

## TUG OF WAR BETWEEN *SUNNAH TASYRÎ'IYYAH* AND *GHAYR TASYRÎ'IYYAH*: A CASE STUDY OF A HADÎTH REGARDING USE OF CAMEL URINE AS MEDICATION

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Article history:

Submitted: 02-09-2018 | Revised: 07-11-2018 | Revised: 18-04-2019 | Revised: 10-05-2019 |

Accepted: 30-06-2019

### Abstract

*Qur'anic texts and Prophetic sunnah are essentially zamâniy and makâniy in nature. According to historical records, Muhammad Shallallâhu 'alaihi wa sallam was playing numerous roles. Therefore, every Moslem really needs to associate sunnah with the status of the Prophet at the time a sunnah was delivered when attempting to understand and practice it. This study aims to discuss the instruction by the Prophet Muhammad, peace and blessings of Allah be upon him, for a group of companions to drink camel urine when they complained of sickness from the perspectives of sunnah tasyrî'iyah and sunnah ghayr tasyrî'iyah. This study is a literature study using content analysis techniques. The results identified that the hadîth above is categorized as sunnah ghayr tasyrî'iyah. The advice of the Prophet in the hadîth above to drink camel urine as a medicine must be understood in the emergency context with no medicine other than camel urine available. This is the opinion of the majority of Moslem scholars that taking medication with something that is najis is not permissible, except in a compelling emergency. Under a normal condition and in the presence of halal medicines, taking medication with something that is najis – like camel urine – is harâm.*

**Keywords:** *Tug of war, sunnah tasyrî'iyah, sunnah ghayr tasyrî'iyah, camel urine.*

### Abstrak

*Teks al-Qur'ân dan sunnah Nabi pada dasarnya bersifat zamâniy dan makâniy. Muhammad SAW berdasarkan catatan sejarah memerankan banyak fungsi. Karenanya, dalam memahami dan mengamalkan sunnah, setiap Muslim sangat perlu mengaitkannya dengan status Nabi saat peristiwa sunnah itu terjadi. Tulisan ini bertujuan untuk mendiskusikan instruksi Nabi Muhammad SAW kepada sekelompok sahabat untuk meminum kencing onta saat mereka mengeluh sakit dari perspektif sunnah tasyrî'iyah dan sunnah ghayr tasyrî'iyah. Kajian ini merupakan kajian pustaka dengan menggunakan teknik analisis isi. Dari hasil kajian, teridentifikasi bahwa hadis di atas tergolong sunnah ghayr tasyrî'iyah. Anjuran Nabi untuk meminum air seni onta harus dipahami dalam konteks situasi darurat, dimana tidak ada pilihan obat lain selainnya. Hal ini merupakan pendapat mayoritas ulama bahwa berobat dengan sesuatu yang najis itu tidak diperbolehkan, kecuali dalam kondisi darurat yang memaksa.*

Adapun dalam kondisi normal dan ketersediaan obat-obatan halal, maka berobat dengan sesuatu yang najis – seperti air kencing onta – hukumnya haram.

**Kata Kunci:** Tarik ulur, *sunnah tasyrî'iyah*, *sunnah ghayr tasyrî'iyah*, kencing onta.

## Introduction

Muhammad *Shallallâhu 'alaihi wa sallam* was sent by Allah, may He be praised and exalted, to all mankind<sup>1</sup> and becomes a blessing for the universe.<sup>2</sup> This means that the presence of Muhammad *Shallallâhu 'alaihi wa sallam* brings goodness and blessings for the entire humanity at all time and all places. In light of that, it is clear that the life of Muhammad *Shallallâhu 'alaihi wa sallam* is confined by the spatial and temporal dimensions. Thus, Prophetic *sunnah* as one of the primary sources of Islamic teachings aside from the Qur'ân contain teachings that are universal and, at the same time, local and temporal in nature.<sup>3</sup>

In general term, in their understanding of Prophetic *sunnah* Muslims are classified into two groups. *First* is those who believe that *sunnah* are a source of religious teachings regardless of the orthodoxy teaching establishment process. This mode of thought by social scientists are categorized as a textual, ahistorical mode of thought (in that understanding of a *sunnah* is attempted without concern for the status of the Prophet, as to whether he was acting in his messenger, *mufti*, judge, leader, or personal capacity). Meanwhile, among the *second* group

are those who look into and consider critically the circumstance of the occurrence (*asbâb al-wurûd*) of the *sunnah*.<sup>4</sup> They understand *sunnah* contextually by placing Muhammad *Shallallâhu 'alaihi wa sallam* as a historical being<sup>5</sup> who was constantly faced with a set of options in a pluralistic value system.<sup>6</sup>

A factual case in point regarding the differing types of understanding of the *ummah* on Prophetic *sunnah* is the recently heating disagreements and controversies, particularly those taking place via such social media as WhatsApp and the like, surrounding the pros and cons of the use of camel urine as medication, which is based on a Prophetic *hadith*.<sup>7</sup> On the basis of the literal (*harfiyah*) sound, without attention to the historical context, some Muslims have a conviction that camel urine is an efficacious medicine.<sup>8</sup> Some others are of view that drinking the urine of living things, including camel, poses a considerable risk, as medically, urine is metabolic waste of the

<sup>1</sup>Q.S. al-Saba' (34): 28.

