

SYAR'U MAN QABLANÂ AND IT'S IMPLEMENTATION IN SHARIA ECONOMIC LAW (MU'ÂMALAH MÂLIYYAH)

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Abstract: The terms of the earlier people's sharia or called *syar'u man qablanâ* are one of the legal arguments in Islam that have been debated by scholars related to their validity. Therefore, it is necessary to conduct related research on the concept of *syar'u man qablanâ* and its implementation in the field of *mu'âmalah mâliyyah*. This research uses a normative juridical approach. The sources of this study are primary and secondary sources. This research is descriptive and classified as qualitative research. The results showed that the implementation of the sharia of the previous people in the field of *mu'âmalah mâliyyah* was the *Ju'âlah* contract, the *Ijârah* contract, the *Dhamân Mâ Tafsadahu al-Dawwâb al-Mursalâh*, the *kafâlah bi al-wajh (bi al-nafs)* contract and the *qismah muhaya'ah* contract.

Keywords: *Syar'u man qablanâ*, Islamic Sharia, *Mu'âmalah mâliyyah*.

Abstrak: Syarat-syariat umat terdahulu atau disebut dengan *syar'u man qablanâ* merupakan salah satu dalil hukum dalam Islam yang menjadi perdebatan para ulama terkait dengan keabsahannya. Oleh karena itu, perlu dilakukan penelitian terkait mengenai konsep mengenai *syar'u man qablanâ* dan implementasinya dalam bidang *mu'âmalah mâliyyah*. Penelitian ini menggunakan pendekatan yuridis normatif. Sumber penelitian ini adalah sumber primer dan sekunder. Penelitian ini bersifat deskriptif dan tergolong penelitian kualitatif. Hasil penelitian menunjukkan bahwa implemementasi syariat umat terdahulu dalam bidang *mu'âmalah mâliyyah* adalah akad *Ju'âlah*, akad *Ijârah*, *Dhamân Mâ Tafsadahu al-Dawwâb al-Mursalâh*, akad *kafâlah bi al-wajh (bi al-nafs)* dan akad *qismah muhaya'ah* .

Kata kunci: *Syar'u man qablanâ*, Syariat Islam, *Mu'âmalah mâliyyah*

Introduction

Juridically, Islamic law from a methodological aspect can be understood as a law derived from the Qur'an and hadith of the Prophet through a process of reasoning or *ijtihad*. Islamic law is elastic and accommodating. This status can occur when viewed from the aspect of the wiggle room of its methodology between revelation as a source of law containing global instructions and the position of *ijtihad* as a function of development. Thus the characteristics of Islamic law based on revelation and reason are the characteristics that distinguish Islamic law from other sides of law.¹

Islamic law is relatively more developed than in other dimensions. At the time of the Prophet, the problems of the law were solved directly by the Prophet through his revelations or *sunnahs*. After the Prophet died, Islamic law developed. New problems cannot be solved relying solely on the text of the existing verses of the Qur'an al-Hadith. The Companions were no longer able to ask the Prophet directly. One of the solutions they do is *berijtihad*, both personally and collectively so that *ijmâ'* occurs. In the next century, the methods used to establish laws were growing. In the second century the discipline of *ushul fiqh* was formed which reviewed the *istinbâth* methods of Islamic law. On the realm of methodology scholars differ in opinion. The implication is that the laws produced will not be uniform.²

Every Prophet who came later, in addition to being in charge of bringing a new sharia to his people, also made a kind of correction (refinement) and annulment of

the previous sharia which was no longer enforced for his people. This means that what the people have to do, among them, some are the same as the previous people's sharia and there are new sharia provisions altogether. The discussion that developed because of this was whether the sharia before Islam was still in force so that it was still required to carry out the rule.³

Because sharia is related to legal issues, the study of Shari'a Man Qablanâ is often found in the books of *Ushul fiqh* as a means of producing Islamic law.⁴ In addition, in the books of *ushul fiqh* the study of *syar'u man qablanâ* is a thick discussion of scholars' differences of opinion regarding the validity of being used as a legal postulate.

Syar'u man qablanâ was the shari'a of the earlier prophets before the existence of Islamic sharia brought by prophet Muhammad Saw. but often it is still used as a method. In this regard, *ushul* jurists use *syar'u man qablanâ* to distinguish between sharia or the law before the Prophet Muhammad Saw became an Apostle and the law when he was sent as an Apostle. Nevertheless, the *ushul* jurists have a different perspective in looking at *syar'u man qablanâ*. This difference is apparent when they discuss the attachment of the Prophet Muhammad after becoming the Prophet and his followers to the previous shari'a.⁵

regardless of the differences of *ushul fiqh* scholars in viewing *syar'u man qablana* as a legal postulate, in the context of sharia economic law or *mu'âmalah mâliyyah*, the

¹ Zumrotul Wahidah, Metodologi Hukum Islam Perspektif Al-Ghazali, *MEDIA KEADILAN Jurnal Ilmu Hukum*, Volume 11 Nomor 2, Oktober 2020, p. 205.

² Kawakib, Yusuf, Hafdz dan Syuhud, *Sadd Al-Dzari'ah* Sebagai Dalil Hukum Islam (Studi Komparatif Ibnu Al-Qayyim Al-Jauziyah Dan Ibnu Hazm), *Al-Bayan: Jurnal Ilmu al-Qur'an dan Hadist*, Volume 4, No.1. Januari 2021, p. 78.

³ Imam Yazid, Analisis Teori Syar'u Man Qablana, *Al Mashlahah Jurnal Hukum Dan Pranata Sosial Islam*, Vol 2, No 04, 2014, p. 370.

