

## Contextualization of Hadith as a Solution to the Polemic of Sunnah Ghair Tasyri'iyyah: A Comparative Study of the Thoughts of Syaltut and Syahin

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**Abstract.** In terms of the authority of hadith, Muslims unanimously agree that the Sunnah of the Prophet is the second source of Islamic teachings after the Qur'an. However, differences arise in interpreting the extent to which the Sunnah is legally binding. This article is a hadith study of the thoughts of Mahmud Syaltut and Musa Syahin regarding the concept of *ghair tasyri'iyyah* Sunnah. Mahmud Syaltut distinguishes between *tasyri'iyyah* (legislative) and *ghair tasyri'iyyah* (non-legislative) Sunnah, asserting that only the former is obligatory to follow. His perspective is based on differentiating between the divine and human aspects of the Prophet. In contrast, Musa Syahin rejects this distinction, arguing that all actions of the Prophet carry legal value, including permissibility (*ibahah*), which he considers part of the Shari'ah. This study aims to compare and find common ground between the views of the two scholars using a qualitative-comparative method through library research. The findings show that the difference between them is largely terminological and methodological. Syaltut classifies *mubah* into two categories: rational (*'aqib*) and legal (*shar'i*), while Syahin does not. Points of convergence include: the importance of understanding hadith contextually through its sabab wurud and 'illah; and the obligation to practice the universal Sunnah of the Prophet with the intention of *ittiba'* (emulating the Prophet) as a manifestation of love for him. Through this approach, Sunnah practiced is deemed legislative, rather than merely rationally permissible.

**Keywords:** Hadith Studies, Sunnah, Ghair Tasyri'iyyah, Mahmud Syaltut, Musa Syahin

### INTRODUCTION

One of the fundamental issues in hadith studies is the position and authority of the Sunnah of the Prophet Muhammad ﷺ. Regarding the authority of hadith, Muslims agree that the Sunnah is the second source of Islamic teachings after the Qur'an. However, they differ in understanding the function

and scope of the Sunnah's authority. This difference leads to the classification of Sunnah into *tasyri'iyyah* (legislative) and *ghair tasyri'iyyah* (non-legislative). The polemic mainly arises in the category of *ghair tasyri'iyyah* because not all its forms are considered to have binding legal force. This classification difference essentially stems from scholars' perspectives on the human aspect of the Prophet and how it affects the legal reasoning of his sayings and actions. Abul A'la Maududi, regarding the human nature of the Prophet as not part of religion, asserts that distinguishing the Sunnah based on the human and revealed aspects is like separating milk from water—an almost impossible task.<sup>1</sup> This is because the human aspect of the Prophet often functions prophetically. Nevertheless, Maududi does not deny the difference in capacity between the human and prophetic sides of the Prophet. The issue becomes complex because these two aspects are closely intertwined in the Prophet's personality, making it difficult to clearly separate them. According to him, every action of the Prophet is always within the framework of divine revelation. Therefore, he warns that Muslims should not arbitrarily decide which Sunnah originates solely from the Prophet's human side.<sup>2</sup>

In this polemic, two prominent schools of thought emerge: Mahmud Syaltut and Musa Syahin. Mahmud Syaltut proposes a distinction between *tasyri'i* (legislative) Sunnah and non-legislative Sunnah, grounding his argument on the principle of separating the prophetic dimension derived from revelation and the human dimension characterized by historical and contextual factors.<sup>3</sup> Muḥammad Sulaimān al-Asyqar states that the daily actions performed by the Prophet not only depict him as the messenger of Allah but also as an ordinary

<sup>1</sup> Maizuddin M. Nur, "Tipologi Pemikiran tentang Kewenangan Sunnah di Era Modern," *Jurnal Substantia* vol. 14, no. 2 (2012), h. 147

<sup>2</sup> Muhib Rosyidi, "Ijtihad Nabi Muhammad Saw dalam Perspektif Muṣṭafā Ṣabrī Studi Analisis atas Relasi Ijtihad Nabi dan Otoritas Hadis," (Tesis Sekolah Pascasarjana, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2014), h. 101-102

<sup>3</sup> Mahmud Syaltut, *Al-Islam 'Aqidah Wa Syari'ah* (Kairo: Dar Al-Qalam, 1966 M), 512

human being.<sup>4</sup> Khaled M. Abou El Fadl adds that the Prophet is an ordinary human being who is also subject to the processes of world history. The Prophet does not engage with history as God but as a part of normal human life, in which his human elements are involved.<sup>5</sup> This group regards the Prophet as a role model, but not entirely. Therefore, the Sunnah is also understood to have limitations in binding the Muslim community, as the human dimension of the Prophet is considered to influence his authority.<sup>6</sup> Conversely, Musa Syahin rejects this distinction. For him, all actions of the Prophet, whether acts of worship or daily activities, constitute forms of *tasyri'* because the Prophet is always under the guidance of revelation. This view is reflected in his major work, *al-Sunnah Kulluba Tayri'*, which explicitly asserts that all Sunnah carries legal implications.<sup>7</sup>

This study holds scientific urgency because, to date, the debate regarding the validity of Sunnah *ghair tasyri'iyyah* has not reached a satisfactory resolution, particularly from the perspectives of these two prominent figures. Previous studies tend to focus on only one side of the discourse, either supporting views like those of Syaltut or opposing views like those of Syahin, without systematically comparing both. For instance, the research by Arifin and Hasbi<sup>8</sup> discusses the thought of al-Dahlawi but employs terminology more accurately attributed to Syaltut. Similarly, the article by Umi Sumbulah et al.<sup>9</sup> highlights the perspective of Yusuf al-Qardhawi without linking it to the classical debate. Meanwhile, the

<sup>4</sup> Muhib Rosyidi, "Ijtihad Nabi Muhammad," h. 14

<sup>5</sup> Khaled M. Abou El Fadl, *Atas Nama Tuhan Dari Fikih Otoriter ke Fikih Otoritatif*, terj. R. Cecep Lukman Yasin (Jakarta: PT Serambi Ilmu Semesta, 2004), h. 163-164

<sup>6</sup> Tarmizi M. Jakfar, *Otoritas Sunnah Non-Tasyri'iyyah Menurut Yusuf al-Qaradhawi* (Yogyakarta: Ar-Ruzz Media, 2011), h. 184-186

<sup>7</sup> Musa Syahin Lasyin, *al-Sunnah Kulluba Tayri'* (Qatar: Qatar University, tt), 38

<sup>8</sup> Johar Arifin dan M. Ridwan Hasbi, "Klasifikasi Sunnah Tasyri'iyyah dan Ghairu Tasyri'iyyah Perspektif Pemikiran Ahmad Syah Waliullah Al-Dahlawi," *Jurnal An-Nida'*, Vol. 43 No. 1 (2020).

<sup>9</sup> Umi Sumbulah, Muhammad Zainuddin dan Dio Alif Bawazie, "Sunnah Ghairu Tasyri'iyyah Perspektif al-Qardhawi," *JURNAL Living Hadis*, UIN Sunan Kalijaga Yogyakarta, Vol. VI, Nomor 2 (2021).

thesis by Ana Miftakhul Khuroidah<sup>10</sup> and the article by Aniq Imam<sup>11</sup> have yet to explicitly demonstrate a comparative approach.