<sup>2</sup>Q.S. al-Anbiyâ' (21): 107.

<sup>3</sup>*Sunnah* is likened to *hadith* by the majority of Muslim scholars. This refers to all matters attributed to Muhammad *Shallallâhu 'alaihi wa sallam* either sayings (*qawl*), acts (*fi'il*), stipulation (*taqrîr*) or physical or psychological characteristics, before and after his prophethood. Scholars of *Usûl al-Fiqh* confine *hadith* definition to the sayings of the Prophet Muhammad *Shallallâhu 'alaihi wa sallam* related to law. His law-related acts and *taqrîr* are then referred to *sunnah*. M. Quraish Shihab, *Membumikan Al-Qur'ân: Fungsi dan Peran Wahyu dalam Kehidupan Masyarakat* (Bandung: Mizan, 1996), 56. See also Sayyid Alwi al-Maliki, *al-Manhal al-Latif fî Usûl al-Hadith al-Syarif* (Mecca: Dar al-Rahmah al-Islâmiyyah, t.th.), 2-3.

<sup>4</sup>M. Quraish Shihab, "Kata Pengantar" dalam Muhammad al-Ghazali, *Studi Kritis atas Sunnah Nabi antara Pemahaman Tekstual dan Kontekstual* (Bandung: Mizan, 1996), 8-9. The second understanding model is not very popular as it is hegemonized by *Ahl al-Sunnah wa al-Jamâ'ah* who tend to understand *sunnah* literally. Literal understanding is deemed necessary by *Ahl al-Sunnah wa al-Jamâ'ah* out of the drive to keep and maintain the strength equilibrium of its orthodox teachings. See M. Amin Abdullah, *Studi Agama: Normativitas atau Historisitas* (Yogyakarta: Pustaka Pelajar, 1996), 315.

<sup>5</sup>Q.S. al-Furqân (25): 20.

<sup>6</sup>Benny Afwazdi, "Hadis di Mata Para Pemikir Modern: Telaah Buku Rethinking Karya Daniel Brown", *Jurnal Studi Ilmu-Ilmu al-Qur'ân dan Hadis* 15, no. 2 (2014): 227-242.

<sup>7</sup>Abû 'Abd Allâh Muhammad bin Ismâ'il bin Ibrâhîm bin al-Mughîrah bin Bardizbah al-Ju'fiy al-Bukhârîy, *Sahih al-Bukhârîy, Kitâb al-Tibb, Bâb al-Dawâ' bi Abwâl al-Ibil*, *Hadith* Number 5281 (Cairo: Dâr al-Hadith, 2004), 781.

<sup>8</sup>Lauren Carruth, "Camel Milk, Amoxicillin, and a Prayer: Medical Pluralism and Medical Humanitarian Aid in the Somali Region of Ethiopia", *Social Science & Medicine* 120, (November 2014): 405-412. <https://doi.org/10.1016/j.socscimed.2014.03.007>.

body potentially containing bacteria or poisons,<sup>9</sup> which unquestionably pose a great danger to the health of the human body.<sup>10</sup>

Mohammed Arkoun holds that Qur'anic verses and Prophetic *hadīths* that inspire Muslims to behave and act in this world are *zamāniy* and *makāniy* (*zamkāniy*) in nature, that is, involving spatial and temporal dimensions.<sup>11</sup> This historical awareness, according to Hodgson, offers hope that Islam will be able to better answer future challenges.<sup>12</sup> This historical approach does not directly translate into total relativization of religious teachings by regarding them as no more than mere products of history. On the other hand, it seeks correct understanding of texts existing in our body of knowledge.<sup>13</sup> The problem is how to capture the universal, context-independent import of such message if not by referring to the specific cause of the emergence of a teaching or legal product.<sup>14</sup>

As hinted in the Qur'ān, Muhammad *Shallallāhu 'alaihi wa sallam* was declared not only as a messenger of Allah, but also as an ordinary human.<sup>15</sup> In history, Muhammad *Shallallāhu 'alaihi wa sallam* served multiple functions: as a messenger of Allah, as a head

of state,<sup>16</sup> as a community leader, as a warlord, as a judge,<sup>17</sup> and as a person. That a *sunnah* is something emanating from the Prophet *Shallallāhu 'alaihi wa sallam* indicates that understanding and application of such *sunnah* should be related to the status of the Prophet *Shallallāhu 'alaihi wa sallam* when the *sunnah* event was taking place. The sides inextricably linked to the Prophet's self and the backdrop against which a *sunnah* emerged assume an important position in the understanding of such *sunnah*.<sup>18</sup>