⁴ Imam Yazid, Tafsir Ayat Ahkam Tentang Syar'u Man Qablana Dan Kehujahannya Sebagai Dalil Hukum, *Al-Ussrah: Jurnal Al Ahwal As Syakhsyah*, Vol. 5, No. 1, 2017, p. 43.

⁵ Abdul Helim, Memposisikan Kembali Syar'u Man Qablana Sebagai Istinbat Hukum Islam, *HIMMAH* Vol. VII No.20 September - Desember 2006, p. 36.

shari'a of the earlier people which is still valid today.⁶ Thus it is necessary to conduct a study of the forms of *syar'u man qablanâ* in the context of *mu'âmalah mâliyyah*.

Method

The approach used in this study is a normative juridical approach. The normative juridical approach is carried out through a philosophical, systematic and critical analysis approach. Because this research is based on a normative juridical approach, the technical data collection in this study is through literature study, namely studying and examining primary materials in the form of books on *ushul fiqh*, especially those related to the concept of *syar'u man qablanâ*. The secondary materials in this study are the books of jurisprudence that are relevant to the focus of the research. This research is descriptive because this research is carried out to find as precise and complete data about the characteristics of a condition or symptoms that can help strengthen the old theory of *syar'u man qablanâ* to build a new theory of its implementation in the field of *mu'âmalah mâliyyah*.

Definition of *Syar'u man qablanâ*

The definition of *syar'u man qablanâ* is not found in the books of *ushul* classical jurisprudence. Contemporary scholars, however, formulate that what is meant by *syar'u man qablanâ* as stated by Abd al-Karim Zaidan is as follows:

الاحكام التي شرعها الله تعالى لمن سبقنا من الامم, وانزلها على الانبيائه ورسله لتبليغها لتلك الامم.⁷

"The laws that Allah Swt mandated for

the earlier peoples that the Shari'a passed down to the prophets and *rasul_nya* to be conveyed to his people".

In line with the above definition, Zaki al-Din Sha'ban gives the following definition of *syar'u man qablanâ*:

الاحكام التي شرعها الله تعالى للامم السابقة بواسطة انبيائه الذي ارسلهم الى تلك الامم, كسيدنا ابراهيم وموسى وعيسى عليهم الصلاة والسلام⁸

"The laws that Allah Swt decreed upon the earlier people through the intermediary of His prophets whom he sent to the people, such as Ibrahim, Moses, Isa 'Alaihim al-Shalatu wa Salam".

Musthafa Sa'id al-Khin gives the definition of *syar'u man qablanâ* in his book *al-Kâfî al-Wâfî Fî Ushûl al-Fiqh al-Islâmî* as follows:

ما نقل الينا من احكام تلك الشرائع التي انزلت على الانبياء قبل نبينا محمد عليه الصلاة والسلام. والتي كانوا مكلفين بالعمل بها على انما شرع الله عز وجل لهم, وما بينه لهم رسلهم عليهم الصلاة والسلام.⁹

"What applies to us from the sharia laws passed down to the prophets before the Prophet Muhammad and they are the subject of the law over the shari'a that it is the sharia of Allah Swt for those whose sharia is present through the intercession of their

⁶ Panji Adam, *Fikih Muamalah Kontemporer: Perkembangan Akad-Akad dalam Hukum Ekonomi Syariah*, (Malang: Intelligensia Media, 2021), p. 63.

⁷ Abd al-Karim Zaidan, *al-Wajîz Fî Ushûl al-Fiqh*, (Beirut: Muasasah al-Risâsalah, 2015), p. 247.

⁸ Zaki al-Din Sya'ban, *Ushûl al-Fiqh al-Islâmî*, (Istanbul: Dâr Tahqîq al-Kitâb, 2019), p. 215.

⁹ Musthafa Sa'id al-Khin, *al-Kâfî al-Wâfî Fî Ushûl al-Fiqh al-Islâmî*, (Beirut: Muasasah al-Risâsalah, 2000), p. 233.

Apostles"

Based on the definition of contemporary scholars above, it can be concluded that what is associated with *syar'u man qablanâ* are the laws that have been prescribed to the people before the people of prophet Muhammad Saw which were brought by the previous Prophets and Messengers and became a legal burden to be followed by the people as long as the existence of the sharia of the Prophet Muhammad Saw.

The concept of *Syar'u man qablanâ*

Basically, the sharia of samawi is one. This is in accordance with the word of Allah Almighty:

شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي
أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى
وَعِيسَى أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ

He has warned you of what religion He has watched over to Noah and what We have revealed to you and what We have revealed to you and what We have told Ibrahim, Moses and Isa which is: Establish religion and do not divide it... (Q.S Ash-Shura: 13).