Therefore, this article aims to fill this gap by offering a comparative study of the thoughts of Mahmud Syaltut and Musa Syahin regarding sunnah ghair tasyri'iyyah. The method employed is a qualitative approach with descriptive-comparative analysis based on library research. The primary sources analyzed are Mahmud Syaltut's *al-Islam 'Aqidah wa Syari'ah* and Musa Syahin's *al-Sunnah Kulluba Tasyri'*. The main objective of this study is to conduct an in-depth analysis of the methodological and epistemological differences between the two scholars and to identify possible points of convergence as a theoretical contribution to the development of hadith studies, particularly in the classification of Sunnah's authority. Practically, this study is expected to serve as a reference for methodological approaches in understanding the Sunnah in a more contextual and comprehensive manner.

## DISCUSSION

### Definition of Sunnah and Tasyri'iyyah

Etymologically, Sunnah means a way or method followed, encompassing both good and bad ways or methods.<sup>12</sup> In terminology, Usyuliyyin define it as the sayings, actions, and approvals of the Prophet Muhammad ﷺ.<sup>13</sup> Muhaddithin

<sup>10</sup> Ana Miftakhul Khuroidah "Sunnah Tasyri'iyyah dan Ghairu Tasyri'iyyah (Studi Analisis Terhadap Pemikiran Mahmud Syaltut)," (Skripsi UIN Sayyid Ali Rahmatullah Tulungagung, 2016).

<sup>11</sup> Muhammad Aniq Imam, "Problematika Sunnah Tasyri'iyyah dan Gairu Tasyri'iyyah," Jurnal ADDIN, Vol. 7, No. 2, (2013).

<sup>12</sup> Ahmad bin Faris, *Mu'jam Maqayis al-Lughah* (Dar al-Fikr, 1399 H/1979 M), 61

<sup>13</sup> Musa Syahin Lasyin, *al-Sunnah Kulluba Tasyri'* (Qatar: Qatar University, tt), 54

expand this definition by including the Prophet's characteristics, both physical and moral, thus equating Sunnah with the definition of Hadith Marfu'.<sup>14</sup>

Among the Fuqaha, Sunnah refers to what is commanded by the Shariah with a non-compulsory directive. Consequently, those who perform it are rewarded as an expression of obedience, and those who omit it are not held accountable for sin.<sup>15</sup> Thus, Sunnah is understood as a recommendation that does not reach the level of fardhu (obligatory). Its synonyms include mandub, mustahab, hasan, muragghab fih, tathawwu', nafilah, and fadhilah.<sup>16</sup> The majority of hadith scholars hold the view that Sunnah is synonymous with Hadith.<sup>17</sup> This is not only because of the opinion that both terms are synonymous but also due to historical reasons: the Prophet's Sunnah has been formulated in the hadiths compiled in the current hadith collections. Therefore, it can be said that the content of hadiths comprises the recorded and reported Sunnahs of the Prophet.<sup>18</sup>

### **Epistemology of the Classification of Sunnah Tasyri'iyyah and Ghair Tasyri'iyyah**

Meanwhile, the term *Tasyri'iyyah* is linguistically derived from the word *syar'u*, which means the path leading to a water source. Terminologically, it refers to matters ordained by Allah for His servants, encompassing creed (aqidah), worship ('ibadah), ethics (akhlak), social transactions (mu'amalah), and life regulations. Its purpose is to organize the relationship between humans and their

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<sup>14</sup> Ibid.

<sup>15</sup> Hasan bin Ahmad al-Kaf, *al-Taqrirat al-Sadidah* (Tarim: Dar Ilmu wa al-Da'wah, cetakan pertama, 2003 M), 50

<sup>16</sup> Ibid.

<sup>17</sup> Abbas Mutawali Hamadah, *As-Sunnah an-Nabawiyah wa Makanatuh fi at-Tayri'*, (Kairo : Dar al-Qauniyah, t.t), 23

<sup>18</sup> Rino Ardiansyah dan Rifqi Muhammad Fatkhil, "Rekonstruksi Pemahaman Sunnah Ditinjau dari Segi Sejarah" (Ushuluna: Jurnal Ilmu Ushuluddin 3, no. 2, 2020), h. 78-80

Creator, as well as interpersonal relations among humans, with the aim of achieving their happiness in both this world and the hereafter.<sup>19</sup>

Al-Dahlawi states that the Sunnah falling under the category of Muhammad as the bearer of the message (*ma sabiluhu sabil tabligh al-risalah*) includes the following: First, knowledge about the Day of Judgment and miracles that cannot be comprehended by ordinary humans<sup>20</sup>; al-Ghazali asserts that this knowledge must be believed in and is known as Islamic eschatology.<sup>21</sup> All of these are based on divine revelation from Allah. Second, the rules of Sharia, limits of worship, and matters of social transactions (*irtifaqat*) among humans, some of which are the result of revelation from Allah, while others are the Prophet Muhammad's *ijtihad* conducted under the guidance of revelation. Third, universal policies and general welfare that the Prophet did not specify for a certain period nor set boundaries for, such as the Prophet's explanations of good and bad. Fourth, the virtues of righteous deeds (*fadhbil al-a'mal*) and the special qualities of those who perform virtuous acts (*manaqib al-'umma*).<sup>22</sup>

According to al-Dahlawi, the Sunnah that falls under the category of Muhammad as an ordinary human being, not as the bearer of the message (*ma laisa min bab tabligh al-risalah*), is, first, knowledge about medicine.<sup>23</sup> The Prophet Muhammad ﷺ, through his sayings, indicated that certain remedies are effective for specific illnesses; however, he was not sent as a physician or a specialist tasked with healing physical ailments or teaching medical science, but rather as a Prophet bringing the message of prophethood. If he ever spoke about medical matters, these were not part of religious law or the prophetic mission but rather aspects

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<sup>19</sup> Manna al-Qatthan, *Tarikh Tasyri'* (Riyadh: Maktabatul Ma'arif, 1996), h. 13

<sup>20</sup> Ahmad Syah Waliyullah ibn Abdurrahim al-Dahlawi, *Hujjat Allah al-Balighah*, (Beirut: Dar al-Jail, cetakan pertama, 1426 H / 2005 M), j. 1, h. 223

<sup>21</sup> Al-Ghazali, *al-Iqtishad fi al-Tiqad* (Beirut: Dar al-Kutub al-Ilmiyah, cetakan pertama, 2004 M), 115

<sup>22</sup> al-Dahlawi, *Hujjat Allah al-Balighah*, 223-224

<sup>23</sup> al-Dahlawi, *Hujjat Allah al-Balighah*, 224

of his humanity and his role as a member of a broad social community. It is therefore natural that he possessed extensive knowledge, including in medical issues.

The second is knowledge based on experience.<sup>24</sup> This is exemplified by the use of the fig tree wood (kayu ara') often employed for brushing teeth—not the wood itself, but the act of brushing and cleaning the teeth. In fact, in the modern era, using a toothbrush, toothpaste, and mouthwash like Listerine is far more effective in cleaning, whitening teeth, and freshening breath than using a miswak made from fig tree wood. However, this does not negate that fig tree wood has its own benefits. Islam does not restrict the sunnah of miswak to using only fig tree wood; rather, fig tree wood was simply a well-known tool for miswak at that time.

