THEO-PROPHETIC JURISPRUDENCE: TRACING THE GENEALOGY OF THE ISLAMIC LAW’S FORMATION AND GROWTH IN RASULULLAH ERA

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Abstract

This paper concisely and analytically presents the history of tasyri’, or the formation of Islamic law in the Prophet's era. By using the term "Theo-Prophetic Jurisprudence," this paper also provide a response and rebuttal to the view that Islamic law is a product of Muhammad's jurisprudence. The results of this qualitative research with conceptual and historical approaches indicate that the formation of Islamic law began in the prophetic period. The period of the formation of Islamic law or the Prophet Muhammad's jurisprudence is divided into two phases, namely the Mecca phases which includes everything related to belief, morals-ethics, and fiqh (law); and the Medina phase which is more oriented to the formation of law, including social situations or the social construction phase. Islamic law or the Prophet Muhammad's jurisprudence is not a product of Muhammad's ideology like some scholars view that Islamic law does not have theological and juristic nuances but only historical-sociological aspects.

Keywords: Islamic Law; Muhammad Pbuh. Era; Theo-Prophetic-Jurisprudence

Abstrak


Kata kunci: Era Muhammad Saw; Hukum Islam; Teo-Profetik.
Introduction

As a scientific discipline, Islamic law is still the prima donna for legal scholars and Western thinkers. Bogdan aligns and positions Islamic law as one of the most effective legal systems in the world. So it is not surprising that Islamic law is taught and has even become one of the compulsory subjects in the best universities in the world. This indeed cannot be separated from the role and patrons of Muhammad as the most influential figure in the world, as stated by Michael H. Hart.

The existence of Muhammad as a cultural actor and a messenger are two essential variables to see how the process of Islamic law is established, which is then institutionalized in the form of sunnah and Muhammad's jurisprudence. Muhammad's existence as a cultural actor is vital to serving as a rule model for building human civilization, with the spirit of justice, humanity, and egalitarianism.

Prophet Muhammad as an Apostle, has a vital role in the formation and establishment of Islamic law in the early era of its growth and development. Allah has established Islamic law through the intermediary of His Prophet as a rule model for subsequent generations. All words and behavior of the Prophet Muhammad, is a revelation that is not based on the slightest consideration of his lust. This portrait makes this article important to see and study the history of the Prophet Muhammad in formulating and establishing Islamic law in the early era of its formation and growth.

At the same time, Rasulullah as a transmitter of Allah's will, has laid down the basic principles of Islamic law, such as the principle of benefit (al-mashlahah), justice (al-'adalah), humanity (al-insaniyyah), morality (akhlakiyyah), brotherhood (al-ukhuwwah), universal (al-'alamiyyah), minimizing the burden (adamul kharaj), gradually (at-tadarruj), ease (at-taysir), compassion (ar-rahmah), liberation (al-tahrir), egalitarianism (al-musawa), tolerance (at-tasamuh) and so on. These principles have all become the spirit in every tasyri' stipulation in the era of the Prophet Muhammad, both in the realm of private law and public law.

With its divine law system, Islamic law has distinctive characteristics compared to other legal systems produced by the world's religions. Rasulullah has a role as an authoritative shari'a and musyari' appointed by Allah SWT. in managing various problems of human life in detail. Issues that are not contained in the Qur'an in detail are covered by the sunnah of the Prophet Muhammad with its function as

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2 Michael Bogdan, Comparative Law, trans. Derta Widowatie, (Bandung: Nusa Media, 2010).
bayan tasyri’, bayan ta’kid, and bayan tafshil to the Qur’an. When the Prophet still alive, all the people’s problems can be immediately found a solution directly through the revelation of Allah revealed to him or through his ijtihad or collective ijtihad with friends who have been determined by the Prophet Muhammad. So, it can be said that the era of the Prophet Muhammad is the initial process of establishing and directing Islamic law by him to the first generation of Muslims with all their complexities in responding to various problems of the people and humanity.6

Tasyri’s condition in the era of the Prophet Muhammad cannot be separated from the stages of Mecca and Medina with the socio-cultural background that surrounds them. The Mecca phase lasts about 13 years, while the Medina phase lasts less than ten years. These two phases have given their color to the formation, growth, and development of Islamic law. The presence of Islam did not necessarily erase the rules that lived in the life of pre-Islamic Arab society. Sometimes Islam adopts the existing regulations of Arab culture and adapts them. For example, the law of unlimited polygamy before the arrival of Islam was later adopted and adapted into limited polygamy in Islamic teachings.

In addition, Islam also does not hesitate to erase the legal culture of Arab society that is contrary to the principles of Islamic universality. Such as the discriminatory and inhumane treatment of the pre-Islamic Arab community towards women and baby girls buried alive. There are also pre-Islamic Arab laws whose abolition was not carried out radically but in a gradual way, such as the prohibition of khamr.

