Significant Development of the Concept of *Ahl-Dhimmah* on Religious Rights in Early Islamic State

Mohamad Zaidi Abdul Rahman,[*] Raja Hisyamudin Raja Sulong[**] & Osman Md Rasip[***]

Abstract

This article aims to explain the effect of historical development in the early Islamic history regarding to treatment of plural society on religious rights. This issue is not a new issue since as early as the formation of the Islamic state of Medina, communities of different religions have already existed. Therefore, to understand the model of managing the affairs of non -Muslim religious beliefs through the historical lens of the Prophet Muḥammad PBUH and the *Ṣaḥabah* RAH have become important for the ummah. This research is library research using a historical approach to obtain data, drawing upon Islamic sources, i.e. the Holy Qurʾān, the Prophetic Traditions and selected opinions of Muslim scholars to explore the conceptual framework that Muslim jurists develop their ruling with regard to issue encounter Muslim and non-Muslims affairs. Then for conducting analysis, a descriptive and analytical approach based on selected themes was used. As a result, this study shows that the combination of the guidance of *Wahy* and the contract signed by the Prophet Muhammad PBUH and the *Ṣaḥabah* RAH with *ahl-Dhimmi* in several occasion have significance effects on development of religious rights rule. However, ceasefire agreement between the Caliph ʿUmar al-Khattab and non-Muslims named *Syurūṭ ʿUmariyyah* gave inspiration for Muslim jurist to provide a social conduct of religious rights for non -Muslims through genre Islamic jurisprudence later on.

Keywords: Religious Rights, Non-Muslims, *Syurūṭ ʿUmariyyah, Ahl-Dhimmah*

Introduction

Non-Muslims who live in Muslim state – *Ahl dhimmah* - theoretically will be guaranteed their religious rights. This protection derives mainly from an agreement that they formally sign with Muslim authority called *Aqd al-Dhimmah*. This social contract further may produce the Islamic legal treatment of non-Muslims is symptomatic of the more general challenge of governing a diverse polity. By understanding of the *dhimmī* rules, could allow us to view the *dhimmī* rules in the larger context of law and pluralism especially to religious rights.

However, Muslim jurists provide various models sometime unique from one jurist to others as consequence would lead differentiation. These products of *ijtihad* being crucial element to be examined since various interpretations were made by them, sometimes seems to address certain problems that emerged and influenced to their outlook which link to time and place. Thus, this article explores significant development on *Aqd al-Dhimmah* conceptual framework that Muslim jurists develop their ruling with regard to issue encounter Muslim and non-Muslims affairs originated from the Early Islamic State (The Prophet Muhammad PBUH and the *Khulafa' al-Rasyidin* RAH).

The discussion on this matter is significant to trace legal formation managing non-Muslims as *ahl dhimmī* under Islamic state which are often categorised by some scholars as a form of discrimination. By taking the early historical background, this article will explore the nature of such agreement as consequence to determine what religious rights of the nation can acquire and highlight some analytical remark in certain point.

---

[*] Mohamad Zaidi Abdul Rahman (PhD), Senior Lecturer, Department of Siyasah Syariyyah, Academy of Islamic Studies, Universiti Malaya, Kuala Lumpur, Malaysia. Email: mzaidi@um.edu.my
[**] Raja Hisyamudin Raja Sulong (corresponding author) (PhD), Senior Lecturer, Department of Siyasah Syariyyah, Academy of Islamic Studies, Universiti Malaya, Kuala Lumpur, Malaysia. Email: r_hisyamudin@um.edu.my.
[***] Osman Md Rasip (PhD), Senior Lecturer, Department of Siyasah Syariyyah, Academy of Islamic Studies, Universiti Malaya, Kuala Lumpur, Malaysia. Email: osmanrasip@um.edu.my.

Ahl al-Dhimmah: Conceptual Framework

The term *Dhimmah* literally has several meanings, and can be translated literally in English as pledge, promise, undertaking to answer for payment, guarantee, responsibility; trust, protection, obligation, custody, compact or covenant of protection.[1] A part of its meaning itself it already shows the association with the socio-political connotations in which it emerged, through a combination of duties and rights resulting from certain agreements, namely *Dhimmah*. This connotation could be traced *inter alia* through Islamic dictionary terms such as was written by Bewley, in which she refers to "obligation or contract, in particular a treaty of protection for non-Muslims living in Muslim territory."[2]

This special attention in terms of preference is adopted by many dictionaries, such as the Hans Wehr dictionary. *Ahl al-Dhimmah* according to him are "the free non-Muslim subjects living in Muslim countries who, in return for paying the capital tax, enjoyed protection and safety." Similar expressions have been explained in Glossaries of Islam that state that the term refers to "the non-Muslim subjects of an Islamic state who have been subjugated by the Muslims and pay *Jizyah* tax in order to have tolerance of their rights to life, property and practice of their religion, etc.."[3] This practice derives perhaps from socio-historical political developments by which the early Muslims developed their relationships based on religions, as discussed below.

Encounter Non-Muslims in Early Islamic History

Mecca: Encounter Polytheists

Generally, Meccan society had enjoyed a freedom of religion at the time when the Prophet Muhammad PBUH was born. At that time, in Mecca had existed a majority of idolaters, Christians, Jews and a significant number of followers of the Abrahamic faiths that later produced the multi-religious societies that might coexist with each other in harmony. For instance, when ᶜUmar al-Khatāb embraced Islam, al-ᶜAs ibn Wā'il al-Sahmi, a prominent leader in Mecca, commented that ᶜUmar had exercised his right to choose a faith and urged that other leaders did not interfere with his right.[4] His attitude towards religious freedom could be argued as having roots in the Meccan tradition, where different faiths lived side by side in a multi-religious environment.