Third, everyday conversations that the Prophet engaged in, similar to those of ordinary people.<sup>25</sup> Fourth, matters related to partial interests (*kemaslahatan parsial*) that are not permanent or universally applicable to the entire Muslim community. Fifth, customs and habits of the Prophet that are not religious rituals (*ibadah*), such as his ways of sleeping, walking, dressing, and appearance. For example, the hadith concerning the beard: growing a beard was merely a cultural practice among Arabs at that time. Although there are hadith texts commanding to leave the beard uncut, growing a beard is not obligatory, even though the Prophet left his beard uncut, because it was part of the Arab tradition in that era. Sixth, certain specific laws and rulings that occur based on particular evidence and oaths.<sup>26</sup> This theory of al-Dahlawi is cited by Jamaludin

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid

al-Qasimi in *Qawa'id al-Tabdis* in the chapter on hadith classification, which has been compiled in hadith collections.<sup>27</sup>

Imam al-Qarāfi, in line with al-Dahlawi, explains that the actions of the Prophet Muhammad can be categorized into three roles: as a messenger (*tabligh* and *fatwa*), as a judge (*qādi*), and as a head of state. Hadiths containing *tabligh* and *fatwa* are obligatory for all to follow until the Day of Judgment because they are conveyed by the Prophet in his capacity as the messenger of Allah. In contrast, hadiths reflecting the Prophet's decisions as a judge should not be followed by others simply by imitating him unless there is a judicial ruling, since these actions were made in his role as a judge. Similarly, hadiths arising from the Prophet's role as head of state are not binding unless authorized by the state authority, as these actions pertain to his political leadership. Therefore, hadiths deriving from his positions as judge and head of state are not intended as part of the prophetic message (*tabligh al-risālah*) and do not carry obligatory legal status for the Muslim community.<sup>28</sup>

According to Musa Syahin and Yusuf al-Qardhawi, building on the theories of al-Dahlawi and al-Qarāfi, Mahmud Syaltut introduced and classified Sunnah into Sunnah Tasyri'iyyah and Ghair Tasyri'iyyah.<sup>29</sup><sup>30</sup> However, in his research, Tarmizi M. Jakfar notes that Syaltut did not provide a specific definition of what exactly constitutes Sunnah Tasyri'iyyah and Ghair Tasyri'iyyah.<sup>31</sup> Other scholars discussing this issue also do not offer precise definitions; rather, they state that alongside hadiths obligatory for Muslims to follow (hadith tasyri'), there are hadiths that are not mandatory to follow (non-tasyri'), as these hadiths are

<sup>27</sup> Jamaluddin al-Qasimi, *Qawa'id Al-Tabdis Min Funun Musthalah al-Hadis* (Beirut: Muassasah al-Risalah al-Nasyirun, 2004 M), 260-261

<sup>28</sup> Syihāb al-Dīn al-Qarāfi, *al-Furūq* (Beirut: 'Alam al-Kutub, t.t), 206

<sup>29</sup> Musa Syahin Lasyin, *al-Sunnah Kulluba Tasyri'* (Qatar: Qatar University, tt), 38

<sup>30</sup> Yusuf al-Qardhawi, *al-Sunnah al-Nabariyyah masdarān li al-Ma'rifah wa al-Hadarah* (Cairo: Dar asy-Syuruq, 1998), h. 12

<sup>31</sup> Tarmizi M. Jakfar, *Otoritas Sunnah Non-Tasyri'iyyah Menurut Yusuf al-Qardhawi*, h. 122

non-binding. In other words, they are not intended for legal purposes or do not carry legal implications because what comes from the Prophet in these hadiths is not part of conveying Allah's message or religious matters.<sup>32</sup>

## **Comparative Thought on Sunnah Tasyri'iyyah and Ghair Tasyri'iyyah: Perspective of Mahmud Syaltut and Musa Syahin**

### **1. Thought of Mahmud Syaltut**

Mahmud Syaltut, the pioneer of the distinction between Sunnah Tasyri'iyyah and Non-Tasyri'iyyah as explained by al-Qardhawi and Musa Syahin, was a prominent modernist scholar from Egypt. He was born on April 23, 1893, in the village of Maniyah, Bani Mansur, in the Buhaira Province.<sup>33</sup> As was common among Islamic scholars from Egypt at that time, Syaltut's education began with his introduction to studying the Qur'an. He started memorizing the Qur'an at a relatively young age and successfully completed his memorization in 1906, precisely when he reached the age of 13.<sup>34</sup> Recognizing his son's abilities, at that age Syaltut was enrolled by his father in an educational institution that taught not only religious sciences but also general knowledge. This institution was called Ma'had Al-Dini, located in Alexandria.<sup>35</sup> After completing his studies in Alexandria, Syaltut continued his higher education at Al-Azhar University, graduating in 1918. A year later, in 1919, he began teaching at his alma mater in Alexandria. Eventually, in 1928, he was transferred to teach at Al-Azhar University in Cairo. Besides serving as a lecturer, he was also active as a preacher and writer for magazines and journals published by Al-Azhar.<sup>36</sup> He also served as

<sup>32</sup> Moh. Rizki Reviansyah Rizal, "KLASIFIKASI HADIS TASYRĪ' DAN NON-TASYRĪ' MENURUT SARJANA HADIS INDONESIA," (Skripsi UIN Syarif Hidayatullah Jakarta, 2021 M), 40

<sup>33</sup> Abd. Salam Arief, Pembaruan Pemikiran Hukum Islam: Antara Fakta dan Realita: Kajian Pemikiran Hukum Syaikh Mahmud Syaltut (Yogyakarta: Lesfi, 2003), h. 201

<sup>34</sup> Ibid.,

<sup>35</sup> Saiful Amin Ghofur, Profil Para Mufasir Al-Qur'an (Yogyakarta: Pustaka Insan Madani, 2007), h. 177

<sup>36</sup> Ibid.,

the rector of Al-Azhar University in Cairo. Historians have recorded at least 17 of his works, including *Tafsir al-Qur'an al-Karim*, *Muqaranah al-Madzahib fi al-Fiqh*, *al-Islam Aqidah wa al-Syari'ah*, and many others. Quraish Shihab, in his book *Membumikan Al-Qur'an*, states that Mahmud Syaltut was a pioneer in applying thematic (maudhu'i) Qur'anic exegesis based on surahs.<sup>37</sup>

In his thought, Syaltut divides the Prophet's Sunnah into two parts: Sunnah Tasyri'iyyah and Sunnah Ghair Tasyri'iyyah. This division is based on whether the Sunnah of the Prophet is obligatory to obey and practice, and whether it has binding legal authority or not. The sayings of the Prophet conveyed in his capacity as a Messenger represent his duty to deliver all commands from Allah SWT to the entire Muslim community, and all of these are obligatory to obey, just as obeying Allah SWT and His verses in the Qur'an.<sup>38</sup> Sayings of the Prophet Muhammad that were conveyed in capacities other than as the messenger, reflecting his human nature or matters concerning ordinary human affairs, are considered part of the Sunnah that cannot be regarded as a source of legislation or *shari'ah* that must be followed. Therefore, such Sunnah is not obligatory to practice or implement in all aspects of Muslim life and is non-binding in nature.<sup>39</sup>

Based on Mahmud Syaltut's classification of the Prophet's Sunnah as previously explained, it is further narrowed down into more specific categories as follows: First, the Sunnah related to issues concerning human life necessities, such as eating, drinking, sleeping, walking, visiting, reconciling between two people, and bargaining in trade. Second, the Sunnah that contains events which are merely personal experiences and customary habits in social interactions, for