The history of the formation and development of Islamic law (tasyri’) by some thinkers and observers of Islamic studies, especially in the western world, is seen as a set of norms that are purely related to social settings, so that Islamic law is the result or product of historical development in Islamic society. This is, for example, as stated by Schacht, who stated that the reference to the traditions narrated by the Companions and the theory of the authority of the traditions of the Prophet Muhammad, which is the basis of Islamic law, is an innovation born from historical developments.7

Hurgronje and Gibb equate Islamic law as a product of Muhammad’s ideology as the ideological process carried out by Marx with his Marxism, Lenin with his Leninism, and Mao with his Maoism. It is at this point that Hurgronje and Gibb call Islamic law the term Muhammadanism.8 In the perspective of both, it seems as if Muhammad’s jurisprudence or Islamic law is the result of Muhammad’s creation, intention, taste, and thought. Muhammad’s jurisprudence is not the same as Sidarta Gautama, Lao Tze, and Zarastustra’s

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jurisprudence which only contains moral and ethical jurisprudence, while Muhammad's jurisprudence contains various issues, both moral-ethical and legal.

Muhammad's jurisprudence was not born from his creation as an actor of Arab culture at that time, but in every product of his jurisprudence, the prophet Muhammad was always guided by Allah through the holy book, which was revealed gradually to answer the problems of humanity at that time. At this point, the author calls it theo-prophetic jurisprudence to distinguish the jurisprudence of the earth's religions and at the same time refute the accusations of the orientalists who equate Muhammadanism with Marxism or other understandings.

So far, the study of the history of tasyri' in the Prophet Muhammad's era presented in such thick master literature, such as the works of Khudari Bek\(^9\), Manna' al-Qattan\(^10\), Syalabi\(^11\), and so on. In this context, this study is here to present the history of tasyri' or the formation and growth of Islamic law in the era of the Prophet Muhammad. with various problems briefly, concisely, and analytically. In addition, this study is also intended to provide a rebuttal to the western orientalist views, which often regard Islamic law as a product of Muhammad's jurisprudence. Whereas all forms of tasyri' that were born during the time of the Prophet Muhammad and even all the actions and behavior of the Prophet Muhammad himself are manifestations of God's revelation. Thus, this study offers a term called “theo-prophetic jurisprudence” to describe the history of tasyri' in the era of the Prophet Muhammad.

This paper is a normative legal study, namely research conducted by examining literature or secondary data.\(^12\) An approach is a conceptual approach and historical approach.\(^13\) The historical approach is used to see the development of Islamic law during the Prophet Muhammad's era through historical records written by Islamic historians. In contrast, the conceptual approach is used to analyze the formation and development of Islamic law during the Prophet's era and, at the same time, refute the view that Islamic law lacks theological and juristic nuances but is only historical-sociological factors.

**Discussion**

A. The Legal Conditions of Pre-Islamic Society

Arabs are known to have had a civilization long before the advent of Islam, covering various aspects ranging from religion, politics, law, economics to arts and culture. Pre-Islamic Arab civilization, in the literature of Islamic studies, is often referred to as the period of jahiliyyah. This was based on the condition

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where the pre-Islamic Arab society at that time, the majority had immoral behavior and did not respect human values and civility. The progress of the civilization of the pre-Islamic Arabs was not based on the spirit and principles of the true religion, so that even though they had knowledge and skills in various fields of life, their actions and behavior were categorized as acts of jahiliyyah (ignorance), because they were far from ethical and moral. the noble values of true religion.\textsuperscript{14}

The pre-Islamic Arabs adhered to a solid tribal understanding (ashobiyah) and had a social order that tended to be closed to public participation. In other words, the characteristics of Arab society at that time prioritized nasab or heredity factors. For this reason, Arabs know a robust social hierarchy and value customs.\textsuperscript{15} So even in the field of law, the pre-Islamic Arabs made this custom a legal norm. In practice, this factor makes, in practice, if a person commits an act that is considered unlawful during society, he often does not get the appropriate reward because of his position or position and lineage. Deviant acts or crimes committed by a person often get the defense of his tribe or tribe excessively and blindly.\textsuperscript{16} Perhaps this is what causes at that time disputes and wars between community groups and tribes often occur.

The arrival of Islam in pre-Islamic Arab society brought social change\textsuperscript{17}, including efforts to change and resist the existing legal system.\textsuperscript{18} Pre-Islamic Arab society is described as a society that upholds and even tends to be passionate about ethnicity and the hegemony or superiority of the rich over the poor and weak.\textsuperscript{19} This condition is evidence of the strength of the feudal system in pre-Islamic Arab society at that time.

In addition, gender-based discrimination has also become a prevailing system and has been deeply rooted. At that time, men held great power over women. Women were often mistreated because their position was considered to be below that of men, or in other words, women were second-class society at that time. The condition of this social institution made it known as the period of “ignorance” because of the various moral damages caused by people’s behavior. It had become entrenched and far from religion that...
unites God. As described in the word of Allah SWT. in sura Ar-Rum verse 41:

Meaning: “Corruption has appeared on land and at sea due to the actions of human hands, so that Allah may feel for them some of the consequences of their actions, so that they return to the right path.”