This policy of religious freedom, however, changed drastically when the idea of monotheism was gradually accepted by non-Muslims, and at same time the fundamental belief of polytheism was strongly challenged. To respond to this challenge, various strategies were adopted by the polytheist Quraish leaders, involving either coercion or diplomacy. Despite their antagonistic attitude, polytheists proposed a compromise approach through an exchange idea of worship as a way to decide which religion to prefer. The idea of this kind of compromise was strongly rejected by Allah through the revelation of *surah al-Kāfirun* (the disbelievers).[5] The Quraish's offer to Muhammad seems an effort to create one official religion in the long term. But this idea does not enhance people's understanding of God and produces an uncritical faith, followed blindly and leading one to be more of a believer in any authority, secular, sacred or otherwise. Thus, this idea was firmly rejected by Allah through the *Surah al-Kāfirun*: "Say: O ye that reject Faith! (1) I worship not that which ye worship, (2) Nor will ye worship that which I worship. (3) And I will not worship that which ye have been wont to worship, (4) Nor will ye worship that which I worship. (5) To you be your Way, and to me mine. (6)"

The polytheists of Quraish, however, did not accept plurality, especially so far as those who had converted to Islam was concerned. As a reaction, they acted unjustly towards them. A part of their cruel attitude was as the Qur'an states *"(They are) those who have been expelled from their homes in defiance of right, (for no cause) except that they say, Our Lord is Allah."* (al-Hajj,22: 40) As a result, their previous attitude of tolerance seems to have shifted to one much more unsympathetic, even towards people who did not commit any wrong against them. This is an indication of the infringement of the

---

[1] H. S. al-Faruqi (2006), *al-Mu'jam al-Qanuni: Faruqi's law dictionary, English-Arabic*, Lubnan: Maktabah Lubnan; Hans Wehr (1994), "Dhimma," in J. Milton Cowan (ed.), *Hans Wehr; A Dictionary of Modern Written Arabic*, Urbana: Spoken Language Service.

[2] Aisha Bewley (1998), "Dhimma," in *A Glossary of Islamic Terms*, London: Ta-Ha Publishers.

[3] Bewley (1998), "Dhimma."

[4] Muhammad Yasin Mazhar Siddiqi (2006), *The Prophet Muhammad; a Role Model for Muslim Minorities*, Markfield: The Islamic Foundation, pp. 28-29.

[5] Ali ibn Ahmad al-Wahidi an-Naisaburi (2005), *Reason of Revelation of the Glorious Quran*, Z. Baintner (trans.), Karachi: Darul Ishaat, p. 487.

freedom of religion being introduced to the Meccan scene, as the establishment of polytheism was challenged by another religion (which in this case was Islam). Finally, Allah instructed the Prophet Muhammad PBUH migrated to Yathrib (Medina).

Medina: Encounters Jews, Polytheists and Christians

When the Prophet Muhammad PBUH migrated to Yathrib (later Medina), it was inhabited mainly by two influential tribal groups: *'Aws* and *Khazraj*. Both embraced Islam in significant numbers, and dwelt alongside non-Muslims, mainly Jews from the clans of *Qaynuqa'*, *al-Nadir* and *Qurayza* but also polytheists.[6] Politically, Medina was not a state like Mecca, but was only a tribal society. Arnold described the way that "the citizens lived in uncertainty and suspense, and anything likely to bind the conflicting parties together by a tie of common interest could not but proven a boon to the city"[7] a situation that often led to instability. This situation was a great challenge to the Prophet Muhammad PBUH, who was appointed by the *'Aws* and the *Khazraj* as leader of Medinan society. The acceptance of the Prophet Muhammad PBUH as leader demonstrated on the other hand, a new dimension for *da'wa* (Islamic preaching) where it enjoyed relatively more power than in the Meccan period.

Under His administration, the Prophet Muhammad PBUH adopted the principle of good relations and cooperation with local inhabitants, through the agreement named the *al-Sahifah al-Madinah* (literally the Medinan Constitution). The *al-Muhajirūn* (the Muslims who migrated from Mecca) and *al-Ansar* (the Muslim helpers who inhabited Medina) agreed to be an *ummah,* which was later extended to other clans, including the Jews. This agreement stipulated the Jews' rights, as stated in Article 25 of the Constitution "The Jews of *Banu 'Awf* are a community (ummah) along with the believers" then was acknowledged firmly their religious rights "to the Jews their religion and to the Muslims their religion."[8] This is the way that the Prophet Muhammad PBUH established power in managing a multi-religious political community, based on a set of tolerant and cooperative laws in the first Islamic state. In this state, religious rights were preserved, and the state did not interference in the religious affairs of non-Muslim groups.

The occupation of Mecca was the dramatic event which caused the Prophet Muhammad PBUH to address the question of non-Muslim Mecca and to order the action that should be taken on them. However, they left the solution in the Prophet's hands. The Prophet Muhammad PBUH took unexpected action when He said "go, you are relieved" to non-Muslims, despite that which they had done against Him and His companions.[9] If the Prophet Muhammad PBUH had wished, He could have compelled them to conform to Islam, without any resistance. This case may be argued as being the best example that no coercion ought to be used to force conversion to Islam, even if a Muslim ruler could do so.