<sup>37</sup> Quraish Shihab, *Membumikan Alqur'an* (Bandung : Mizan, cetakan pertama, 2013), 401

<sup>38</sup> Mahmud Syaltut, *Tafsir Al-Qur'an Al-Karim*, terj: Herry Noer Ali (Bandung: CV Diponegoro, 1990), h. 1001

<sup>39</sup> Ana Miftakhul Khuroidah, "Sunnah Tasyri'iyyah dan Ghairu Tasyri'iyyah: Studi Analisis Terhadap Pemikiran Mahmud Syaltut" (Skripsi UIN Sayyid Ali Rahmatullah Tulungagung 2016), 62

example matters related to agriculture, medicine, and clothing. Third, the Sunnah that discusses leadership matters and fulfilling human needs, which are only carried out in specific or exceptional situations. Examples include tactics and strategies in war, dividing and directing troops during a battle, ambushes, selecting military camps, and so forth.<sup>40</sup> According to Syaltut, all these matters are not within the capacity of the Sunnah to serve as a source of *shari'ah* related to commands to be performed or avoided. They are natural human affairs (*fitrah*) concerning ordinary human matters. This means that other people could potentially perform the same actions as the Prophet Muhammad did if placed in similar situations and conditions. Such attitudes and actions of the Prophet cannot be considered *tashri'* (legislation) nor a source of *tashri'* because they do not carry legal implications.<sup>41</sup>

Syaltut further explains that, besides the three categories mentioned earlier, there are three additional types of prophetic sayings that function as sources of *tasyri'* (legislation) or legal rulings. These are divided as follows: First, the Sunnah that comes from the Prophet Muhammad through the channel of *tabligh* (conveying Allah's message) in his position as a messenger. An example of this is when the Prophet explains *mujmal* (general) verses of the Qur'an, clarifies general statements, limits the meaning of *mutlaq* (broad) terms, or elaborates on matters related to worship, lawful and unlawful issues, creed, ethics, and other related subjects. Such Sunnah constitutes universal *shari'ah* that remains valid until the Day of Judgment. Therefore, if this Sunnah contains a command, it is obligatory to perform it; if it contains a prohibition, it must be avoided. Once known, Muslims are required to practice it.<sup>42</sup>

<sup>40</sup> Jamal Al-Banna, *Manifesto Fiqih Baru 2: Redefinisi dan Relevansi Al-Sunnah* (Jakarta: Erlangga, 2008), h. 148

<sup>41</sup> Mahmud Syaltut, *Al-Islam 'Aqidah Wa Syari'ah* (Kairo: Dar Al-Qalam, 1966 M), 508

<sup>42</sup> *Ibid.*

According to Mahmud Syaltut, the second category of Sunnah is that which comes from the Prophet Muhammad in his capacity as Imam and head of the general government of the Muslim community. Examples include sending military troops, establishing the collection and distribution of *baitul mal* (state treasury), appointing governors and judges, dividing war booty (*ghanimah*), making treaties, and other matters related to his role as a leader and administrator responsible for public affairs. Syaltut emphasizes that these Sunnah practices cannot be regarded as general *shari'ah* legislation applicable to all Muslims universally. Therefore, Muslims are not permitted to undertake such actions on their own initiative by citing the Prophet's example; rather, these actions require authorization from the legitimate Imam or ruler. This distinction underscores that the Prophet's political and administrative actions are context-specific and do not constitute binding legal rulings for the entire Muslim community.<sup>43</sup>

According to Mahmud Syaltut's thought, the third category of the Prophet's Sunnah concerns actions performed within the realm of law and judiciary. During his lifetime, besides being the Messenger of Allah and conveying His messages, the Prophet also served as the head of the general government of the Muslims, managing state affairs and political matters. Additionally, he held the position of a judge, authorized to investigate and decide cases based on evidence or oaths. Sunnah arising from this judicial role, similar to those related to his political leadership, cannot be regarded as general *shari'ah* legislation applicable to all Muslims universally. This means that not every Muslim is permitted to act independently in such matters by citing the Prophet's example as a definitive legal ruling. In such situations, individuals are bound by the decision of the judge, since when the Prophet acted in this capacity,

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<sup>43</sup> Ibid, 509.

he was functioning as a judge with the authority to investigate and issue judgments.<sup>44</sup>

According to Syaltut, there is great benefit in understanding the causes and circumstances that influence the actions of the Prophet Muhammad, including the specific role he held when performing those actions. Such factors are often overlooked by many Muslims, who tend to view the Prophet's actions, sayings, or rulings from a single perspective—that because the Prophet performed, said, or established them, they must be regarded as religious law, Sunnah, or recommended practice. However, Syaltut argues that many of these actions were not intended to establish *shari'ah*. Rather, many of the Prophet's deeds were performed in his capacity as an ordinary human being, reflecting customary habits or personal life experiences.<sup>45</sup>

One of the fundamental assumptions Syaltut uses in classifying the Sunnah is based on a hadith narrated in Sahih Muslim, which supports this nuanced understanding.

حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ، وَعَمْرُو النَّاقِدُ، كَلَاهُمَا عَنِ الْأَسْوَدِ بْنِ عَامِرٍ ، قَالَ: أَبُو بَكْرٍ ، حَدَّثَنَا أَسْوَدُ بْنُ عَامِرٍ ، حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ هِشَامِ بْنِ عُرْوَةَ ، عَنْ أَبِيهِ ، عَنْ عَائِشَةَ ، وَعَنْ ثَابِتٍ ، عَنْ أَنَّسٍ ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَرَّ بِقَوْمٍ يُلْقَحُونَ ، فَقَالَ: لَوْلَا تَفْعَلُوا لَصْلَحَ قَالَ: فَخَرَجَ شِيشَاً ، فَمَرَّ بِهِمْ فَقَالَ: مَا لِنَخْلِكُمْ؟ قَالُوا: كَذَا وَكَذَا ، قَالَ: أَنْتُمْ أَعْلَمُ بِأَمْرِ دُنْيَاكُمْ .<sup>46</sup>

*"It has been narrated to us by Abu Bakar bin Abi Syaibah and 'Amr an-Naqid, both from al-Aswad bin 'Amir. Abu Bakar said: It has been narrated to us by al-Aswad bin 'Amir, who narrated from Hammad bin Salamah, from Hisyam bin 'Urwah, from his father, from 'Aisyah, and from Tsabit from Anas, that the Prophet once passed by a people who were pollinating (cross-pollinating) date palm trees. Then he said, 'If you did not do that, perhaps it*

<sup>44</sup> Ibid, 510-511

<sup>45</sup> Ibid, 512

<sup>46</sup> Muslim ibn Hajjaj, *Sahih Muslim* (Beirut: Dar Ihya' Turats al-'Arabi), jilid 4, hlm. 1836.

*would have been better (the yield).” However, the result turned out to be unsuccessful (the dates did not develop properly). Then he passed by them again and said, “What has happened to your date palms?” They replied, “You said such and such.” Then he said, “You know better about your worldly affairs.”*

Syaltut employs this hadith to support his explanation and interpretation regarding certain worldly matters that, in his view, are intentionally neither detailed nor regulated within divine legislation (*tasyri’ ilahi*). Allah allows these issues to be addressed by human beings themselves, using the intellect bestowed upon them, so that they may arrive at outcomes—whether correct or incorrect.<sup>47</sup> Thus, every individual has ample opportunity to explore and exercise their intellectual capacity to conduct research in fields such as agriculture, industry, medicine, warfare tactics, and other areas that Allah entrusts to human reasoning for understanding and deriving benefit.