If the Quran and the shahîh's sunah tell of a law that has been enshrined in the earlier people through the Apostles, then the nash is obliged to us as it is required of them, then there is no doubt that the sharia is shown to us. In other words, it is obligatory to follow, as the word of Allah Swt regarding the obligation of fasting in the Quran surah al-Baqarah verse 183. On the other hand, if it is said that a sharia has been established to the previous people, but the law has been abolished for us, the scholars agree that the law is not prescribed to us, such as the sharia of prophet Moses A.S. that a person who has committed a sin will not be forgiven his sins, except by killing

his didi. Similarly, if there is an uncleanness that is stuck in the body, it will not be holy except by cutting off the limb of the body, and the laws thereof.¹⁰

In response to the enactment of *syar'u man qablanâ*, there are several things that scholars agree on: first, that the laws of shari'a established for the people before us are not considered to exist without going through the sources of Islamic law, because among Muslims, the value of a law is based on the sources of Islamic law; secondly, all things that are abolished with Islamic sharia, automatically the law does not apply to us. Thus, the laws, which are reserved for a particular people, do not apply to Muslims such as the monasticity of some food/meat for the Children of Israel; thirdly, all that is established by the nash-nash which is valued by Islam as also established by the past samawi religions, remains true for Muslims, because of the provisions of the Islamic nash, not because it was decreed by Him for the past umat. Whereas the laws of the people before us which are not agreed upon by the scholars on their value or power are the laws of the past samawi which there is no proposition establishing them, or rejecting them.¹¹

According to Muhammad al-Khudari Beik,¹² with regard to *syar'u man qablanâ* there is a provision of law that is overturned by our sharia (Islam) and this does not cause a quarrel that the Prophet Muhammad Saw did not worship with him. There are also some that are not mentioned in the nash regarding its annulment and in this case there are two parts, first, the part stipulated by the sharia and there is no problem in it that we worship with it, because it belongs

¹⁰ Rachmat Syafe'i, *Ilmu Ushul Fiqih*, (Bandung: Pustaka Setia, 2015), p. 143-144.

¹¹ A. Djazuli dan I. Nurool Aen, *Ushul Fiqh: Metodologi Hukum Islam*, (Jakarta: PT RajaGrafindo Persada, 2000), p. 204-205.

¹² Muhammad al-Khudari Beik, *Ushûl al-Fiqh*, (Kairo: Dâr al-Ḥadîts, 2003), p. 249.

to islamic sharia; and secondly, the unaltered passages, among which there are those told by Allah Swt to us in His book or through His Prophet without any nash that he is obliged upon us as required of them. Then among them there is a section that is not mentioned at all.

As for the unnamed, then there is no question that we do not worship with it either, for there is no way to know it except by tawâtyr and this is not approved for the Bookman, so there is limited to his talk in terms of what is told to us. According to al-Khudari the chosen one is that we worship with him, because the clerics agree on the establishment of the postulate with the word of Allah Swt:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ

And we have decreed against them in it (At torah) that the soul is (reciprocated) with the soul,... (Q.S al-Maidah: 45).

The above verse shows that the mandatory application of the qishâsh sharia in our religion and if we do not worship with it (living it) is undoubtedly invalid its istidial.

The Shari'a or law that applies in the same religion that Allah passed down to the Prophets before the Prophet Muhammad Saw is often also told in the Quran and sunah to Muslims. The form of the story is distinguished in 3 (three) forms, each of which has different consequences for Muslims, namely as follows.¹³ First, there are clues about his nasakh. The scholars agreed that the no longer validity of sharia for muslims. An example is the word of Allah Swt in surah al-An'am verses 145 and 146 as follows:

¹³ Sulaiman Abdullah, *Sumber Hukum Islam: Permasalahan dan Fleksibilitasnya*, (Jakarta: Sinar Grafika, 2007), p. 69-72.

قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهْلًا لِعَبْدِ اللَّهِ بِهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ (145)

Say: "I have not obtained in the revelation revealed to me, something that is forbidden to the one who will eat it, unless the food is carrion, or flowing blood or pork, for indeed it is filthy or an animal slaughtered in a name other than God. Whoever is in a state of compulsion is not wanting it and does not (also) go beyond the limits, then verily your Lord is All-Forgiving again All-Merciful." (Q.S al-An'am: 145)

وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفْرٍ وَمِنَ الْبَقَرِ وَالْعَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا إِلَّا مَا حَمَلَتْ ظُهُورُهُمَا أَوْ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ ذَلِكَ جَزَيْنَاهُمْ بِبَعْضِهِمْ وَإِنَّا لَصَادِقُونَ (146)

Say: "I have not obtained in the revelation revealed to me, something that is forbidden to the one who will eat it, unless the food is carrion, or flowing blood or pork, for indeed it is filthy or an animal slaughtered in a name other than God. Whoever is in a state of compulsion is not wanting it and does not (also) go beyond the limits, then verily your Lord is All-Forgiving again All-Merciful." (Q.S al-An'am: 146).

In verse 145 of surah al-An'am above describes all the food that is forbidden in Islamic law whereas in verse 146 what is forbidden of the Jews alone eats some of the good as torture and whipping against

those who are immersed in the creed to the degree of tyranny, as a sanction for their killing of the Prophets, and the various wrongs they have committed.

Examples of hadiths that narrate about the nasakh of the law/sharia of the previous people include the hadith narrated by Imam al-Bukhari and Muslims of Jabir Ibn Abdullah:

ابْرُ بْنُ عَبْدِ اللَّهِ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "أُعْطِيتُ حَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ مِنَ الْأَنْبِيَاءِ قَبْلِي... (رواه البخاري ومسلم)¹⁴

"I was given the right of 1/5 of the spoils of war, which was not given to the Prophet before me".

وَجُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهْرًا، فَايُّمَا رَجُلٍ مِنْ أُمَّتِي أَدْرَكْتُهُ الصَّلَاةَ فَلْيُصَلِّ، وَأَحَلَّتْ لِي الْمَعَانِمُ وَمَنْ نَحَلَ لِأَحَدٍ قَبْلِي... (رواه البخاري)¹⁵

"The earth is made a mosque and holy to me. So wherever a man of my people enters the time of sholeh, then let him pray. Farm animals are justified for me, and not justified for someone before me".

These hadiths show that the law in the shari'a of the previous people was not halal to livestock, the invalidity of prayer in an unspecified place for it, had been nasakhd in Islamic law.