After Mecca had been occupied, however, the Prophet PBUH Muhammad faced a military challenge from Christians. The Arab Christians of *Ghassan* had made an alliance with the Byzantine military and fought the Muslims. The Prophet Muhammad PBUH launched His last *Ghazwa* expedition (H. 9/A.D. 630) to Tabuk, against them in a city located on the Medina-Syria trade route, 700 km from Medina.[10] The enmities attitude of them received special attention from Allah, who later revealed verse 29 of the Ninth Chapter *inter alia* introducing the payment of *jizyah* as a way to politically engage the enemy, without using physical attack. In this light, relations Muslim- non-Muslim has evolved into the concept of *Ahl al-Dhimmah*.[11]

In sum, the Prophet Muhammad PBUH encountered different type of non-muslims religious adherent from Polytheists, Jews in significant number before he experienced Christians to the same extent. Later, however, as the tensions and conflicts with the Polytheists of Mecca then the Jewish tribes of Medina

---

[6] Muhammad Hamidullah (2006), *The Prophet's Establishing a State and His Succession*, New Delhi: Adam Publishers & Distributors, pp. 24-25; Bat Ye'or (1985), *The Dhimmi;Jews and Christians under Islam*, David Maisel, Paul Fenton and David Littman (trans.), London: Associated University Presses, p. 43.

[7] Thomas W. Arnold (2006), *The Preaching of Islam: A History of the Propagation of the Muslim Faith*, 2nd Edition, Delhi: Low Price Publications, p. 21.

[8] Yohanan Friedmann (2003), *Tolerance and Coercion in Islam; Interfaith Relations in the Muslim Tradition*, Cambridge Studies in Islamic Civilization, Cambridge: Cambridge University Press, p. 89.

[9] Hamidullah (2006), *The Prophet's Establishing a State*, pp. 26-27.

[10] Seyfettin Erşahİn (2021), "Prophet Muhammad's Relations with Christians (An Islamic Perspective)," *Siyer Araştırmaları Dergisi*, Vol. 11, pp. 105-138.

[11] Misri Abdul Muchsin and Abdul Manan (2019), "Historical Development of Tax During The Early Islamic Period: Jizyah and Kharaj: A Historical Analysis," *Journal of Al-Tamaddun*, Vol. 14, No. 2, pp. 1-7.

are resolved, either by force or by conversion, followed by the Christians which have affairs with the Byzantine (the great powers of the world at that time) took place as new challenges.

Discussion about *Ahl Dhimmah* on Legal Recognition

Historically, the existence of different types of beliefs within society occurred in Islamic territories in diverse forms. This is because Islam from a theological perspective would accept other religious adherents living side by side in its territories. For instance, Jews and Christians were classified as *ahl al-Kitab* (the People of the Book) and Magians and Zoroastrians were grouped as *ahl Shubhah al-Kitab* (the People of a Dubious Book) unanimously would be entitled to this legal recognition. The basic acceptance of these groups derived from the Qur'anic and the Prophetic Instruction. The Qur'an *surah al-Tawbah*: 29 states: "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger nor, acknowledge the Religion of Truth from among the People of the Book, until they pay the jizya with willing submission and feel themselves subdued."

The People of the Book mentioned by the Qur'an would refer to those who have scripture and are generally known as Jews and Christians. For *al-Majus* (Magians) they are entitled by approval of the Prophetic Tradition. Abū ᶜUbaiyd states that:

> The Prophet (peace be upon him) wrote to the al-Majus of Hijr, inviting them to embrace Islam. Whoever from them embraced Islam, he (peace be upon him) approved it and who did not, he (peace be upon him) imposed upon him jizya and (he also) declared that his slaughter would not be taken (eaten) and his females would not be married (with the Muslims)[12]

Obviously, based on the Qur'anic and Prophetic Instruction quoted above, only three religious groups have been specifically named and would be accepted as being *ahl- Dar-Islam*. However, the spirit of acceptance (in specific situations for some Muslim jurists) was not extended to polytheists. This view was adopted by the Zahir of Hanbalī School including Ibn Qudamah (d.620/1223) which said that all infidels except Jews, Christians and Magian, should be coerced to embrace Islam or they will be fought.[13] Their opinion is based on the Qur'an which state *'...then fight the Mushrikin wherever you find them...'* (*Tawbah*, 9: 5) and on the Hadith in which the Prophet instructed the Muslims to fight against people until they profess Islam.[14] The same view was also attributed to al-Imam al-Shafiᶜi (2001) who held that the *jizyah* was taken only from those whom God allowed to take it from them (*ahl al-Kitab*). Consequently, polytheists were not entitled to the status of *dhimmis,* since *jizyah* did not apply to them.

Some Muslim jurists, however, narrowed the scope of the term polytheists who were not entitled to the status of *Dhimmi*. According to al-Tabariy (d.310/923) who quoted Qotadah and al-Dahhak and argued that only the polytheists of Arab tribes should be treated in this way (and were offered two options: embrace Islam or the sword.) The reason was based on two factors, given as: '*laysa lahum kitāb'* (the Arab had no book) and '*laysa laha din'* (no legitimate religion) compared to the Jews, Christians and the Magians.[15] In line with Qotadah and al-Dahhak's opinion, al-Hasan ibn Sawab concluded that polytheistic Arabs should be treated differently from other non-Arab polytheists, because of their religion and their enmities attitude towards the Prophet Muhammad PBUH.[16] Al-Zuhayli observes that the *Mushrik* ᶜArabs were not entitled to ratify the *Dhimmah* contract, which is a part of the stipulation agreed by al-Hanafiyyah, al-Shafiᶜiyyah, al-Hanabilah, al-Zahiriyah, al-Ibadiyyah, al-Syiᶜah al-Imamiyyah and al-Zaidiyyah.[17] Without recognition of legal capacity in paying *jizyah*, the protection that integrated into the *Dhimmah* contract does not cover them.