This condition of society is the target of da’wah and education by the Prophet Muhammad. Thus, the Prophet Muhammad develop the nubuwah mandate from Allah SWT. to bring Islamic teachings into the midst of society, which is a teaching that overhauls all deviant social systems, especially the prevailing legal system. The emergence of the Prophet Muhammad by bringing Islamic teachings and laws can be seen as a social change to the jahiliyyah that occurred in Arab society. Even Kholish et al. revealed that the existence of the Prophet Muhammad was not only an agent of social change but also an economic architect with social justice.

The Qur’an explains that the goal to be achieved by the message of Islam brought by the Prophet Muhammad is to cleanse and purify the soul by knowing God and worshiping Him and strengthening human relations with the principles of love, equality, and justice both as individuals and as a society. As the word of Allah in surah al-Jumu’ah verse 22:

It is He who sent to the illiterate an apostle among those who recite His verses. To them, books and wisdom. And indeed, they were in clear error before.

B. The Conditions of Tasyri’ in Prophet Muhammad Pbh. Era: Portrait of the Growth and Formation of Islamic Law

Tasyri’ at the time of the Prophet Muhammad referred to as the period of formation and growth of Islamic law. The construction of Islamic law was sown by the Prophet Muhammad for 23 years, namely from the appointment of the Prophet Muhammad became an Apostle in 610 AD until he died in 632 AD. The period is divided into two, namely the Meccan period, which lasts for approximately 13 years, and the Medina period, which lasts less than ten years. The thing that became the essential point in that period was that the legal authority was entirely in the hands of the Prophet Muhammad. The source of Islamic law at that time was the Qur’an and the Sunnah of the Prophet.

22 Satir, op.cit., p. 47.
23 Yayan Sopyan, Tarikh Tasyri’, Sejarah Pembentukan Hukum Islam, (Gramata Publisiting, 2010), p. 16.
The prophetic period is the initial milestone in the journey of Islamic tasyri'. Because of its nature as the basis or foundation for the construction of tasyri 'in the era that followed, that is why this period is known as the process of planting, fostering, and structuring sharia laws. The first revelation is marked by the revelation of surah al'-Alaq verses 1-5.\textsuperscript{24} It is well known that in the history of Islamic da'wah, Rasulullah for the first time to spread Islam secretly. Then after the revelation of surah al-Mudassir verses 1-7, the Prophet calls on Islam to family and friends by giving teachings and understanding to worship Allah alone (tawhid). Furthermore, the Prophet Muhammad then spread the message of Islam openly.

Tasyri' when viewed in terms of terminology is the stipulation of regulations, explanations of laws and the preparation of legislation. Also referred to as technical terms regarding the process of formation or coverage of fiqh products as well as statutory regulations. With the revelation of the Prophet Muhammad then the date of tasyri 'Islam begins. As already mentioned that the source or reference of tasyri 'is revelation (al-Qur'an and Sunnah). The verses related to tasyri' are dominated mainly by Madaniyah verses, namely after the Prophet moved to Medina.\textsuperscript{25} Tasyri' verses do not come immediately at once, but gradually and gradually. It is said to be gradual because it is related to the conditions of Arab customs, where in Islamic teachings often leave old customs that are considered deviant and are replaced by new laws in accordance with the values of Islamic teachings. In this case the Messenger of Allah himself acts as a judge in deciding a problem as well as being a propagator of Islamic da'wah. At the time of the Prophet Muhammad. tasyri' 'is the laying of the basic principles and general principles, namely the understanding of religious knowledge as a whole, including monotheism, morals/ethics, and law or what is currently known as fiqh. The growth of fiqh at that time was inseparable from the role of the Prophet Muhammad.

This period gave birth to various legal provisions contained in the Qur’an and Sunnah. This period has also laid a comprehensive legal basis, showing sources and arguments to explore legal requirements for new problems faced by Muslims, and an issue that arose was returned to the Prophet to be resolved so that he becomes the only source of law.\textsuperscript{26}

1. Examining the Growth and Formation of Tasyri’ in Mecca Period.

The Meccan period lasted for approximately 12 years and five months from the time the first revelation was revealed to the Prophet Muhammad migrated to Medina. During this period, the Prophet improve people's beliefs

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\textsuperscript{24} Nawawie, \textit{op. cit.}, p. 33.

\textsuperscript{25} See Dedi Supriyadi, \textit{Sejarah Hukum Islam : Dari Kawasan Jzirah Arab Sampai Indonesia}, (Pustaka Setia, 2010).