Secondly, There are instructions about being recognized and sustainable, so the

scholars do not differ in opinion about being recognized and required to practice by Muslims. For example, the obligation to fast as stated in the Quran surah al-Baqarah verse 183. Thus the law of fasting is obligatory upon muslims as is required of the previous people. Similarly, the hadith of the Prophet narrated by Imam Ahmad of Zaid Ibn Arqam regarding sacrificial worship is as follows:

عَنْ زَيْدِ بْنِ أَرْقَمٍ قَالَ: قُلْتُ: أَوْ قَالُوا: يَا رَسُولَ اللَّهِ مَا هَذِهِ الْأَضَاحِيُّ؟ قَالَ: " سُنَّةٌ أَبِيكُمْ إِبْرَاهِيمَ ". قَالُوا: مَا لَنَا مِنْهَا؟ قَالَ: " بِكُلِّ شَعْرَةٍ حَسَنَةٌ ". قَالُوا: يَا رَسُولَ اللَّهِ فَالصُّوفُ؟ قَالَ: " بِكُلِّ شَعْرَةٍ مِنَ الصُّوفِ حَسَنَةٌ " (رواه احمد)¹⁶

from Zaid ibn Arqam he said; I said or they asked, "O Messenger of Allah, what is this sacrificial animal for?" he replied: "That is the sunnah of your father Ibrahim." They asked again, "Then what good shall we get from him?" he replied: "Every strand of his fur is goodness." They asked again, "What about sheep?" he replied: "Each strand of fleece is worth one good."

Thirdly, There is no clue as to its recognition and di-nasakh, so in this case scholars differ in opinion on whether it is still valid or not anymore. In this case there are 2 opinions as follows:¹⁷

1. Some scholars among them the majority of scholars from the Hanafiyyah,

¹⁴ Muhammad Ibn Isma'il Abu Abdullah al-Bukhari, *Shahîh al-Bukhârî*, (Kairo: Dâr al-Hadîts, 2008), j 1, h. 222. Lihat juga, Muslim Ibn al-Hajaj Abu al-Hasan al-Qusyairi al-Naisaburi, *Shahîh Muslim*, (Kairo: Dâr al-Hadîts, 1997), j. 1, p. 383.

¹⁵ *Ibid.*

¹⁶ Abu Abdullah Ahmad Ibn Muhammad Ibn Hanbal Ibn Hilal Ibn Asad al-Syaibani, *Musnad al-Imâm Ahmad Ibn Hanbal*, (Beirut: Muasasah al-Risâlah, 2001), j. 32, p. 34.

¹⁷ Muhammad Musthafa al-Zuhaili, *al-Wajîz Fî Ushûl al-Fiqh al-Islâmî*, (Damaskus: Dâr al-Khair, 2006), j. 1, p. 275.

Malikiyyah and Shafi'iyah circles argue that sharia is practiced by Muslims, arguing:

- a. All sharia is equally one. Allah is infidelized in the Surah Ash-Shura verse 13 as above. This verse establishes the unity of this religion/sharia and the unity of its laws. So it is obligatory to do charity according to the laws of the previous sharia, except against those that there are arguments that show that it is a temporary sharia for the previous people, or nasakhed in Islamic law. This is reinforced by the word of Allah Swt directed to His Prophet in the Quran, which is as follows:

أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهِدَاهُمُ افْتَدَاهُ...

They are the ones who have been instructed by God, so follow their instructions.... (Q.S al-An'am: 90).

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ

And We have handed down to you the Qur'an by bringing the truth, justifying what was before, namely the books (which were handed down earlier)... (Q.S al-Maidah: 48).

إِنَّا أَنْزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ يَخُكُّمُ بِهَا
النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا
وَالرَّبَّانِيُّونَ وَالْأَحْبَابُ بِمَا اسْتَحْفَظُوا مِنْ
كِتَابِ اللَّهِ وَكَانُوا عَلَيْهِ شُهَدَاءَ

Verily We have sent down the Book of the Torah in it (there is) instruction and light (which illuminates), by which the Book was decided the cause of the Jews by the prophets who surrendered

themselves to Allah, by their alims and their pastors, because they were commanded to keep the books of God and they became witnesses to them....(Q.S al-Maidah: 44)

Among the instructions of this verse is that the laws of the Torah contain instruction, light and grace. Then which of them is not in nasakh, then it is still obligatory to be recited.

- b. That the Messenger of Allah Saw often made reference to the Torah to decide matters including those relating to the jewish law of adultery proposed to him

In connection with this opinion, hanafiyyah clerics imposed a balanced qishâsh law as mentioned in surah al-Maidah verse 45 for Muslims, even though the verse was directed at Jews. Based on this opinion muslims who kill dzimmi infidels (who get protection) are subjected to qishâsh just as dzimmi infidels kill Muslims. Meanwhile, the Shafi'iyah clerics who did not enforce the Jewish sharia for Muslims understood the verse that there was no need for a balance in the practice of qishâsh between Muslims and non-muslims as imposed on Jews. Therefore, if muslims kill dzimm infidels, then the law of qishâsh does not apply. But what is the *dzimmi kafir* who killed the Muslims, then the qishâsh was imposed

2. According to the scholars of Mu'tazilah, Shi'a some of the Shafi'iyah circles and one of the opinions of Imam Ahmad, the sharia before Islam, that is, there is no clue about nasakh or its permanence, does not become sharia for Muslims and is not obliged to be practiced. Their reasons are as follows:
 - a. That the earlier sharia was temporary

during that time, limited, and specific to the earlier people, while the Islamic sharia came for all the people and nasakh) was another sharia, as the prophet Muhammad Saw narrated by Imam Ibn Abi Syaibah in his Mushanaf as follows:

3.