[12] Abū ᶜUbayd al-Qāsim b. Salām (2006), *Kitāb al-Amwāl* [The Book of Finance], Noor Mohammad Ghiffari (trans.), New Delhi: Adam Publishers & Distributors.
[13] Ibn-Qudamah (1997), *al-Mughni*, Vol. 13, 3rd Edition, Riyard: Dar 'Alam al-Kutub, pp. 208-209.
[14] Ibn-Qudamah (1997), *al-Mughni*, Vol. 13, p. 501.
[15] Abi Jaᶜfar Muhammad Jarir al-Tabariy (1374H), *Tafsir al-Tabariy Jamic al-Bayan can Ta'wil Ay al-Qur'an*, Vol. 3, Kaherah.: Maktabah Ibn Taymiyyah, p. 16.
[16] Ibn-Qudamah (1997), *al-Mughni*, Vol. 13, pp. 208-209.
[17] Wahbah Zuhaili (1985), *al-Fiqh Islamiy wa Adillatuh*, Vol. 1, Beirut: Dar al-Fikr, pp. 442-443.

Ibn Qayyim al-Jawziyyah (d.751/1350) on the other hand upheld the equal treatment of all other infidels as similar to that granted to the People of the Books.[18] According to him, they should be offered three options before fighting them; accept Islam, pay *jizyah* or fight, which is explicitly mentioned in the Hadith reported by Buraida.[19] This Hadith, in principle, has placed all infidels, including Arab Polytheists, in one category, because the Prophet Muhammad PBUH did take *jizyah* from Magians who worship fire. Therefore, as Ibn Qayyim concluded, "there was no difference between them (Magians) and the idolaters" (*la farq baynahum [al-Majus]wa bayna ʿUbdah al-Awthan*) with regard to paying *jizyah*.[20] Al-Awzaʿi, al-Sawri, Fuqaha al-Syam and the popular opinion expressed by al-Malikiyyah asserts this opinion, since it is influenced by the Hadith and narrated by Buraida, as above.[21]

Further critical analysis of the discussion above should consider that we are dealing with a war situation. In that context, Muslim jurists have proposed a code of conduct which was the way to approach various enemies (*Ahl al-Harbi*) associated with different religions, as referred to in Buraida's report. The Prophet Muhammad PBUH, according to the report, gave a guideline with three choices to their enemies, either embrace Islam, ratify a contract or fight. Some jurists tend to apply the guideline to all non-Muslims, but others adopted a selective approach, excluding polytheists, particularly those from the Arab line. The last category, limited in terms of choices (Islam or fight) might be argued as having a relatively coercive element. War itself, in general, has a strong element of coercion but, ironically, its purpose in Islam is, *inter alia,* to fight for religious freedom. Thus, the coercion element, according to this group, is permissible, based on the theological point of view (lack of scripture or invalid religion) combined with non-Muslims' attitude of enmity to Islam.

The opinion above, however, is not shared by many of the scholars,[22] who hold that there are three options through Buraida's report, as discussed earlier. As a result, non-Muslims have more choices: either to change religion (become Muslim) or keep their identity (being *dhimmi*) or keep their attitude of enmity against Muslims (i.e. to fight). Moreover, choosing peace[23] (being Muslim or *dhimmi*) is sequentially preferred, rather than war, as observed from Buraida's report. If they favour keeping their religious identity (being *dhimmi*), according to the majority of contemporary Muslim scholars,[24] they have the right to do so as a 'citizen' without any danger to the status of his or her religion.[25] Thus, non-Muslims in Muslim states would be accepted as a part of the citizenry by conversion to Islam or by ratifying a contract known as ʿaqd al-Dhimmah. By the accepting as an *ahl-Dhimmah*, non-Muslims would enjoy some rights as discussed below.

Making Stipulation on Religious Rights for *Ahl Dhimmah*: The Role of Muslim Authority

Muslim jurists have introduced a legal maxim regarding the issue of the influence of locality and reality as it effects or changes a fatwa. Ibn Qayyim, for example, states that *Taghayyur al-fatwa wa ihkhtilafuha bi hasb Taghayyur al-Azminah wa al-Amkinah wa al-Ahwal wa al-Niyyat wa al-'Awa'id* (The fatwa and its change and variance is based on the change of times, places, conditions, intentions and customs)[26] or changes in fatwa are evaluated by changes in time, places, conditions and customs.

---

[18] Shams al-Din Abiy cAbdullah Muhammad bin Abiy Bakr Ibn Qayyim al-Jawziyya (1995), *Ahkam Ahl al-Dhimma*, Vol. 1, Beirut: Dar al-Kutub al-ʿIlmiyyah, pp. 20-24.

[19] Sahih Muslim The Book of Jihad and Expedition, Chapter 2: Appointment of the leaders of expeditions by the Imam and His advice to them on Etiquettes of war and Related Matters. The relevant quotation is "…When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and withhold yourself from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to land of *Muhājīrs* and inform them that, if they do so, they shall have all the privileges and obligations of the *Muhājīrs*. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the commands of Allah like other Muslims, but they will not get any share from the spoils of war or *Fai'* except when they actually fight with Muslims (against the disbelievers). If they refuse to accept Islam, demand from them the *jizya*. If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them…"

[20] Ibn Qayyim al-Jawziyya (1995), *Ahkam Ahl al-Dhimma*, p. 1.