\textsuperscript{26} Nawawie, \textit{op. cit.}, pp. 32-33.
by first instilling aqidah or monotheism in Allah Subhanahu Wata’ala. Therefore, the verses that were revealed in Mecca before the hijrah contained prohibitions against associating partners with God and teaching the local population to leave the bad and deviant traditions inherited by grandmothers their ancestors and teach them to be kind to others. Thus, most of the Makiyyah verses contain matters relating to the faith, morals, and history of the previous peoples. Most of the time, the Prophet focused on structuring the fundamental foundations in pioneering the establishment of a social community of Islamic society.27

In this phase of Mecca, Prophet Muhammad has not built a community of solid government institutions because, in quantity, the Muslims are still relatively few and weak. Therefore, the Prophet Muhammad focuses more on spreading Islamic da’wah to eliminate the practices of idol worship, which are the root of all deviant acts of society and damage the joints of life.28 There is also no opportunity to form regulations laws such as applicable laws, especially laws relating to state administration in this phase. This can also be seen from the revelations that came down in the Mecca period, namely verses containing messages of belief, monotheism, morality, exemplary and the history of the people or previous people who also mostly told about issues of divinity or faith.29

The verses which the commentators have categorized as makiyyah verses seem to have the nuances of an ideological revolution to reconstruct the paradigm of jahiliyyah belief towards the totality of monotheism. For example, surah al-An’am, one of the surahs revealed in Mecca, contains shari’ah laws such as the prohibition of eating the meat of slaughtered animals without mentioning the name of Allah. The concept of this prohibition aims to erode habits or culture pre-Islamic Arab society in which the practice of killing animals is not by Islamic teachings.30 This fundamental improvement seeks to save the Islamic community from previous bad habits. Then teach them good things, such as upholding justice, equality, respect for human rights, tolerance, and abstaining from useless actions.31

2. Examining the Growth and Formation of Tasyri’ in Medina Period

The Medina period lasted about ten years since the Prophet Muhammad migrated until he died in 11 Hijriyah. In this period, Muslims developed rapidly both in terms of quantity and quality. This condition is a driving factor for the tasyri process and the formation of laws that regulate relations between individuals and between tribes or Arab qabilah in the Medina

27 Nawawie, op. cit., p. 34.
28 Usup, op. cit., p. 3.
29 Nawawie, loc. cit.
30 Nawawie, op. cit., p. 35.
31 Sopyan, op. cit., p. 55.
region. Prophet Pbuh. began to form an Islamic community that has a stable government. Tasyri’ began to outline or lay down laws relating to the community’s affairs in many ways, such as matters of worship, marriage, war, inheritance, and so on. Rules and regulations that are practical are initiated, covering public law, economy, politics, and culture. Therefore, this phase is also usually better known as the period of social construction. Thus, the surahs recited in Medina contain many legal verses and have verses about aqidah, morals, and history.

The Medina period is known as the period of structuring and establishing society. During this period, legal teachings were laid down. The verses of the Qur’an discuss many legal issues because Muslims are considered to have a strong faith and good character and morals. In this period, Islamic tasyri’ was oriented towards the goal of sharia law covering all situations and conditions, and relating to all aspects of life, both individuals and groups in each region. Tasyri’ or the establishment of Islamic laws at the time of the Prophet Muhammad. all these problems go hand in hand with the issues that did arise or occurred. And at that time, a legal provision for the case or issue was put in place. And so on, the process of law formation and continues in such away.

C. The Resistance of the Jahiliyyah

1. Arab Society Against the Prophet Muhammad’s Risalah

There are various reasons why the Quraysh infidels opposed the preaching of Islamic teachings brought by the Prophet Muhammad SAW. According to Syalabi, some of these reasons are:

1. Competition for power. The Quraysh could not distinguish the preaching of the Prophet Muhammad’s message as nubuwwah (prophecy) or control. They think they are the same. They believe that they submit to the religion brought by the Prophet Muhammad means submission and obedience to the power of the Bani Abdil Muttalib. It was not easy for other Quraysh to hand over the leadership to the Prophet Muhammad because giving up power means they will lose control and influence in society.

2. Equalization of social strata. The Arabs are a nation that adheres to a caste culture; that is, humans were created by God in certain classes or social strata depending on their lineage. Contrary to that, the da’wah of the Prophet Muhammad emphasizes equality or equality between humans. Prophet Muhammad considers that everyone has the same rights; this human right is one of the essential foundations in Islamic teachings. The teachings of the Prophet

32 Nawawie, loc. cit.
33 Sopyan, op. cit., p. 61.
Muhammad do not distinguish between a highly respected descendant of Quraysh and a lowly slave. For the teachings of the Prophet Muhammad, the only difference between humans is their holiness as described in the Qur'an surah al-Hujurat verse 13.

3. Fear of the Day of Judgment. Islam teaches that on the Day of Judgment, humans will rise from the grave and that all human actions will be accounted for depending on their good deeds. On the Day of Judgment, there will be no social strata, so that their power and honor will not apply. At the same time, their misguided actions will drag them into hell. That's why they reject the teaching.

4. Taqlid to the ancestors. Their devotion to the teachings of their ancestors was very blind. Their ancestral traditions are upheld, both in social and religious procedures, so that even though they realize that tradition is irrational and even misleading, they must still be implemented. Several verses of the Qur'an explain This is the case, as described in Surah al-Maidah verse 104.