وَكَانَ النَّبِيُّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً، وَبُعِثْتُ
إِلَى النَّاسِ عَامَّةً (رواه ابن أبي شيبة)¹⁸

"The earlier prophets were sent for his people only, while I (Muhammad) was sent to man entirely"

So, if there is no specific argument for the stay of the previous sharia, it is not mandatory for Muslims to recite. This is as Allah swt said as follows:

...فَاحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ
أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلِّ جَعَلْنَا
مِنْكُمْ شِرْعَةً وَمِنْهَاجًا...

... then decide their cause according to what God sent down, and you shall not follow their passions by forsaking the truth that has come to you. For each of the people among you, We give rules and paths of light.... (Q.S al-Maidah: 48).

The verse shows that each people has their own sharia. That means that the shari'a of the previous prophet no longer applies to the people of Prophet Muhammad Saw

- b. When Mu'adz Ibn Jabal was sent to be a judge in Yemen, the Prophet Saw asked him as the hadith narrated

by Abu Dawud as follows:

حَدَّثَنَا حَفْصُ بْنُ عُمَرَ، عَنْ شُعْبَةَ، عَنْ
أَبِي عَوْنٍ، عَنْ الْحَارِثِ بْنِ عَمْرٍو ابْنِ أُخِي
الْمُغِيرَةِ بْنِ شُعْبَةَ، عَنْ أَنَسٍ مِنْ أَهْلِ
حِمْصٍ، مِنْ أَصْحَابِ مُعَاذِ بْنِ جَبَلٍ، أَنَّ
رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا أَرَادَ أَنْ
يُبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ: «كَيْفَ
تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ؟»، قَالَ:
أَقْضِي بِكِتَابِ اللَّهِ، قَالَ: «فَإِنْ لَمْ تَجِدْ فِي
كِتَابِ اللَّهِ؟»، قَالَ: فَيَسْتَنُّ رَسُولَ اللَّهِ صَلَّى
اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: «فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ
رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وَلَا فِي
كِتَابِ اللَّهِ؟» قَالَ: أَجْتَهُدُ رَأْيِي، وَلَا أَلُو
فَضْرَبَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
صَدْرَهُ، وَقَالَ: «الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ
رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِمَا يُرْضِي رَسُولَ اللَّهِ»،
(رواه ابى داود)¹⁹

It has told us Hafsh bin Umar of the Syu'bah of Abu 'Aun of Al Harits bin 'Amru son of brother Al Mughirah bin Syu'bah, of some of the inhabitants of Himsh who were some of the companions of Mu'adz bin Jabal. That the Messenger of Allaah sallallahu 'alaihi wasallam when he was going to send Mu'adz bin Jabal to Yemen he said: "How do you give a decision when there is a judiciary that is faced with you?" Mu'adz replied, "I will decide to use the Book of God." He said: "If you had not found it in the

¹⁸ Abu Bakar Ibn Abi Syaibah, *al-Kitâb al-Mushanaf Fî al-Aḥādîts wa al-Âtsar*, (Riyadh: Maktabah al-Rusyd, 1409 H), j. 6, p. 303.

¹⁹ Abu Dawud Sulaiman Ibn Al-Asy'ats Ibn Ishaq Ibn Basyir Ibn Syidad Ibn 'Amr al-Azdi al-Sijistani, *Sunan Abî Dâwud*, (Beirut: al-Maktabah al-'Ashriyyah, t.th), j. 3, p. 303.

Book of God?" Mu'adz replied, "I will return to the sunnah of the Messenger of Allaah sallallahu 'alaihi wasallam. He said again: "If you do not get in the Sunnah of the Messenger of Allaah sallallahu 'alaihi wasallam and in the Book of Allah?" Mu'adz replied, "I will use my opinion, and I will not diminish." Then the Messenger of Allaah sallallahu 'alaihi wasallam patted his chest and said: "All praise be to Allah who has instructed the messenger of the Messenger of Allah to do what pleases the Messenger of Allah.

In the dialogue, there was no instruction from the Prophet Muhammad Saw to refer to the shari'a of the earlier prophets. If the sharia of the earlier prophets could be used as a reference by Mu'adz, it would have been that the Prophet Saw gave instructions for it.

According to Abd al-Wahab Khalaf,²⁰ the *râjih* (superior) opinion between the two pendpaats above is the first opinion, that is, the opinion that states that it remains valid and obligatory to be recited over the *syar'u man qablanâ*. The reason is that Islamic sharia only invalidates laws that happen to be different from Islamic sharia. Therefore, all the sharia laws of the previous prophet mentioned in the Quran without any stipulation that the laws have been nasakhed (abolished), then those laws remain valid for the people of Prophet Muhammad Saw. In addition, the mention of these laws in the Quran which is a guide for Muslims, indicates the validity for the people of Muhammad Saw.

According to Muhammad Abu

Zahrah,²¹ the issue of *syar'u man qablanâ* should not be a topic that revolves around the dissent of scholars. for according to him, every matter established by Allah in the Quran and mentioned by the hadith as the law of shari'a which applies specifically to some of the people of the past, must be supported by the existence of a postulate that shows that specificity, or the existence of a postulate that indicates the permanent validity of the provisions of that law which are universal for all ages.