[21] Zuhaili (1985), *al-Fiqh Islamiy wa Adillatuh*, Vol. 1, p. 443.

[22] ʿAbd al-Karīm Zaydān (1982), *Ahkām al-Zimmiyyīn Wa Al-Musta'mīn Fī Dār al-Islām*, Beirut: Muassah ar-Risālah, pp. 28-30.

[23] Karl-Wolfgang Tröger (1990), "Peace and Islam: in Theory and Practice," *Islam and Christian-Muslim Relations*, Vol. 1, No. 1, pp. 12-24.

[24] Rāshīd al-Ghannusiy (1993), *Huqūq al-Muwatanah: Huqūq Ghayr al-Muslim Fī al-Mujtamaʿ Al-Islāmiy*, 2nd Edition, Herdon: The International Institute of Islamic Thought, p. 57.

[25] Ibn Battūta (d.1378) in his journey to India described that some Hindus lived under protection of the Muslim and resided amongst them. Cited from (Sabjan, 2009, p. 140) This statement was made by him to some extant can be justified that Muslim authority in India has exercised their power based on siyāsah syarʿiyyah. Thus, Muslim ruler can expend application for citizenship based on their wisdom.

[26] A. Rahman M. Zaidi and R.Sulong R. Hisyamudin (2008), "Pengaruh Perubahan Dalam Pembinaan Hukum Siyasah Syar'iyyah," *Jurnal Syariah*, Vol. 16, No. 1, pp. 17-31.

This principle gives more flexibility for leaders holding high positions in Muslim states (*imam*/ caliph) in the conduct of state-people relations. However, a decision made by an *imam* must be in the public interest. This is in line with a legal maxim that "The affairs of the *imam* concerning his people are judged by reference to *Maslahah*" (*Amr al-Imami fi Shu'un ra^c iyyati manatun bi Maslahah*) or "the actions of the ruler or *imam* should be bound by public affairs (*Tasarrafu al-Imam ala ri^c ayatihi manut bi Maslahah*)" which refers to the requirement to act in the wider public interest so as to reach the best decision regarding the state's relationship to its citizens. This maxim could be applied to the cases of Muslim and non-Muslim affairs in Muslim states. Generally, this relationship was conducted by an *imam* in peace and harmony, by virtue of the tolerance of Islam. Sometimes non-Muslims were even treated better than Muslims. Al-Sharnoubi, in his thesis for instance, clearly demonstrates that Ibn al-Durayhim advanced a critical comment against the Mamluk Sultanate's attitude, in which it preferred certain posts (such as clerical work and accounting) in the government to be allocated to non-Muslims. Ironically, by holding this position, non-Muslims had control over Muslims, and sometimes persecuted them.[27] The writings of Ibn Durayim perhaps reflect his general observation of the pattern of treatment of non-Muslims by the Muslim authorities as favouring them, which for him should be reviewed, in order to better protect the Muslim's interest. His book is, arguably an exercise of his right to advise *imams*, to play their role in making society, especially in the sense of preserving harmonious balance.

Generally, in case of *imam* who authorises to make a treaty with non-Muslims, they may not in static condition. Based on condition of power, they might be divided into three categories;

i. from a position of power and to avoid further conflict and bloodshed (sometimes as well as to gain more time for reinforcements and supplies to arrive) as the case of the capitulation of Jerusalem in 638 H.

ii. from a position of equilibrium, and in order to settle differences for which a military solution is not desirable for instance in the case of treaties with Byzantines in connection with their frontier wars in Asia Minor during both the Umayyad and Abbasid eras.

iii. from a position of weakness, where the object is to make the best of adverse circumstances and perhaps to gain time for planning and readjustments for potential future conflict especially when faced with internal disputes as a case of Abd al-Malik ibn Marwan.[28]

These circumstances theoretically would lead differentiation in terms of concluding a treaty with non-Muslims. John Tolan who is a leading expert in medieval European anti-Muslim polemics also give emphasis on similar idea that there is a variety of local adaptations of *dhimmi* system throughout Muslim history encounter non-Muslims.[29] Here, however some model of treaties signed by the Prophet Muhammad PBUH and Caliph Umar RAH as examples how religious rights preserve upon non-Muslims in early Islamic state.

General Pattern of Treaty Model: A Reference

The Prophetic Traditions combine with the early practice of the caliphs also demonstrate a sound of theoretical framework for treatment of non-Muslims in Muslim state that lays out their rights and obligations in great detail and prevents their persecution at the hands of the Muslims. In the light of the contract of *Dhimmah*, it appears that the pacts or contract with the *ahl al-Dhimmah* was greatly respected and honoured particular in the formative period of Islam.[30]

The premise above, has applied in Muslim history particular through treaties (*Aqd al-Dhimmah* or *Hudna*) that they have engaged with non-Muslims in the time of "*futuh.*" When we look at type of treaties, we can find the existence of variety legal terms are used amongst Muslim rulers with 'others'. The treaty of Hudaibiyyah is obviously in favour of non-Muslim's request.[31] In the case of the peace

---

[27] Ahmad Muhammad Ahmad al-Sharnoubi (2000), "Critical Study and Edition of Manhaj al-Sawab fi Qubh Istiktab Ahl al-Kitab of Nur al-Din 'Ali Ibn Abu al-Fath Known as Ibn al-Durayhim," PhD Thesis, University of Wales, Lampeter.