Furthermore, Syaltut cites several examples of hadith narrations that elucidate the distinction between legislative (*tasyri’iyyah*) and non-legislative (*ghair tasyri’iyyah*) elements contained within them. Among these examples is the authentic:

1. hadith recorded in *Sahih al-Bukhari*.

حَدَّثَنَا أَبُو نُعَيْمٍ، حَدَّثَنَا سُفْيَانُ، عَنْ عَمْرُو، عَنْ جَابِرٍ، قَالَ: قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "مَنْ قَتَلَ قَتِيلًا لَهُ عَلَيْهِ بَيْتَهُ، فَلَهُ سَلَبَهُ".<sup>48</sup>

*“The meaning of the hadith narrated from Jabir is: The Messenger of Allah said, "Whoever kills an enemy and has proof of it, then he is entitled to the spoils (weapons and equipment) of that enemy.”*

<sup>47</sup> Mahmud Syaltut, *Tafsir Al-Qur'an* terjemahan: Herry Noer Ali (Bandung: CV Diponegoro, 1990), 982

<sup>48</sup> Al-Bukhari, *Sahih al-Bukhari* (Dar Tuq al-Najah, cet. Pertama, 1442 H), j. 4, h. 92, no. Hadis: 3142

In response to this narration, Syaltut notes that scholars differ in their opinions regarding the underlying reason for the Prophet's statement. Some scholars argue that the Prophet spoke these words in his capacity as a messenger conveying Allah's commands. Consequently, this understanding implies that any soldier or warrior who kills an enemy has the right to take the enemy's clothing and weapons, regardless of whether this is authorized by the Imam or not. On the other hand, some scholars contend that the Prophet made this statement in his role as an Imam (leader). If this is the case, then a soldier who kills an enemy does not automatically have the right to possess the enemy's clothing and weapons unless authorized by the leader. This difference highlights the distinction between the Prophet's legislative role as a messenger and his administrative role as a political and military leader.<sup>49</sup> Next, Syaltut includes Al-Kamal's commentary regarding the hadith. According to Al-Kamal, there is no difference of opinion among scholars concerning the authenticity of this narration from the Prophet.

The actual issue lies in whether the ruling contained in this Sunnah is general—that is, applicable for all times and circumstances—or whether it was merely an exhortation by the Prophet to inspire the spirit of struggle during the battle, meaning that the Prophet's statement holds a specific meaning limited to that particular situation and context. Syaltut adds that Imam Shafi'i ruled this Sunnah as a general legislative Sunnah (*sunnah tasyri'iyyah*) because the primary duty of the Prophet was to implement the divine law (*shara'*). This matter is also discussed in the book *Fathul Qadir*, volume IV, in the chapter on *tanfil* (spoils of war). Furthermore, it has been addressed by Imam Ghurafi in his book *Al-Furuq*, volume I, as well as by Ibn Qayyim in *Zād al-Ma'ād*, volume II, in the discussion concerning the Battle of Hunain.<sup>50</sup> According to Syaltut, many Islamic jurists

<sup>49</sup> Mahmud Syaltut, *Al-Islam 'Aqidah Wa Syari'ah* (Kairo: Dar Al-Qalam, 1966 M), 514

<sup>50</sup> Al-Bukhari, *Sahih al-Bukhari* (Dar Tuq al-Najah, cet. Pertama, 1442 H), j. 3, h. 106, No. Hadis: 2335.

(fuqaha), especially those who often differ in their views when examining the actions of the Prophet Muhammad in relation to his role at the time, actually mostly agree on a fundamental statement: that the Sunnah of the Prophet contains two main dimensions, namely *Sunnah Tasyri'iyyah* (legislative Sunnah) and *Sunnah Ghair Tasyri'iyyah* (non-legislative Sunnah). Moreover, these scholars acknowledge the validity of this classification. This consensus reflects an important distinction in understanding the nature and function of the Prophet's Sunnah in Islamic law and practice.<sup>51</sup>

## 2. Authentic hadith narration in Sahih al-Bukhari

حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ، حَدَّثَنَا سُفْيَانُ، عَنْ سَعِيدِ بْنِ إِسْحَاقَ، عَنْ عَمِّهِ، عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، قَالَتْ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "مَنْ أَحْيَا أَرْضًا مَيِّتَةً، فَهِيَ لَهُ".

"Narrated from Aisha (may Allah be pleased with her), she said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever revives dead land, then that land becomes his property."

In response to this hadith, according to Syaltut, the majority of scholars hold that the Prophet conveyed this statement in his capacity as a transmitter of the divine message (tabligh ar-risalah) and as a legal authority (fatwa rasul). Therefore, the hadith is considered to contain a general legal principle. This means that every individual has the right to cultivate and subsequently possess unused land in full ownership, whether with or without the permission of the Imam.<sup>52</sup> Syaltut further adds the opinion of Imam Abu Hanifah, which differs from the consensus of the majority of scholars mentioned above. According to Abu Hanifah, this hadith was delivered by the Prophet in his capacity as Imam and head of state. Therefore, it cannot be regarded as a general legal principle

<sup>51</sup> Ibid

<sup>52</sup> Mahmud Syaltut, *Al-Islam 'Aqidah Wa Syari'ah*, 513

applicable to everyone. Consequently, in his view, not everyone is permitted to revive dead land except with the permission of the Imam.<sup>53</sup> Syaltut's thought faces an epistemological challenge within the Islamic world, particularly from classical fiqh schools that regard the sunnah as the second source of law after the Qur'an, without much distinction in the function of the Prophet's sayings. The significance of his thought lies in establishing a gradation between the Prophet's religious authority as Allah's messenger and his actions as an ordinary human being. By doing so, he offers a methodological distinction that allows for a more rational and flexible understanding of hadith, enabling it to better respond to the dynamics of changing times.

In line with Syaltut's theory, Abd al-Wahhāb Khallāf first states that the sayings and actions of the Prophet Muhammad that originate from him as a Messenger are intended for legislation (*tasyrī*) and can be used as legal evidence (*hujjah*). However, there are also sayings and actions of the Prophet that are not meant for legislative purposes, namely: 1) those originating from his human nature, such as standing, sitting, walking, sleeping, and eating; 2) those originating from the Prophet's human knowledge, including his intelligence and experiments conducted in worldly matters, such as trading, farming, organizing troops, managing war strategies, and treating illnesses; 3) those originating from the Prophet and supported by legal evidences indicating that they apply exclusively to the Prophet, thus not intended as general legislation, such as the Prophet.<sup>54</sup>

In agreement with Syaltut's theory, Yusūf al-Qarādawī, a student of Syaltut himself, also divides hadith into *tasyrī*—which relates to religious matters—and *ghair tasyrī*, which pertains to worldly affairs. Moreover, al-Qarādawī interprets *ghair tasyrī* hadith as those that are neither obligatory, nor