Abu Zahrah further explained that, based on the results of research on the nash-nash of the Quran or hadith, it was found that there was not a single nash-pun that raised the story of the earlier people without being equipped with the information that the legal provisions contained in the story were special or general. If this is the case, then the scholarly dissent should not have occurred. For the sharia of the earlier people, if there is a proposition that explains that it applies specifically, it cannot be used as a *hujjah* by the agreement of the clergy. whereas if there is a postulate that explains generally applicable, it can be used as a *hujjah*.

Result and Discussion

Based on the author's findings, there are at least 5 forms of contract in the study of *mu'âmalah mâliyyah* which is a form of implementation of the previous sharia (*syar'u man qablanâ*) in *mu'âmalah mâliyyah* transaction activities, namely as follows:

Akad Ju'âlah

Ju'âlah is unique in terms of the science of contract in the fiqh of *mu'âmalah mâliyyah*. In general, scholars argue that *Ju'âlah* belongs to the domain of treaty agreements, as stipulated in the law of treaties (also known as the law of

²⁰ Abd al-Wahab Khalaf, *'Ilm Ushûl al-Fiqh*, (Kairo: Dâr al-Rasyîd, 2008), p. 84.

²¹ Muhammad Abu Zahrah, *Ushûl al-Fiqh*, (Kairo: Dâr al-Fikr al-'Arabî, t.th), p. 294.

engagement), because *Ju'âlah* contains (can give birth to) rights and obligations born because of agreements.²²

Literally, the word *Ju'âlah* means a promise to give a reward or 'iwadh/jâizah (al-*Ju'âlah* aw al-wa'ad bi al-jâizah) to another party if it succeeds in achieving a certain natîjah. The 'âmil party is not entitled to a reward from the jâ'il party if it is unable to achieve natîjah perfectly. In other words, *Ju'âlah* language has the meaning of a promise to give a gift (i.e. the giving of a gift, wages, fees or specified compensation). It is a contract or covenant based on personal will.

In terms of syara' which is enshrined with the *Ju'âlah* contract is as follows:

التزام عوض معلوم على عمل معين، أو
مجهول، عسر علمه²³

"A commitment to providing a clear reward for a particular or unknown job that is difficult to learn"

In simple terms, it can be said that *Ju'âlah* is a request from a person to return the lost goods with the specified payment/wage. In this simple sense, the *Ju'âlah* contract is almost similar to the competition institutions that are commonly practiced in society.

According to the Hanafiyaah school, the *Ju'âlah* contract is not broken because it contains the element of *gharar* in it, namely the vagueness of the work and the specified period of time. Hanafiyyah scholars analogize with the *ljârah* contract which requires the existence of a job, kataah

(wages), and a period of time.²⁴ The Hanafiyyah cleric only allowed the *Ju'âlah* contract to return the fleeing slaves on the grounds of *istihsan*, i.e. allowed him to give gifts to those who managed to carry out the fleeing slaves for a period of three days or more in exchange (*ju'l*) amounting to 40 dirhams.

According to the Malikiyyah, Shafi'iyah and Hanabilah scholars, they argue that the law of *Ju'âlah* is permissible. It is based on the *syar'u man qablanâ* (shari'a of the earlier people) which is the story of the Prophet Yusuf which is contained in the Quran surah Yusuf verse 72 as follows:

قَالُوا نَفَقْدُ صُورَةَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ
بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ (72)

"The impersonators said: "We lost the king's trophy, and whoever can return it will get food (as heavy as) the burden of a camel, and I guarantee against it". (Q.S Joseph: 72).

The above verse is a postulate for the majority of scholars to allow the *Ju'âlah* contract. In addition, according to the Scholars Malikiyyah and Hanabilah, verse 72 of the above letter of Yusuf is a form of *syar'u man qablanâ* and the law still applies as a result of the proposition that nasakh it.²⁵

Akad Ijârah

Ijârah is etymologically the mashdar of the word اجر ياجر (ajara-ya'jiru), that is, the wages given as compensation for a job. According to M. Rawas Qal'aji, *Ijârah* comes from the sentence اجر ياجر-اجارة plural اجر which means الجزاء على العمل (something you give to

²² Jaih Mubarak dan Hasanudin, *Fikih Mu'âmalah Maliyyah: Akad Ijarah dan Ju'alah*, (Bandung: Simbiosis, 2017), p. 272.

²³ Wahbah al-Zuhaili, *al-Fiqh al-Islâmî wa Adillatuh*, (Beirut: Dâr al-Fikr al-Mu'âshir, 2012), j. 4, p. 578.

²⁴ Panji Adam, *Fikih Mu'âmalah Mâliyyah: Konsep, Regulasi dan Implementasi*, (Bandung: Refika Aditama, 2017), p. 352-353.

²⁵ Musthafa Dib al-Bugha, *Atsar al-Adillah al-Mukhtalif Fîhâ: Mashâdir al-Tasyr' al-Tabi'iyah Fî al-Fiqh al-Islâmî*, (Beirut: Dâr al-Qalam, 2013), p. 545.

others in the form of wages in work).²⁶

The definition of *Ijârah* contract in sharia terminology as presented by Umar Abdullah Kamil is:

²⁷ الاجارة شرعا عقد يفيد تملك المنافع بعوض

"An agreement that results in a transfer of ownership of a benefit accompanied by a reward/wage"

The *Ijârah* contract is the association of property with benefits. Because of such a definition, scholars generally call it the sale and purchase of benefits (*bai' al-manâfi'*). The *Ijârah* contract in terms of its object can be divided into 2 (two), namely: (1) *Ijârah* whose object benefits over an item/object called rent (*al-Ijârah*); and (2) *Ijârah* whose object of service (labor or expertise of manusia) is called wages or labor for services (*al-kirâ*). According to the Malikiyyah scholar's version, rent whose object is human labor/merit is called *al-Ijârah*, while rent whose object benefits an object is called *al-kirâ*.²⁸

One of the juridical foundations of the *Ijârah* contract is allowed based on *syar'u man qablanâ*, namely the kisan of Prophet Moses 'Alahi Salam and the two daughters of prophet Syu'aib. This is as stated in the Quran surah al-Qashash verse 26 as follows:

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ (26)

One of the two women said: "Yes, my father, take him as a person who works (on us), because indeed the kindest person you take to work (on

us) is a strong man who can again be trusted". (Q.S al-Qashash: 26).