[28] Labeeb Ahmed Bsoul (2008), *International Treaties (Muʿāhadāt) in Islam: Theory and Practice in the Light of Islamic International Law (Siyar) according to Orthodox Schools*, Maryland: University Press of America, p. 152.

[29] See Preface in John Tolan et al. (eds.) (2017), *Religious Minorities in Christian, Jewish and Muslim Law (5th-15th centuries)*, Turnhout: Brepols.

[30] Bsoul (2008), *International Treaties (Muʿāhadāt) in Islam*, p. 56.

[31] M. Hamīdullah (1895), *Majmuʿah al-Wasāiq al-Siyāsiyah Li ʿAhd Al-Nabawiy Wa Al-Khilāfah Al-Rāshidah*, 5th Edition, Beirut: Dār al-Nafāis.

treaty with the Christian tribe of Banu Taghlib the phrases "they shall not Christianise the Children of those who have already embraced Islam" has been inserted as observed by al-Tabari as a specific request from the Muslims of that tribe to protect their future generation.[32] The agreement that signed by the Prophet Muhammad PBUH with the people of Najran (about 10/631) in relevant points state:

> To the Christians of Najran and the neighbouring territories, the security of Allah and the pledge of His Prophet are extended for their lives, their religion and their property- to those present as well as those absent and others besides; There shall be no interference with the practice of their faith or their observance; nor any change in their rights or privileges. No bishop shall be removed from his bishopric, nor any monk from his monastery, nor any priest from his priesthood…[33]

This agreement with regard to religious rights produces main principle as follows;
  i-   The state protects and guarantees the property of the people of Najran, their belongings, worship and personal freedom,
  ii-   Leave religious administration to decide by their community,
  iii-   The people of Najran will not be insulted despite they were Christians.

These are principles later forms the fundamental rules govern non-Muslims in Muslim state. It seems broadly tolerant of diversity even in matters of religion that the Prophet Muhammad PBUH agreed to recognise them as part of democratic safeguard. Such agreement as modelled by the Prophet Muhammad PBUH then is followed by His successors in general pattern. The treaty known as *al-ʿUhda al-ʿUmariyyah* with people of Aelia is another example that the people of Aelia has been guaranteed their religious rights by the Caliph ʿUmar al-Khattab reflect of the Prophet's model: "In the name of God, the most Merciful, the most Compassionate. You are granted Aman for your lives, possessions, and churches unless you cause public harm or protect who cause public harm. Any one of you who cause public harm or protect who causes public harm then he will not be under the covenant of God."[34]

This treaty in fact is proposal made by the Caliph ʿUmar al-Khattab to Christians of Aelia. The essence of this treaty is in line with the spirit of Najran's treaty to preserve freedom of religion. However, the Christians of Aelia requested special stipulation should be inserted; "no Jews should reside with them in Aelia" probably inspired from conflict between two religions in this region.[35] This request has been considered by the Caliph ʿUmar al-Khattab, indicate that such treaty is formed through bilateral negotiation.

However, the crucial treaty that mostly cited by the Classical Muslim jurists is what called "*shurut Umriyya*" (the Covenant or Path of Umar. Al-Khallal[36] after mention their "*sanad*" (link) for instance stated "*Haddathana ghair wahid min Ahl al-ʿIlm*" has transmitted to us not only one from knowledgeable Muslim). The covenant states *inter alia*:

> When you came to us, we asked of you safety for our lives, our families, our property, and the people of our religion on these conditions... to beat the nakus only gently in them and not to raise our voices in them in chanting…;not to build a church, convent, hermitage or cell, nor repair those that are dilapidated, nor assemble in any that is in a Muslim quarter, nor in their presence; not to display idolatry nor invite to it, nor show a cross on our churches, nor in any of the roads or markets of the Muslims; not to learn the Qur'ān nor teach it to our children; not to prevent any of our relatives from turning Muslim if he wish it;…

---

[32] Maher Y. Abu-Munshar (2007), *Islamic Jerusalem and Its Christians: a History of Tolerance and Tensions*, London: Tauris Academic Studies, pp. 57-62.
[33] Hamīdullah (1895), *Majmu'ah al-Wasāiq*, p. 176.
[34] Abd al-Fattah El-Awaisi (2018), "Umar's Assurance of Aman to the People of Aelia (Bayt Al-Maqdis - Islamicjerusalem): A Critical Analytical Study of al-Tabari's Version," *Journal of Al-Tamaddun*, Vol. 13, No. 2, pp. 65-80; Abm. Mahbubul Islam (2002), *Freedom of Religion in Sharīʿah: a Comparative Analysis*, Kuala Lumpur: A.S. Noordeen, p. 82.
[35] Abu-Munshar (2007), *Islamic Jerusalem*, pp. 88-97.
[36] Abu Bakr Ahmad bin Muhammad al-Khallal (2003), *'Ahkām ahl al-Milal min al-Jamic al-Masāil al-Imām Ahmad bin Hanbal*, Beirut: Dar al-Kutub al-'Ilmiyah.