5. The business of the Quraysh disbelievers was disrupted. Among the business sectors that are very disturbed by Muhammad's teachings are buying and selling statues for worship and the practice of shamanism. The statues for worship are usually traded to pilgrims from various countries. Therefore, they (the statue merchants and shamans) consider Muhammad as a barrier to their sustenance.

Therefore, the infidels of Quraysh began to carry out attacks and threats to stop them. It is noted that the reactions and threats against this Prophet can be divided into four phases:

The third year of the beginning of the prophethood, when Abu Lahab and his colleagues tried to stop the preaching of the Prophet Muhammad, which was considered contrary to the system of the Meccan leaders.

Abu Lahab agreed with Abu Sufyan to make propaganda, including demanding that the Prophet show his prophetic miracles, like the previous prophets and apostles.

Namely the effort to persuade Abu Talib to influence his nephew, the Prophet Muhammad, and stop his preaching.

When the infidels of Quraysh came to Abu Talib for the third time, they offered one of the most famous young Quraysh, Umarah bin al-Walid, and handed over the Prophet Muhammad to them to be killed.

Apart from that, the Quraysh infidels also carried out a movement whose purpose was to intimidate the followers of the Prophet Muhammad SAW. Among these intimidations was the torture of slaves and the weak. They tortured Y asir and his son Ammar and his wife, Sumaiyah. They also carried out such

36 Ibid.
37 Ibid.
cruel torture of Bilal bin Rabah, Khabab ibn Aris, and other companions. The followers of the Prophet were flogged, dried in the desert, deprived of food and water, and crushed with large stones.\textsuperscript{39}

Because they experienced such cruel torture, the Prophet also invited them to emigrate to Habsyi (Habasyah/Abisinia/Negus). Habsy became the choice because, at that time, Habsy was led by a just king. No one has ever been mistreated there. Ten men and four women followed this first hijrah. With the migration of the Prophet Muhammad and his followers, they considered their efforts a failure.

After the Prophet Muhammad returned to Mecca, they implemented a new strategy to boycott the Banu Hashim. This was done because the Prophet Muhammad was part of the Bani Hasyim, and the Bani Hasyim had also protected the Prophet Muhammad. The boycott includes several things, including they will not enter into marriage and will not trade with the Banu Hashim; they would not speak, nor would they visit the sick from the Bani Hashim, nor bring the dead to their graves. With this boycott, Bani Hasyim experienced hunger and poverty during the three years of this boycott. The Prophet's suffering got worse when two people who were his protectors and companions died, namely his uncle Abu Talib and his wife, Siti Khadijah. The sadness and uncertainty of the Prophet were profound, so that year was named the year of sorrow (\textit{‘am al-khuzn}).\textsuperscript{40}

### D. The Tasyri’ Application Method in Prophet Muhammad Era

In general, the Prophet's law enforcement can be realized through two stages: first, some problems arise among the people and demand a solution to be solved. The problem was sometimes experienced, heard, and seen directly by the Prophet and sometimes in the form of questions asked by the companions. The incident experienced by the Apostle included the movement of the Qibla direction from Baitul Maqdis or the Al-Aqsa Mosque in Palestine to the Kaaba in Mecca, as stated in the word of Allah in Surah al-Baqarah verses 149-150. Second, there are no problems that arise, but tasyri’ considers that the rules regarding the law to be applied are very urgent and essential in creating and maintaining the socio-spiritual stability of the ummah. Such as the ablution mechanism, the nisab of property that must be paid for zakat, qishas punishment, or had and ta’zir imposed on certain actors.

Rasulullah used three methods to answer and solve various problems that arise. The first method is the determination of the law based on divine revelation. The Apostle makes no legal decision without the guidance of revelation, nor does he decide the law arbitrarily based on lust. The Prophet took the initiative to take legal decisions with other

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\item[39] Haikal and Ali Audah, \textit{loc. cit.}
\end{itemize}
methods if no revelation was revealed to him. The second method used in the *tasyyri’* process is inspiration. This method is applied if it turns out that the revelation of the Qur’an does not come down. The inspiration is God’s revelation, whose editorial sentences were not translated into sentence editors by the angel Gabriel but were translated by Rasulullah himself. The third method is *ijtihad*, carried out by the Prophet himself; this method is carried out after feeling sure that no revelation or inspiration comes down, while the conditions or problems of the people urgently need to be resolved.

There are other methods of Shari’ah in this phase in several ways, namely first, by providing legal provisions for problems or events that arise or are asked by friends. The Messenger of Allah will answer the problem or question with one verse or several verses of the Qur’an, which were revealed as the answer. This can be seen in the word of Allah in surah al-Baqarah verse 215:

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\text{"They ask about what they earn. Answer: "Whatever wealth you spend, let it be given to parents, relatives, orphans, the poor, and those who are on the way." And whatever good you do, then verily Allah is Knowing."} 
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Second, the Prophet Muhammad also sometimes responded with words and actions. Rasulullah took the path of *ijtihad* if the rules were not written in the Qur’an and Sunnah. If the Rasulullah wrong in *ijtihad*, then Allah immediately commemorates it through His revelation. As in the case when Rasulullah allowed hypocrites who asked not to participate in the Tabuk war. At that time, the verse was revealed.