The person who works in this verse means to work with the *Ijârah* contract. Providing rentals for services owned by the Prophet Moses. Renting someone's services to do a certain job is an *Ijârah* contract that is allowed in *mu'âmalah mâliyyah* activities. The tenant of the services in the story as stated in the voice of al-Qashash verse 26 above is the father of the two women while the one who is hired for services is the Prophet Moses, while his job is to herd the goats belonging to the family.²⁹

Dhamân Mâ Tafsadahu al-Dawwâb al-Mursalâh

The next implementation according to the scholars based on *syar'u man qablanâ* in the field of *mu'âmalah mâliyyah* is the obligation to compensate for crops or anything that has been damaged by a person's livestock. In fiqh terms *mu'âmalah mâliyyah* the concept of indemnity for crops damaged by one's farm animals is called "Dhamân Mâ Tafsadahu al-Dawwâb al-Mursalâh".

According to the view of Imam Malik, Shafi'i and Ahmad Ibn Hanbal, the damage done by a person's livestock must be reimbursed by the owner of the livestock if the destruction occurs at night, but if the destruction occurs during the day, then there is no obligation for the owner to compensate. This means that the owner of the animal cannot be held accountable for replacement. Imam Malik took this view according to *syar'u man qablanâ*, which is the story of the Prophet Dawud which is told in the Quran as follows:

وَدَاوُدَ وَسُلَيْمَانَ إِذْ يَخْتَصِمَانِ فِي الْخِزْيَانِ إِذْ نَفَسَتْ فِيهِ غَنَمُ الْقَوْمِ وَكُنَّا لِحُكْمِهِمْ شَاهِدِينَ (78)

²⁶ Muhammad Rawas Qal'ahji, *Mu'jam Lughat al-Fqahâ*, Dar al-Nafais, Beirut, 1998, p. 28.

²⁷ Umar Abdullah Kamil, *al-Qawâ'id al-Fiqhiyyah al-Kubrâ wa Atsaruhâ Fî al-Mu'âmalât al-Mâliyyah*, (Kairo: Universitas al-Azhar, t.th), h. 508.

²⁸ Ahmad Hasan, *Nadzariyyah al-Ujûr Fî al-Fiqh al-Islâmî: Dirâsah Tahliyyah Mubtakirah li Fiqh al-Mu'âmalât al-Mâliyyah*, (t.t: Dâr Iqra, t.th), h. 13.

²⁹ M. Pudjihardjo, dkk, *Ushul Fikih Ekonomi Syariah*, (Malang: UB Press, 2021), h. 131.

"And (remember the story of) David and Solomon, when both gave decisions about crops, because they were ravaged by the goats of their kindred. And is We witnessed the decision given by them it (Q.S al-Anbiya: 78).

According to Musthafa Sa'id al-Khin, the phrase *nafasyat* in the text verse 78 of surah al-Anbiya above means destruction that occurs at night. The law that was in force during the time of prophet Dawud as recounted in the Quran was used as the basis for the legal determination of the mandatory compensation/dhamân for damages done by livestock belonging to a person done at night, as in Imam Malik's view above

Akad Kafâlah bi al-nafs

Kafâlah linguistically as stated in the Hanafiyah and Hanabilah books means al-dham i.e. dependent, and according to Shafi'iyah means *al-iltizâm*. Akad *kafâlah* has word equivalents including: (1) *al-dhamân*, which is a word used for guarantees related to property; (2) *al-hamâlah*, i.e. the word used for guarantees relating to the payment of diyat sanctions; (3) *al-zâ'im*, that is, a word used for guarantees relating to large amounts of property; (4) *al-kâfil/kafâlah*, i.e. a word used for guarantees related to the soul; and (5) *al-shabir*, which is a word used for guarantees of a general nature.³⁰

As for the definition in sharia terminology, the *kafâlah* contract as conveyed by the Hanabilah scholars is as follows:

لأن الضمان ضم ذمة الضامن إلى ذمة المضمون عنه

³⁰ Ja'ih Mubarak dan Hasanudin, *Fikih Mu'âmalah Maliyyah: Akad Tabarru'*, (Bandung: Simbiosia, 2017), h. 191.

في التزام الحق³¹

"Guarantees given to persons who have dependents in fulfilling their obligations".