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<sup>53</sup> Ibid

<sup>54</sup> Abdu al-Wahhāb Khallāf, *Ilmu Usul Fikih, terj. Halimuddin* (Jakarta: PT Rineka Cipta, 2005), h. 46-47

recommended (sunnah), nor permissible (mubāḥ). Aspects included in ghair tasyrī hadith are: 1) the actions and sayings of the Prophet based on his experimental expertise and technical aspects, such as issues of warfare, agriculture, and medicine; 2) the actions and sayings of the Prophet as head of state and judge; 3) the Prophet's commands or prohibitions that are advisory in nature; 4) the Prophet's purely personal actions; 5) the Prophet's actions as a human being.<sup>55</sup>

Third, Ali Mustafa Ya'qub classifies hadith into tasyrī and non-tasyrī. Ali Mustafa states that if a hadith from the Prophet relates to religious matters, it is binding and therefore obligatory for every Muslim to follow (tasyrī). Conversely, if a hadith from the Prophet pertains to worldly affairs, it is not binding, so there is no obligation for every Muslim to adhere to it (ghair tasyrī). According to Ali, hadiths concerning religious matters are those related to creed (aqidah) and worship ('ibadah). Hadiths related to worship, which regulate the relationship between humans and Allah, such as prayer, fasting, almsgiving, pilgrimage, sacrifice, and others, are religious matters that must be followed. Meanwhile, hadiths concerning worldly affairs include those related to Arab cultural practices, such as hadiths about wearing the jubbah and turban.<sup>56</sup> Hadiths regarding the Prophet's opinions on worldly matters such as agriculture, trade, warfare, medicine, and similar issues are based on his worldly knowledge and personal judgment. Therefore, the Prophet's lack of knowledge about date palm pollination is understandable; historically, it is never mentioned that the Prophet was a farmer, so his knowledge of agriculture was limited to empirical experience. Moreover, the Prophet did not bequeath scientific knowledge in these fields, so matters like agriculture, medicine, and the like are left to human discretion, while

<sup>55</sup> Tarmizi M. Jakfar, *Otoritas Sunnah Non-Tasyri'iyyah Menurut Yusuf al-Qaradhawi* (Yogyakarta: Ar-Ruzz Media, Cetakan ketiga, 2016), h. 276-289

<sup>56</sup> Ali Mustafa Ya'qub, *Cara Benar Memahami Hadis* (Jakarta: Pustaka Firdaus, 2016 M), 88-89

what the Prophet transmitted as a legacy is religious knowledge.<sup>57</sup> Syaltut's fundamental argument is crucial because it attempts to position the sunnah more proportionally: not every action of the Prophet should be regarded as a universal legal norm. In this context, the sunnah is studied functionally and contextually, rather than merely normatively and textually. This represents an epistemological leap from the traditional approach, which often generalizes every action of the Prophet as legally binding (*syar'i*) and obligatory.

## 2. Musa Syahin's Thought

The distinction between sunnah *tasyri'iyyah* and *ghair tasyri'iyyah* is outright rejected by Musa Syahin. Syahin is a prominent Egyptian scholar who memorized the Qur'an at a young age in a Kuttab, then pursued formal education at primary and secondary levels at al-Azhar (Ma'had al-Azhar). He later served as head of the Hadith Department at the Faculty of Ushuluddin in 1976, was appointed dean from 1979 to 1982, and his final position at al-Azhar was as vice rector for postgraduate studies and research. Among his works are: *Taysir Tafsir an-Nasafi* (15 volumes), included in the tafsir curriculum at Madrasah Aliyah (Ma'had al-Azhar); *al-Laali al-hisan fi 'ulum al-Qur'an*; *al-Manhal al-Hadits fi syarh hadits al-Bukhari* (4 volumes); *Fath al-Mun'im syarah shahih Muslim* (10 volumes), a magnum opus considered the most contemporary and comprehensive commentary on Sahih Muslim, which took 25 years to complete; *Qasas min hadits nabawy* (2 volumes); *Shahib Bukhari fi nizam jadid* (4 volumes); *as-sunnah wa at-tasyr'i*; *as-sunnah kulluba tasyri'*; *al busun al-man'ah li ad-difa' 'an as-sunnah*; and *tajdid addin*. His unpublished works include *as-salsabil al jariy syarah shahib al-Bukhari*, *taysiru ma'ani Al-Qur'an*, and *al-mubassat fi mustalah al-hadis*.<sup>58</sup>

<sup>57</sup> Ali Mustafa Yaqub, *Islam Masa Kini* (Jakarta: Pustaka Firdaus, 2008), h. 118

<sup>58</sup> Majalah al-Wa'y al Islamiy, Kuwait: edisi 523 Rabi' al Awwal 1430 H.

According to Syahin, Mahmud Syaltut was the first figure to propose this distinction, and the idea was subsequently followed by several modern scholars.<sup>59</sup> With his concept of *as-Sunnah kulluba tasyri'*, Syahin aimed to establish a correct and straightforward understanding of the established construction of the sunnah. This was intended to prevent any shifts in the terminology of sunnah and to avoid dichotomies and compartmentalization of the sunnah. From the outset, the classification of sunnah into these two terms arose due to misunderstanding (*su'* *al-fahm*) or differences in point of view (*wijhat an-nadhar*) in interpreting the sunnah itself.<sup>60</sup>

The terminology *ghairu tasyri'iyyah* often carries a stigmatic impression, especially when confronted with the conservative foundational knowledge framework in understanding Islam, because it causes a shift in the established understanding of the sunnah among earlier generations (salaf ummah). They were unfamiliar with this term, and its proponents could be considered innovators (bid'ah) who disregard the comprehensive and complete dimension of the sunnah (*syamilah wa mutakamilah*). The sunnah must be conveyed to one and a half billion Muslims worldwide, who come from diverse backgrounds, traditions, cultures, and societies. According to Musa Syahin, the arguments put forth by supporters of *sunnah ghairu tasyri'iyyah* are weak. They deny the legislative (tasyri') nature of some of the Prophet's actions, rejecting that these originate from or are guided by revelation, as if these actions hold no legal status in the sight of Allah.

How could the actions of the Prophet Muhammad be free from the supervision and guidance of revelation, when his followers are commanded to obey and follow his example? How can we claim that the Prophet's actions are not subject to divine oversight and direction, when the Prophet himself was

<sup>59</sup> Musa Syahin, *al-Sunnah Kulluba Tasyri'*, 38

<sup>60</sup> Muhammad Aniq Imam, "Problematika Sunnah Tasyri'iyyah dan Gairu Tasyri'iyyah", h. 390.

reprimanded for refusing to eat his favorite food to please his wife, leading to the revelation of verses 1-2 of Surah al-Tahrim? The Prophet was also admonished by Allah for his human emotion when he frowned at a blind man who approached him while he was engaged in preaching before the Quraysh leaders, which resulted in the revelation of verses 1-12 of Surah 'Abasa. Additionally, the Prophet was corrected for thoughts in his heart, as reflected in verse 37 of Surah al-Ahzab. Are not these traits manifestations of the Prophet's human nature? Is liking or disliking certain halal foods merely a worldly matter? Is emotion a natural human characteristic? Are thoughts in the heart human cognition? All these human attributes of the Prophet remain under the supervision and guidance of divine revelation. This proves that all actions of the Prophet are always guarded from the heavens and subject to divine revelation, whether in the form of affirmation (*iqrār*) or correction (*ta'dīl*).<sup>61</sup>