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\text{Meaning: “May Allah forgive you. Why did you permit them (not to go to war) before it became clear to you those who were right (in their ignorance) and before you knew those who were lying?”} 
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### E. The Ijtihad’s Position in Prophet Muhammad Era

The Prophet himself has given an example of *ijtihad* when a problem is not found in the texts of the Qur’an, while the problem must be resolved immediately. This, for example, happened when the Prophet Muhammad wanted to solve the problem of prisoners of war at Badr. The Prophet at that time consulted with his companions regarding the prisoners of war at Badr. Several friends expressed their opinions, including Abu Bakr, Umar bin Khattab, Abdullah bin Rawahan and Sa’ad bin Mua’adz. At that time, the Prophet was more inclined to the opinion of Abu Bakr, who made an offer to take fidyah from the prisoner of war. Said Ramadhan explained that this incident
showed that there was an event of ijtihad from the Prophet himself. Ijtihad performed by the Prophet is justified in the Qur’an.

In addition, there is also the practice of establishing law through ijtihad friends. Legal stipulations derived from the ijtihad of these companions, of course, through the approval of the Prophet Muhammad. An example is when the Prophet sent Muadz bin Jabal to represent the Prophet in Yemen. At that time, the Prophet Muhammad asked Muadz about how Muadz determined a law against a problem while there was no legal stipulation, both in the Qur’an and as-Sunnah. At that time, Muadz replied that he would do jihad with his mind. The Prophet then praised Muadz by saying: “Praise be to Allah who has given taufiq to the Messenger of Allah.” The companions’ ijtihad process was always confirmed to the Prophet, so it can be said that the companions’ ijtihad was not independent ijtihad but application ijtihad.

Scholars agree that the Prophet’s ijtihad in a worldly context such as a strategy for war and government aimed at realizing the social stability of the ummah is permissibility, even a necessity. However, the scholars have different opinions regarding the Prophet’s ijtihad on shari’ah law and provisions relating to ukhrawi issues for which there is no textual provision from Allah. The majority of ushul scholars and fiqh scholars of the Hanafi school agree on the permissibility of this Prophet’s ijtihad. Meanwhile, some of the Ash’ariah scholars and most of the Mu’tazilite scholars think that the shari’ah laws formulated by the Prophet were all sourced from revelation and not at all from ijtihad. So, the Prophet Muhammad should not perform ijtihad on something that does not have the provisions of the texts, which are related to ubudiyah amaliyah and ukhrawi matters.

From this, it can be seen that the ijtihad carried out by the Prophet was sometimes carried out by him alone and sometimes with his companions. Even Rasulullah allowed the companions to perform ijtihad, and many of them acknowledged and confirmed the results of the ijtihad that some of the companions had carried out.

**F. The Tasyri’s Principles in Prophet Muhammad Era**

One of the features of Islamic teachings is their universality and comprehensive scope. The Prophet Muhammad is positioned by Allah in the Qur’an as the agent of rahmatan Lil ‘Alamin. Allah indeed backed up Muhammad’s personality and example in establishing the law to give birth to the teachings of Islamic law and universal jurisprudence. In realizing the universality of Islamic teachings, the Messenger of Allah through his Shari’ah has the basic principles of the tasyri system, including:

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43 Ibid
44 Ibid
46 Nawawie, *loc. cit.*
a. Adam al-Haraj (not to complicate). In its implementation of establishing Islamic shari'ah, the Qur'an always takes into account human capabilities in carrying it out; this can be seen in the opportunities and concessions to humans so that they can accept legal provisions with the abilities of the people. Al-Syatibi in al-Muwafaqat states that human ability is an absolute requirement in accepting legal provisions.

b. Tadriji (gradually/gradually in establishing the law). Gradually in establishing the law, both in terms of time and legal material. In terms of time, it can be seen that the law of Allah and His Messenger was not established at one time at once but gradually over 22 years. Meanwhile, in terms of legal material, the stipulated taklif is also given in stages.

c. Taqlil al-taklif (make it easy and lighten the burden). This principle in Islamic Shari'ah aims to realize the benefit of the people, while the wisdom of a legal provision is always oriented towards convenience. As for changes, substitutions, and even the abolition of the law, it is evidence that Islamic law has been oriented towards the convenience and benefit of humankind.

d. In line with the universal benefit. Humans as the subject of the legal legislation of the Qur'an, then all Islamic law in the Qur'an is intended for the benefit and improvement of the people both in terms of religion, soul, reason, honor, heredity, property, and the environment.

e. Musawa and 'is. Equality and justice are absolute requirements in the law, both in matters of muamalah and worship. The equality of rights implies justice. Equality and justice are two things that are inseparable in establishing a law for the maintenance of human life.