The scholars of the 4 schools of jurisprudence differ in terms of guarantee, first, the Hanafiyah scholars use the term *kafâlah* and are divided into two, namely *kafâlah al-mâl* and *kafâlah al-wajh* (*kafâlah bi al-nafs*); second, Malikiyyah scholars use the term *al-dhamân* and are divided into two, namely *dhamân al-mâl* and *dhamân al-wajh* (*dhamân al-nafs*); third, Shafi'iyah scholars use the term *kafâlah* which includes only *kafâlah bi al-mâl* (excluding *kafâlah bi al-nafs*); and fourth, Hanabilah scholars use the terms *kafâlah* and *dhamâan* with two different uses, namely (1) *dhamân* is used for property guarantee (*dhamân al-mâl*) and *kafâlah* is used for guarantee of the ability to present a person (*kafâlah bi al-nafs*) for the purposes of court proceedings/trials.³²

One form of implementation of *syar'u man qablanâ* is the *kafâlah bi al-nasf* contract. *Kafâlah bi nafs* is an agreement to provide a personal guarantee. For example, in banking practice for the form of *kafâlah bi nafs* is a customer who gets financing with the guarantee of the good name and shop of a person or community leader. Although the bank does not physically hold any goods, it hopes that the figure can seek payment when the financed customer has difficulties..³³

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³¹ Abd al-Rahman Ibn Ibrahim Ibn Ahmad Abu Muhammad al-Din al-Maqdisi, *al-'Uddah Syarh al-'Umdah*, (Beirut: Dar al-Kutub al-'Ilmiyyah, 2005), h. 230.

³² 'Ala al-Din Za'tari, *Fiqh al-Mu'âmalât al-Mâliyyah al-Muqâran: Shiyâghah Jadîdah wa Amtsilah Mu'âshirah*, (Damaskus: Dâr Al-'Ashmâ, 2010), h. 495.

³³ Muhammad Syafi'i Antonio. *Bank Syariah dari Teori ke Praktik*, (Jakarta: Gema Insani Press, 2001), h. 124-125.

personal guarantee. For example, in banking practice for the form of *kafâlah bi nafs* is a customer who gets financing with the guarantee of the good name and shop of a person or community leader. Although the bank does not physically hold any goods, it hopes that the figure can seek payment when the financed customer has difficulties.

قَالُوا نَفَقْدُ صُوعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ
بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ (72)

"The impersonators said: "We lost the king's trophy, and whoever can return it will get food (as heavy as) the burden of a camel, and I guarantee against it". (Q.S Joseph: 72).

According to Ibn 'Abbas asserts that what is enshrined by the word *al-za'im* in the surah of Yusuf verse 72 above the maksd is *al-kâfil*. According to the Hanabilah scholar as quoted by Musthafa Dib al-Bugha, that verse 72 of the Yusuf surah relates to the concept of *syar'u man qablanâ* regarding the ability of the *kafâlah bi al-nafs* contract.

Qismah muhaya'ah

The *qismah muhaya'ah* contract was born to end the incorporation of multiple parties' ownership of an item and/or asset, either because of the relevant efforts (e.g. the *syirkah* contract) or for natural causes (e.g. the inheritance [*al-mauruts*] due to the death of a person). With *qismah*, the ownership of each party becomes clear and separate from the previous entitas *syirkah*.³⁴

The word *muhaya'ah* comes from the word *al-hai'ah* which literally means real state. The real state in question is that the partners use the same goods with the same form of use. The definition of the *muhaya'ah*

contract or covenant is as follows:³⁵

والمهاياة فقهاً: هي عبارة عن قسمة المنافع

"Agreement on the distribution of benefits"

Another definition according to Malikiyyah scholars states that what is meant by *muhaya'ah* is:

بأنها اختصاص كل شريك عن شريكه في شيء متحد كدار، أو متعدد كدارين، بمنفعة شيء متحد أو متعدد في زمن معلوم. وبناء عليه: تعين الزمن شرط، إذ به يعرف قدر الانتفاع، وإلا فسدت المهاياة.

"An agreement on the specificity for each partner of the expediency of an or for more than one item, such as two houses separately and alternately".

The *qismah muhaya'ah* contract is a form of implementation of *syar'u man qablanâ*, it is based on the word of God as follows:

وَبَيِّنْهُمْ أَنَّ الْمَاءَ قِسْمَةٌ بَيْنَهُمْ كُلُّ شَرْبٍ مُحْتَضَرٌ
(28)

And tell them that indeed the water is divided between them (with the female camel); each drinking turn is attended (by the one who has the turn). (Q.S al-Qamar: 28).

And the word of God is as follows:

قَالَ هَذِهِ نَاقَةٌ لَهَا شَرْبٌ وَلَكُمْ شَرْبٌ يَوْمَ
مَعْلُومٍ (155)

"The shaleh replied: "This is a female camel, she has her turn to get water, and you have your turn to get water on

³⁴ Ali Haidar, *Durar al-Hukkâm Syarh Majallat al-Ahkâm*, (Beirut: Dâr al-Kutub al-'Ilmiyyah, 1991), j. 10, h. 176.

³⁵ Wahbah al-Zuhaili, *al-Fiqh al-Islâmî...*, h. 4776.

a certain day" (Q.S al-Syu'ara: 155).

The concept of *qismah muhaya'ah* is an implementation of *syar'u man qablanâ* which is the sharia of the prophet Sholeh and the law remains in force before the discovery of any proposition that composes it.

Conclusion

Syar'u man qablanâ is one of the legal arguments disputed as to its validity as a method of *ijtihad*. However, the majority of scholars view that the sharia of the former people/*syar'u man qablanâ* can be used as *hujjah* in settling the law. The concept of the previous shari'a of the people/*syar'u man qablanâ* is implemented in the field of sharia economic law (mu'âmalah mâliyyah) including: (1) the *Ju'âlah* contract; (2) *Ijârah* contract; (3) *Dhamân Mâ Tafsadahu al-Dawwâb al-Mursalâh*; (4) the contract of *kafâlah bi al-wajh (bi al-nafs)* and (5) the contract of *qismah muhaya'ah* .

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