This quotation above seems a suggestion that the condition imposed upon them are set up by them amount to discrimination against non-Muslim themselves. Some scholars did not recognise the authenticity and the validity of this covenant referred to the Caliph ͨUmar al-Khattab RAH. Part of the weakness of document are weak of critical methodology of *Isnad* (chain of authorities) and several questions seem would lead in doubt regarding its contains to some extent against the character of the Caliph ͨUmar al-Khattab who respect non-Muslims.[37]

Nevertheless, the covenant influences widely spread into Islamic literatures through genres such as *Fiqh, tafsir, history, Siasah Shar ͨiyyah*. Some jurists produced a detail account of this covenant as a basis to develop regulations amongst non-Muslims as written by Khallal (*'Ahkām ahl al-Milal*) and Ibn Qayyim al-Jawziyyah ('A*hkām ahl al-Dhimmah*). This type of research contributed the development of set of rules with regard to govern non-Muslims who are subjects in Islamic state. As consequence, this tendency of jurists as note by Milka Levy-Rubin,[38] later produce uniform policy regarding to the non-Muslims living under Muslim rule which inspiration through *"shurut Umriyya"* model over others surrender agreements. Using this model however, it patterns slightly divert from previous treaty especially its tendency to highlight restriction against practice religious rights. In that sense, the *dhimmī* rules regarding to religious rights based on model *shurut Umriyya*, when read in isolation, would be perceived as discrimination in nature. As consequence it would lead to raise important thematic questions about tolerance, role of law and governance.

But looking at this sentence "When you came to us, we asked of you…" it could be argued that it was raised from non-Muslims to propose such condition upon themselves. This pattern, however, as note by M. Levy-Rubin is product of a long tradition of such agremeents common throughout the pre Islamic world reflect various Byzantine as well as Sasanian Laws and Conventions in addition to some Arab and Islamic elements. Such aggrement cover lists a series of obligations made by the conquered in return for the assurance of protection (*amān*) given to them by the Muslims.[39]

Conclusion Remarks

The above discussion shows that popular classification of people in relating to citizenship is 'distinguished' from each other by their religion, therefore divided into Muslims and non-Muslims as general classification in international treaties from ancient times throughout the ancient Near East, as well as throughout the Hellenistic, Roman, and Byzantine world.[40] However, there is matter of disagreement amongst Muslim scholars regarding to non-Muslims that could be granted for *dhimmi* status except Jews, Christians and Magian. This matter partly emerges from the textual understanding as stated in hadith in limitation approach or expand based on analogy.

The nature of Islamic ruling with regard to Muslim and non-Muslim affairs mainly based upon Muslim authority's wisdom in dealing with non-Muslims in various events. However, the Prophet Muhammad's PBUH models of treaties give crucial guidelines in preserving religious rights for non-Muslims. The treaty with the Christians of Najran perhaps a reference model later influences their successor to do similar approach. The Caliph ͨUmar al-Khattab treaties especially the *Shurut ͨUmriyyah* and ͨ*Uhud ͨUmriyyah* also have deep influence upon Muslim jurists who wrote in this topic (religious rights). Both treaties however highlight different emphasis. The *shurut* is claimed a proposal made by non-Muslims seems to stress restriction approach. In contrast the ͨ*Uhud* in which its suggestion from the Caliph ͨUmar al-Khattab draw attention to preserve religious rights in general.

Therefore, the *dhimmī* rules with the vocabulary of tolerance or intolerance masks their contribution to a discourse of Islamic Law as a mode of regulating a polity. This type of ruling is a part of *Siyasah Syar'iyyah* may be connected to the general principle of *Tassaruf Imam manatun bi Maslahah* in order

---

[37] The covenant is recorded in various forms. It was proposed by the Christians of Sham through ͨAbd al-Rahman bin Ghannam in order to be decided by the Caliphs ͨUmar. For the full version of the petition see also in Abu Bakr Ahmad bin Muhammad al-Khallal *'Ahkām ahl al-Milal*, 357-9. See further discussion from Muslim scholars such as Abu-Munshar, 2007) Some Orientalists such as A.S.Tritton, *The Caliphs*, Bernard Lewis, *The Jews of Islam* also have similar expression with regard to the authentic issue.

[38] M. Levy-Rubin (2011), *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence*, Cambridge: Cambridge University Press.

[39] Milka Levy-Rubin (2017), "The Pact of ͨUmar," in David Thomas (ed.), *Routledge Handbook on Christian–Muslim Relations*, London and New York: Routledge.

[40] Milka Levy-Rubin (2020), "The Surrender Agreements: Origins and authenticity," in Andrew Marsham (ed.), *The Umayyad World*, London and New York: Routledge.

to protect public interest to gain peace and harmony in the country. The nature of *maslahah* itself contain element of flexibility that Muslim jurists should take into consideration.

References

Abu-Munshar, Maher Y. (2007), *Islamic Jerusalem and Its Christians: A History of Tolerance and Tensions*, London: Tauris Academic Studies.

al-Faruqi, H. S. (2006), *Al-Mu'jam Al-Qanuni: Faruqi's Law Dictionary, English-Arabic*, Lubnan: Maktabah Lubnan.

al-Ghannusiy, Rāshīd (1993), *Huqūq Al-Muwatanah: Huqūq Ghayr Al-Muslim Fī Al-Mujtamaᶜ Al-Islāmiy*, 2nd Edition, Herdon: The International Institute of Islamic Thought.

al-Khallal, Abu Bakr Ahmad bin Muhammad (2003), *'Ahkām Ahl Al-Milal Min Al-Jamic Al-Masāil Al-Imām Ahmad Bin Hanbal*, Beirut: Dar al-Kutub al-'Ilmiyah.

al-Sharnoubi, Ahmad Muhammad Ahmad (2000), "Critical Study and Edition of Manhaj Al-Sawab Fi Qubh Istiktab Ahl Al-Kitab of Nur Al-Din 'Ali Ibn Abu Al-Fath Known as Ibn Al-Durayhim," PhD Thesis, University of Wales, Lampeter.

al-Tabariy, Abi Jaᶜfar Muhammad Jarir (1374H), *Tafsir Al-Tabariy Jamic Al-Bayan Can Ta'wil Ay Al-Qur'an*, Vol. 3, Kaherah.: Maktabah Ibn Taymiyyah.

an-Naisaburi, Ali ibn Ahmad al-Wahidi (2005), *Reason of Revelation of the Glorious Quran*, Z. Baintner (trans.), Karachi: Darul Ishaat.