G. Judiciary in Prophet Muhammad Era

The Prophet occupied three important positions at once, namely as a Prophet and Apostle in charge of conveying Islamic teachings to all humans through the mediation of revelation, both revelations that are matluw (al-Qur'an) and revelations that are ghoiru matluw (hadith). The Prophet also served as head of state, where he managed the government of the Medina state. In this phase, he often leads the war or sends several friends as representatives/ambassadors. The last position of the Prophet was as a Judge. In the hands of Rasulullah, all legal powers were held because there has not been a clear separation like a modern state. In this case, he often accepted the cases put forward by his friends and decided independently. In addition, friends often come to him to ask for a fatwa.

Justice in the time of the Prophet can be said to be very simple, and there is no particular place or building such as Darun Nadwah, clerks, and so on. When people file a case, that is when it has been resolved. The implementation of the judiciary usually begins with the narratives of the litigants, each
of whom is free to present his statement or express his opinion. At the time of the Prophet, there was already an institution of appeal and review for a legal decision handed down. Then the decision may be canceled, or confirmed, or replaced with a new decision.

One of the exemplars of the trial that took place during the time of the Prophet Muhammad is that it can be seen in the history of the theft case committed by a daughter of an elder of one of the tribes in Mecca, namely the al-Makhzumi tribe. In this case, the Messenger of Allah applied the punishment of cutting off his hand for the person's actions, regardless of the background and position of the person concerned. It was in this event that a saying of the Prophet was known, which reads: “By the One in whose power the soul of Muhammad is, if Fatimah daughter of Muhammad steals, then I myself will cut off her hand.” This shows how the judiciary at the Prophet Muhammad era was carried out by upholding the principles of justice and truth. The rule of law was upheld by the Prophet, who was positioned as a judge at that time. The Prophet Muhammad was not willing if the law had to be subordinated to political, economic, social, and cultural interests. Even kinship did not become a barrier to law enforcement in the era of the Prophet.

H. Theo-Prophetic Jurisprudence Muhammad Pbuh.

Some thinkers and observers of Islamic law, especially intellectual-orientalists who conduct studies on the history of the formation and development of Islamic law, consider that Islamic law is a set of norms that are purely related to society's circumstances or social settings. Thus, Islamic law is seen as a product of historical development. This view can be seen from what was stated by Joseph Schacht in his monumental book entitled “the Muhammadan Jurisprudence”. He said that the reference to the traditions narrated by the Companions and the theory of the authority of the rules of the Prophet Muhammad, which became the basis of Islamic law, was an innovation born of historical developments. Although it cannot be denied that the product of Islamic law is also often influenced by aspects of historicity or social conditions when Islamic law was formed, this aspect certainly does not affect it as a whole.

This view, as put forward by Schacht, tries to undermine the traditional understanding of Islamic law. Islamic law in this context is seen as not having theological and juristic nuances as most Muslims, especially the traditionalists, think but are more historical and sociological. Islamic law is seen not as a set of norms revealed by God but as a historical phenomenon closely related to social reality.47 The formation and development of Islamic law, according to Schacht, is very evolutionary. Islamic law was formed and developed not immediately but gradually set in the hands of

Islamic intellectuals (ulama), especially the development of sources of Islamic law from the earliest Islamic period to the time of the scholars of the school of thought. In Schacht's view, Islamic law has only been known since the appointment of religious judges (Qadhi). According to him, the position of religious judges only started during the reign of the Umayyads. The function of qadhi is addressed to people considered to have the ability and competence in Islamic religious knowledge and come from religiously devout circles. Along with its development, the number of these people increased to develop into a group of classical fiqh schools eventually. This happened in the first decades of the second century Hijri.

The orientalist understanding or view as above then received criticism from some Muslim intellectuals. Fazlur Rahman, for example, criticized the opinion of western scholars who said that the Prophet Muhammad left nothing but the Qur'an. Alternatively, the view states that the sunnah of the Prophet's traditions related to religious laws is not an authoritative source in Islamic law, and the term sunnah itself was only present at the time of the madhhab imam which Imam al-Shafi'i more specifically formulated. According to Rahman, this view is wrong because the sunnah or hadith of the Prophet has existed and has the same substance from the time of the Prophet, the early days after the Prophet's death, to the time of the madhhab imams and generations after him.

The Sunnah of the Prophet Muhammad in the Islamic tradition is recognized and has authoritative legitimacy as the source of the formation of Islamic law after the Qur’an. Legitimacy is not obtained because the Prophet is a person who has power but comes from the will of God. In the Qur’an, this sunnah of the Prophet gets theological justification, where it is stated that the authority of the Prophet is an instrument of humanity for divine revelation so that it cannot be ruled out and considers that the Qur’an is the only reference in determining Islamic law. This is because the sunnah of the Prophet itself is a direct revelation from Allah.