For Syahin, the argument that excludes certain actions of the Prophet Muhammad from the scope of *tasyri'*, such as those related to worldly affairs, local culture and traditions, human nature, or personal experience, is unacceptable. Syahin's fundamental assumption is based on two reasons: first, the sayings and actions of the Prophet in these matters indicate the permissibility (*ibahah*) for his community, and *ibahah* itself is one of the five categories of *shari'ah* rulings. Second, all worldly affairs relate to two aspects: those concerning the management of professions and occupations, which are entrusted to competent individuals; and those related to legal obligations (*taklifi*), viewed in terms of permissibility or prohibition (*halal* and *haram*), which fall entirely under the authority of the *shari'ah*, as it determines which professions and occupations are lawful and which are not. Essentially, all forms of *taklif* are always connected to *shari'ah* law, even if they are *mubah* (permissible), because the *shari'ah* has lifted

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<sup>61</sup> Musa Syahin, *as-Sunnah kulluha Tayri'* (Qatar: Qatar University), hlm. 73.

prohibitions on performing permissible acts. In this regard, Syahin cites the opinions of Ibn Taymiyyah and Abdul Ghani Abdul Khaliq to strengthen his argument that the Prophet's sunnah—encompassing speech, actions, and determinations—carries diverse shar'i legal values, ranging from obligatory, recommended, forbidden, disliked, to permissible. Ibn Taymiyyah states, "Anything the Prophet said after his prophethood, which he acknowledged and was not abrogated, is legislation (tasyri) that includes obligatory, recommended, and permissible rulings, including those that provide benefits in the medical field, as this indicates the permissibility of using certain medicines, or sometimes even their recommendation. Thus, all sayings of the Prophet are sources of the shari'ah.<sup>62</sup> Abdul Ghani Abdul Khaliq states, "Everything uttered by the Prophet Muhammad besides the Qur'an and his actions, from the beginning of his prophethood until the end of his life, constitutes his sunnah. This includes rulings that apply generally to all individuals of the Muslim community as well as those that are specific to the Prophet himself or some of his companions, whether the Prophet's actions align with his natural disposition or not. There is no saying or action from the Prophet that does not possess legal authority in the shari'ah, which must be believed in, regardless of whether it holds the status of obligatory, recommended, forbidden, disliked, or permissible. This applies irrespective of whether it is general or specific, and regardless of whether it relates to the Prophet's natural traits or his varying personal choices.<sup>63</sup>

Regarding the hadith of the Prophet Muhammad that is used as the main argument by proponents of Sunnah Ghair Tasyri'iyyah, "أَنْتَ أَعْلَمُ بِأَمْرِ دُنْيَاكُمْ"<sup>64</sup> or the more popularly known hadith of *ta'bir an-nakhl* (the cross-pollination of date palms), Syahin comments that one of the wisdoms behind the Prophet's

<sup>62</sup> Ibnu Taimiyah, *Majmu' al-Fatawa*, (Cairo: Maktabah ibnu Taimiyah, tanpa tahun), 18/11-12.

<sup>63</sup> Abdul Ghani Abdul Khaliq, *Hujjiyyat as-Sunnah*, (Washington: alMa'had al-'Alamy li al-Fikr al-Islamy, 1998) hlm. 78-83.

<sup>64</sup> HR. Muslim no. 2363

statement, which was uttered before his people in Medina, is that sometimes what we perceive as unfavorable is actually best for us. It is possible that the disbelievers in Medina at that time were ambitious to control Medina, which was rich in date palm plantations. Since there was no date harvest at that time, the disbelievers reconsidered their ambition to invade and take over Medina.<sup>65</sup> Syahin also comments that based on the principle of *al-ibrah bi 'umum al-lafzi la bi khusus al-sabab* (the lesson is taken from the general wording, not the specific cause), the hadith "Antum A'lamu bi amri dunyakum" can actually be used as an argument that the sunnah of the Prophet does not distinguish between hadiths related to religious matters and worldly affairs, nor between those that are *tasyri'* (legislative) and *ghair tasyri'* (non-legislative). The evidence is that the Prophet issued this hadith, which essentially legitimizes that those who are experts and competent in a particular field have the authority to manage their affairs because they know best what benefits them. This reflects a recognition within the sunnah that expertise and practical knowledge in worldly matters are valid and authorized under divine guidance.<sup>66</sup> As the Prophet Muhammad also said, "*Idha wussida al-amru ila ghairi ablibi fantadzir al-sa'ab*" ("If a matter is entrusted to one who is not its expert, then wait for the Hour"),<sup>67</sup> Musa Syahin emphasizes an epistemological-historical approach to hadith. He argues that every statement of the Prophet must be traced back to its historical context and social situation (the *illat* or wisdom behind the hadith) before being issued as a legal norm. Syahin tends to complement Syaltut's methodology with a more systematic *ushuliyah* (principles of Islamic jurisprudence) approach, especially in understanding the *maqasid asy-syari'ah* (objectives of Islamic law) and *tafriq bayna al-maratib* (the hierarchy of legal rulings).

<sup>65</sup> Musa Syahin, *as-Sunnah kulluba Tasyri'* (Qatar: Qatar University), hlm. 74.

<sup>66</sup> *Ibid.*

<sup>67</sup> Muhammad Aniq Imam, "Problematika Sunnah Tasyri'iyyah dan Gairu Tasyri'iyyah", h. 397.

In other words, Syahin expands Syaltut's scope from merely classification to a contextualization approach of meaning. Here, their thoughts complement each other: while Syaltut provides the roadmap (framework), Syahin equips it with contextual navigation tools, namely the awareness of *maqashid* (objectives of Islamic law) and an integrative methodology for the critical analysis of hadith narration (*riwayat*) and text (*matan*). This combination enhances the understanding and application of sunnah by grounding it in both structural clarity and contextual depth.

### The Convergence of Thought between Mahmud Syaltut and Musa Syahin

The author proposes a point of convergence between the thoughts of these two figures. Firstly, Syaltut's perspective on *sunnah ghair tasyri'iyyah*—which does not have implications for shar'i law and is considered permissible (*mubah/ibahah*)—is directed towards intellectual permissibility (*ibahah aqliyyah*), not shar'i permissibility (*ibahah syar'iyyah*), because the type of permissibility that constitutes a part of shar'i law is *ibahah syar'iyyah*, not *ibahah aqliyyah*. *Ibahah aqliyyah* is not included within the scope of shar'i law. This indicates that Syaltut follows the opinion which divides permissibility into two categories: intellectual permissibility and shar'i permissibility. This classification of permissibility is acknowledged by Muhammad Sulaiman al-Asyqar in *Af'al al-Rasul wa Dalalatuhu 'ala al-Ahkam al-Syar'iyyah*.<sup>68</sup> The convergence offered by the author is also supported by the statement of Syaltut's own student, al-Qardhawi, who asserts that non-tasyri'iyyah Sunnah is a Sunnah for which obligation, recommendation, or even permissibility has not been legislated.<sup>69</sup> According to Salman Abdul

<sup>68</sup> Muhammad Sulayman al-Asyqar mengatakan ibahah yang ditunjukkan oleh perbuatan Nabi, apabila merupakan penjelasan (bayan) atau contoh (imtisalan), maka ia disebut sebagai ibahah syar'iyyah. Sementara jika yang dikerjakan Rasul berkaitan dengan aktifitas kemanusiaan dan adat kebiasaan yang mubah dan yang dinilai mubah dari perbuatan-perbuatan beliau semata-mata (al-af'al al-mujarradah), maka itu disebut sebagai ibahah 'aqliyyah. Lihat Muhammad Sulayman al-Asyqar, *Af'al al-Rasul wa Dalalatuhu 'ala al-Ahkam al-Syar'iyyah*, juz I, (Amman: Dar al-Nafa'i's, 2004), hlm. 382-383.