Arnold, Thomas W. (2006) *The Preaching of Islam: A History of the Propagation of the Muslim Faith*, 2nd Edition, Delhi: Low Price Publications.

Aisha Bewley (1998), "Dhimma," in *A Glossary of Islamic Terms*, London: Ta-Ha Publishers.

Bsoul, Labeeb Ahmed (2008), *International Treaties (Muʾāhadāt) in Islam: Theory and Practice in the Light of Islamic International Law (Siyar) According to Orthodox Schools*, Maryland: University Press of America.

El-Awaisi, Abd al-Fattah (2018), "Umar's Assurance of Aman to the People of Aelia (Bayt Al-Maqdis - Islamicjerusalem): A Critical Analytical Study of Al-Tabari's Version," *Journal of Al-Tamaddun* , Vol. 13, No. 2, 65-80.

Erşahİn, Seyfettin (2021), "Prophet Muhammad's Relations with Christians (an Islamic Perspective)," *Siyer Araştırmaları Dergisi*, Vol. 11, 105-38.

Friedmann, Yohanan (2003), *Tolerance and Coercion in Islam; Interfaith Relations in the Muslim Tradition*, Cambridge: Cambridge University Press.

Hamīdullah, M. (1895), *Majmu'Ah Al-Wasāiq Al-Siyāsiyah Li 'Ahd Al-Nabawiy Wa Al-Khilāfah Al-Rāshidah*, 5th Edition, Beirut: Dār al-Nafāis.

Hamidullah, Muhammad (2006), *The Prophet's Establishing a State and His Succession*, New Delhi: Adam Publishers & Distributors.

Ibn-Qudamah (1997), *Al-Mughni*, Vol. 13, 3rd Edition, Riyard: Dar 'Alam al-Kutub.

Ibn Qayyim al-Jawziyya, Shams al-Din Abiy cAbdullah Muhammad bin Abiy Bakr (1995), *Ahkam Ahl Al-Dhimma*, Vol. 1, Beirut: Dar al-Kutub al-ᶜIlmiyyah.

Islam, Abm. Mahbubul (2002), *Freedom of Religion in Shariᶜah: A Comparative Analysis*, Kuala Lumpur: A.S. Noordeen.

Levy-Rubin, M. (2011), *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence*, Cambridge: Cambridge University Press.

Levy-Rubin, Milka (2017), "The Pact of ʿUmar," in David Thomas (ed.), *Routledge Handbook on Christian–Muslim Relations*, London and New York: Routledge, 80-89.

Levy-Rubin, Milka (2020), "The Surrender Agreements: Origins and authenticity," in Andrew Marsham (ed.), *The Umayyad World*, London and New York: Routledge, 196-215.

M. Zaidi, A.Rahman, and R.Sulong R. Hisyamudin (2008), "Pengaruh Perubahan Dalam Pembinaan Hukum Siyasah Syar'iyyah," *Jurnal Syariah*, Vol. 16, No. 1, 17-31.

Muchsin, Misri Abdul, and Abdul Manan (2019), "Historical Development of Tax During the Early Islamic Period: Jizyah and Kharaj: A Historical Analysis," *Journal of Al-Tamaddun*, Vol. 14, No. 2, 1-7.

Salām, Abū ᶜUbayd al-Qāsim b. (2006), *Kitāb Al-Amwāl* [The Book of Finance], Noor Mohammad Ghiffari (trans.), New Delhi: Adam Publishers & Distributors.

Siddiqi, Muhammad Yasin Mazhar (2006), *The Prophet Muhammad; a Role Model for Muslim Minorities*, Markfield: The Islamic Foundation.

Tolan, John, Nora Berend, Capucine Nemo-Pekelman, and Youna Hameau-Masset (eds.) (2017), *Religious Minorities in Christian, Jewish and Muslim Law (5th-15th Centuries)*, Turnhout: Brepols.

Tröger, Karl-Wolfgang (1990), "Peace and Islam: In Theory and Practice," *Islam and Christian-Muslim Relations*, Vol. 1, No. 1, 12-24.

Hans Wehr (1994), "Dhimma," in J. Milton Cowan (ed.), *Hans Wehr; A Dictionary of Modern Written Arabic*, Urbana: Spoken Language Service.

Ye'or, Bat (1985), *The Dhimmi;Jews and Christians under Islam*, David Maisel, Paul Fenton and David Littman (trans.), London: Associated University Presses.

Zaydān, ᶜAbd al-Karīm (1982), *Ahkām Al-Zimmiyyīn Wa Al-Musta'Mīn Fī Dār Al-Islām*, Beirut: Muassah ar-Risālah.

Zuhaili, Wahbah (1985), *Al-Fiqh Islamiy Wa Adillatuh*, Vol. 1, Beirut: Dar al-Fikr.