In this context, the term “theo-prophetic jurisprudence”, according to the author, is appropriate to describe tasyri’ in the era of the Prophet, instead of calling it “Muhammadan jurisprudence” or Muhammad's jurisprudence as mentioned by the orientalists. Theo-prophetic is taken from the word theo (theology), which means divine knowledge and the word prophetic, which means prophetic. As for jurisprudence, or in Indonesian, it is called jurisprudence, defined as legal principles. So, freely, “theo-prophetic jurisprudence”

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50 Muslim, *op.cit.*, p. 246.
can be interpreted as religious laws that have been prescribed by the Prophet Muhammad (sunnah), which are derived from Allah's revelation in answering various problems that arose at the time of the Prophet and became the initial foothold in the formation of Islamic law after his death.

Therefore, tasyri 'which has been outlined by the Prophet in this case, has become one of the authoritative sources in Islamic law because the Prophet brought theological guarantees with the guidance of revelation from Allah. If you look in the Qur'an, the legitimacy of the Prophet Muhammad's jurisprudence can be found in various verses that emphasize the command to follow and obey the Apostle after the command to obey Allah. Moreover, that obedience to the Apostle is also a form of obedience of a servant to Allah. For example, it is mentioned in Surah an-Nisa verse 80:

هَلِبَا عَطَةً دَقَّةً لِّيُورُسِلْنَآ عِيْضَةًٖ

Meaning: “Whoever follows the Messenger, then in fact he has obeyed Allah”.

The above verse is one of the many verses mentioned in the Qur'an that provide theoretical reinforcement that Muhammad's jurisprudence was not born of his lust. Muhammad's jurisprudence is fully backed up by God as stated in the Qur'an: “wa maa yantiqu anil hawa in huwa illa Wahyuyyuha” (what the prophet Muhammad said was a pure revelation of God, not his desires). Muhammad's prophetic treatise is a link in the chain of previous prophets. Orientalists seem to see Islam as a cultural product, just like non-Abrahamic religions, such as Hinduism, Buddhism, Zoroastrianism, Confucianism, etc. Even orientalists see the evolutionary history of religious development from animism-dynamism to polytheism, to henotheism to monotheism in which there are Abrahamic religions, namely Judaism, Christianity and Islam. This assumption is not entirely justified. Of course, the perspective balance is not from the theory of evolution as the optics used by Schacht above.

Islam is a revealed religion that has a chain of chains from previous prophets. Muhammad's jurisprudence is not a product of evolution as Sidarta Gautama's jurisprudence with Buddhism, Lao-Tzu with his Confucian teachings, or Zarathustra's Zoroastrian teachings. Islam brought by the Prophet Muhammad was not a cultural product because it was revealed qath'i and mutawatir from Allah through the angel Gabriel. In this context, the theo-prophetic jurisprudence is the antithesis of Muhammad's jurisprudence echoed by the orientalists.

Muhammad's theo-prophetic jurisprudence is a link from the previous "theo-prophetic". Although, in the theo-prophetic process, Muhammad's jurisprudence has erased and complement the syariat of the previous prophet. The existence of the prophet Muhammad, with the holy book that was revealed to him, is a blessing for the universe. It means that the theo-prophetic jurisprudence of Muhammad Pbuh. does not apply particular as the theo-prophetic jurisprudence of the previous prophets. The existence of God's Shari'ah which was revealed to the prophet Muhammad in the cities of Mecca and Medina, is universally applicable without ignoring the historical and cultural aspects in which the Shari'ah was revealed.

Conclusion

The prophetic period is an early milestone in the journey of tasyri' or the formation of Islamic law. The tasyri’ period at the time of the Prophet was divided into two phases: the Mecca phase, which lasted approximately 13 years, and the Medina phase, which lasted less than ten years. During the Mecca period, the Prophet prioritized teachings related to aqidah and morals to correct the foolish behavior of the people. In contrast, during the Medina period, the development of tasyri’ was oriented toward the goals of sharia law which covered all social-community situations and conditions and related to all aspects of life, both individually and in groups in each region. This Medina phase is also known as the social construction phase.

Islamic law is not a product of the ideology of Muhammad as a prophet like other world ideologies, such as Marxism, Leninism, or even the teachings of non-Abrahamic religions. Culture, interpreted as a product of human creation, intention, taste, and thought, is only partially appropriate to identify Muhammad as the creator of culture with his various fiqh products. The views some scholars who view Islamic law as not having theological and juridical nuances but only having historical-sociological nuances do not have an adequate foundation. Indeed, it must be admitted that the social conditions at the time of the Prophet are one aspect of the law, but this aspect does not affect it as a whole. Tasyri', formed during the time of the Prophet, is a set of norms revealed by God. This is because all legal formulation actions by Prophet Muhammad were always based on instructions and revelations from Allah SWT. At this point, Muhammad's theo-prophetic jurisprudence is a “revealing continuity” from previous prophets. Although some of the theo-prophetic jurisprudence of the previous prophets had been preached, some have been perfected. If the prophetic fiqh of the previous prophets was only intended for his people, then Muhammad's prophetic fiqh was intended for all humankind and the universe.
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