.

[61] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 131-132.

[62] Jasser Auda, *Membumikan Hukum Islam,* 59-60.

states "is not being able physically" must be them; the people with disabilities. It is indeed, a kind of discrimination and injustice.[63]

The second is the indicator literacy and involvement in education. Both are connected. It means that when the people with disabilities have better education, it would support their literacy skill and competence. It can be seen at the NU's fatwa on "Special education for students with disabilities." In general, the *fatwa* emphasises that the people with disabilities have the rights of education. So that, they must have access of educational facilities, they must not sit in the process of regular examination or other requirements that are not suitable and even irrelevant to the development of the people with disabilities. The last but not least, the *fatwa* also encourages the government to care of the rights of education for the people with disabilities.[64]

The third, the indicator of life expectancy. The people with disabilities – no matter that they have various characters – have a right to live happily and prosperously, have facilities that are suitable with them, have no any kind of discrimination and have a minimum economic disparity. The fatwas that accommodates the indicator, for example, "The government's obligation to provide accessible public facilities for people with disabilities,"[65] "…to provide inclusive facilities,"[66] "Increasing punishment

[63] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 182-184.

[64] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 157-164.

[65] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 155-157.

[66] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 169-170.

for criminals against people with disabilities,"[67] and "Job access for people with disabilities."[68]

Due to the fatwas, it seems that NU contributes to support participations of the people with disabilities, although not all mentioned indicators are being fulfilled. Yet, as intellectual and moral responsibilities, NU tries to do the best that NU can do, especially in order to respond the ummah problems.

In dealing with the discussed *maqāṣid* construction, it has been claimed by NU as a realisation of the Islamic vision of *rahmatan lil-'ālamīn* (the grace for the universe). The concrete realisation of this grace is that NU achieves the public good. It is also a realisation of *Islam ṣolīh fī kulli makān wa zamān.* Some fatwas need to be reconsidered, however. They must support not only the importance of public good, but also avoid the public destructiveness as a priority in terms of realising the *maqāṣid al- sharī'ah*. Implicitly, although NU tends to apply the trilogy of the method of making law (*istinbāṭ*) that seems to be legalistic, NU's legal thought in general is primarily based on the framework of *maqāṣidī*. This *maqāṣidī* framework of thinking is relevant with the Jasser's argument of *maqāṣid* orients to protect human rights and the human development.

Conclusion

The NU's construction of the *fiqh* of enhancement of the people with disabilities is represented by the NU's fatwas. It thoroughly relates to various problems that have been faced by the people with disabilities covering aspects of life such as prayers, economy, social, law and many others. The NU's construction of the *fiqh* depicts that NU implements religious humanism and the notion of Islam as the grace for the universe (*rahmah lil-'ālamīn*). It consists of the importance of the public good that is especially suitable and fit for the people with disabilities.

In this context, according to the 29th of the NU's congress, although the term of *maqāṣid al-sharī'ah* explicitly is not mentioned by NU, NU itself promotes the concept that substantially contains the same matter: the *maṣlahah 'ammah* (the public good). The *maṣlahah* respects the five fundamental human rights and human dignity such as

[67] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 140-146.

[68] Lembaga Bahtsul Masail (LBM) PBNU, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M) and Pusat Studi dan Layanan Disabilitas Universitas Brawijaya (PSLD UB), *Fiqih Penguatan Penyandang Disabilitas,* 128-131.

protection of religion, life, offspring, mind and property. Thus, in general, the NU's construction of the *fiqh* implements the paradigm of *maqāṣid al-sharī'ah.*

However, the NU's fatwas seem to merely focus on the public good, but the destruction that has happened seems to be less avoided. As a consequence, the implementation of the *maqāṣid al-sharī'ah* proposition emphasising "avoiding destruction is more important than achieving the public good" is non-optimum. Despite the fact that the implementation is non-optimum, the NU's efforts to protect human rights and human dignity are consistent with the Jasser's orientation and thought on the *maqāṣid al-sharī'ah*.

As a conclusion, this article arguably states that the NU's construction of the *fiqh* of enhancement of the people with disabilities is influenced by the *maqāṣidī* thought. The thought that has been realised is consistent with the concept of modern *maqāṣid* especially initiated by Jasser Auda. As a reflection, due to this *maqāṣidī* thought is essential, it is important to implement it in the process of making law (*fiqh* or *fatwa*) in order to justify that Islam is *rahmah lil-'ālamīn* and always relevant persistently with the dynamic context of life.

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