<sup>69</sup> Tarmizi, *Otoritas Sunnah*, h. 276-289

Muthalib in *Fiqh Al-Hadis*, "what al-Qardhawi denies is shar'i permissibility (*mubah syari'i*), not intellectual permissibility (*mubah aqli*)."<sup>70</sup> Meanwhile, Musa Syahin rejects the term *ghair tasyri'iyyah* because he argues that if there is a Sunnah classified as *ghair tasyri'iyyah*, then that Sunnah would have no implications for shar'i law, whereas the principle states, "if in the Sunnah the Prophet performed an action, it indicates that the action is permissible (*mubah/ibahah*) for his followers." Since permissibility (*ibahah*) itself is part of shar'i (legislated) law, this shows that Syahin adheres to the view that all *ibahah* is included within shar'i law, without any dichotomy between shar'i permissibility and intellectual permissibility. Syahin's understanding of *ibahah* refers to classical scholars such as al-Shafi'i, who did not divide *ibahah* into two categories in his book *al-Risalah*. Therefore, Syahin rejects the term *Sunnah Ghair Tasyri'iyyah*.

Secondly, prioritizing contextual understanding over textual understanding. This contextual understanding aims to obtain a comprehensive comprehension of the Sunnah by considering its context, not merely the text itself. Paying attention to the situation and conditions accompanying the *asbab wurud* (occasions of revelation) of a hadith is crucial in understanding the Prophet's hadith. These two elements are fundamental in deriving a legal ruling. In the Sunnah, the Prophet performed actions according to specific situations and conditions. It is possible that if those conditions changed, the Prophet would have altered his actions accordingly. For example, the Prophet ate using his fingers directly, sucked his fingers after finishing a meal, and instructed his companions to do the same. He performed and commanded this because the circumstances demanded it; at that time, he lived in a desert environment with very limited water supply, so the alternative to clean food residue was to suck his fingers. The Prophet performed ablution (*wudhu*) with one bottle of water and

<sup>70</sup> Lihat catatan kaki Salman Abdul Muthalib, *Fiqh Al-Hadis: Konsep Tayri'i dalam Studi Otoritas Sunnah* (Aceh: NASA, Cetakan pertama, 2018), 262

bathed with three bottles of water. If he lived today, with access to bathrooms equipped with cold and hot water taps, solid soap, liquid soap, and dryers, he would not suck his fingers to clean food residue. He might wash his hands with soap and cream, bathe under a shower with abundant water, and use various creams and perfumes available. This contextual understanding is also obtained by comprehending the *illat* (underlying reason) of the hadith. For instance, the Prophet often wore white clothes and a turban; this does not mean that we are obligated to wear the same attire. Considering the *illat* of this hadith, the Prophet was an Arab who deeply loved Arab culture, where wearing white clothes and turbans was customary. Thus, the *illat* behind the Prophet's frequent wearing of white and turbans was to express love for his homeland's culture (known as *hubb al-watan*). Therefore, the implied understanding in this hadith is a command to love one's culture as long as it does not contradict religious teachings (i.e., corrupt customs). By understanding hadiths contextually through their *sabab wurud* and *illat*, it can be assured that there is no disagreement regarding whether the hadith is classified as *tasyri'iyyah* (legislative) or *ghair tasyri'iyyah* (non-legislative), because it is certain that all hadiths understood through this contextual approach are considered *tasyri'iyyah*.<sup>71</sup> In the Indonesian context, the approaches of Syaltut and Syahin are highly relevant, particularly in the discourse on the integration of knowledge and locality. Many religious fatwas in Indonesia still rely on hadiths in a literal sense without considering the local socio-cultural context. For example, in issues related to medicine, agriculture, and Islamic economics, there are often demands for the community to emulate the Prophet's methods literally, such as drinking in three sips or using the siwak, even though the social context and scientific knowledge have evolved.<sup>72</sup>

<sup>71</sup> Subairi, "Kontekstualisasi Hadist Ekonomi Syari'ah", *Qawānin Journal of Economic Syaria Law*, Vol. 2, No. 2, 2020, 10.

<sup>72</sup> Kaizal Bay, "Kriteria Sunnah Tasyri'iyyah yang Mesti Diikuti", *Jurnal Ushuluddin*, Vol. 23, No. 1, 2015, 19.

Syaltut's classification and Syahin's contextual approach can help clarify the boundary between the "teachings" and the "customs" of the Prophet. In this context, both open space for scholars and academics to integrate Islamic values with local wisdom and contemporary scientific findings without feeling that they are violating the Sunnah. This strongly supports the vision of Islam as *rahmatan lil-‘ālamīn* (a mercy to all worlds) and a contextual approach to the diverse and dynamic reality of Indonesia. For example, regarding agricultural methods, the local Indonesian community is certainly more familiar with the soil conditions, climate, and plant varieties that differ from those of the Arabian Peninsula. Therefore, following the Prophet's agricultural methods technically is not relevant, as emphasized in the hadith about date palm pollination, which Syaltut used as a basis for rationalizing the separation between *tasyri'* and *ghair tasyri'*.

Thirdly, practicing all of the Prophet's Sunnah that are universal (not specific to the Prophet or particular companions) with the intention of loving and following (*ittiba'*) the Prophet, because Allah commands us to follow the Prophet. With the intention of loving and following the Prophet, it can be assured that all universal Sunnah of the Prophet, when practiced, will have *tasyri'* value, not merely intellectual permissibility (*ibāhah ‘aqliyyah*).

## CONCLUSION

This article highlights the fundamental differences between Mahmud Syaltut and Musa Syahin in interpreting sunnah *ghair tasyri'iyyah*. The main finding of this article shows that although the two figures differ textually, their views can be synthesized through a more contextual conceptual and methodological approach. The author proposes a synthesis whereby Syaltut's thought on sunnah *ghair tasyri'iyyah* can be understood as intellectual

permissibility (ibahah 'aqliyyah), not shar'i permissibility (ibahah syar'iyyah), thus remaining consistent with the view that ibahah syar'iyyah is part of Islamic law. On the other hand, Syahin's rejection of the classification of sunnah ghair tasyri'iyyah demonstrates a commitment to a legal approach that does not separate permissibility from shar'i stipulations.

The synthetic solution offered in this article is to place hadiths that appear to be ghair tasyri'iyyah within a contextual framework through the analysis of sabab wurud (occasions of revelation) and illat (legal cause). In this way, all of the Prophet's Sunnah (as long as they are not specific) can be understood as tasyri'iyyah within the values and spirit of the Shari'ah, even if their form does not always constitute positive law.

The implications of these findings are significant for the study of hadith and contemporary Islamic law, especially in pluralistic societies such as Indonesia. A contextual approach to hadith can serve as a foundation for understanding the Sunnah more adaptively, integratively, and relevantly to the challenges of the times. This research also encourages the renewal of Islamic legal thought that prioritizes maqāṣid al-shari'ah and local wisdom in interpreting the Prophet's Sunnah.

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