Some *sunnah* are fitter to be understood textually, while some others contextually. Textual understanding and implementation is suitable when certain *sunnah*, after being related to all sides associated with them, for example, the background of the event, require that they be understood according to what is written in the text. Contextual understanding and implementation of *sunnah*, on the other hand, is performed if "behind the text" of such *sunnah* lie a strong hint requiring that such *sunnah* be understood and implemented not as expressed (textually).<sup>19</sup>

From that point of view, this paper will analyze Prophetic *sunnah* in relation to diverse functions of Muhammad *Shallallāhu 'alaihi wa sallam* either as a messenger, as a socio-political leader, or as an ordinary man, with the Prophetic *hadīth* concerning camel urine serving as the subject of this case study. It is of a considerable importance to answer the questions being the central theme of this paper: Are *sunnah* always presented for *tasyrī'* purposes? Are *sunnah* Divine revelation or Prophetic *ijtihād* or are they a combination of

<sup>9</sup>Bassem Y. Sheikh, "The Role of Prophetic Medicine in the Management of Diabetes Mellitus: A Review of Literature", *Journal of Taibah University Medical Sciences* 11, No. 4 (2016): 339-352.

<sup>10</sup>Laila M. Akhu-Zaheya, Esraa M. Alkhasawneh, "Complementary Alternative Medicine Use Among a Sample of Muslim Jordanian Oncology Patients", *Complementary Therapies in Clinical Practice* 18, no. 2 (2012): 121-126. <https://doi.org/10.1016/j.ctcp.2011.10.003>.

<sup>11</sup>M. Amin Abdullah, *Studi Agama: Normativitas atau Historisitas* (Yogyakarta: Pustaka Pelajar, 1996), 64.

<sup>12</sup>Marshal G.S. Hodgson, *The Venture of Islam*, quoted from Nurcholish Madjid, *Kontekstualisasi Doktrin Islam dalam Sejarah* (Jakarta: Paramadina, 1994), 35-36.

<sup>13</sup>Ummu Farida, "Diskursus Sunnah Sebagai Sumber Hukum Islam: Perspektif *Usūliyyīn* dan *Muhaddithīn*", *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 6, no. 1 (2015): 238-255.

<sup>14</sup>Azhar, "Sumber dan Otoritas Hukum dalam Perspektif Islam dan Barat", *Jurnal Raudhah* 6, no. (2016): 1-11.

<sup>15</sup>Q.S. Ali 'Imrān (3): 144 and al-Kahfi (18): 110.

<sup>16</sup>W. Montgomery Watt authored a historical book of Muhammad *Shallallāhu 'alaihi wa sallam* regarding the difference between his function as a Messenger of Allah and as a head of state. See further W. Montgomery Watt, *Muhammad: Prophet and Statesman* (London: Oxford University Press, 1969).

<sup>17</sup>Philip K. Hitti, *History of The Arabs* (London: The Macmillan Press Ltd., 1974), 139.

<sup>18</sup>M. Syuhudi Ismail, *Sunnah Nabi yang Tekstual dan Kontekstual* (Jakarta: Bulan Bintang, 1994), 4 and 6.

<sup>19</sup>Ibid.

both? And what is the implication for the validity of *sunnah* as a source of *tasyri*’?

### **Sunnah, Divine Revelation or Prophetic Ijtihād?**

Muslim scholars from *usûliyyûn* and *mutakallimûn* realms are of different views regarding the *ijtihād* of Muhammad *Shallallâhu ‘alaihi wa sallam*. Some hold that there is no Prophetic *ijtihād* in respect of law as he, peace and blessings of Allah be upon him, was directly inspired by Allah, may He be praised and exalted, for that matter.<sup>20</sup> The logic is that it is forbidden to rely on a source of lower degrees over other sources of higher ones or to use *zanniy* while ignoring *qath’iy*.<sup>21</sup> This group’s argument is based on the verse of Allah, may He be praised and exalted:

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ۗ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ ۗ

“Nor does he speak from [his own] inclination. It is not but a revelation revealed.”<sup>22</sup>

The other group objects this view on the grounds of Qur’anic argumentation, *sunnah* and common sense. They argue, “The verses on which their argument is based are not appropriate to be used as *hujjah* as what the verses refer to is the Qur’ân. The meaning of the verses is as narrated by Qatâdah: None of the Qur’ân came from his own inclination but all revealed by Allah, may He be praised and exalted, to him.”<sup>23</sup> Al-Syaukânîy in refuting the first group’s argument states that what is referred to in the verses is the Qur’ân. Even if what the first group asserts has the truth, the verses cannot be used as a basis for denying the *ijtihād* of the Prophet *Shallallâhu ‘alaihi wa*

*sallam*.<sup>24</sup>

Furthermore, Abû Zahwû underscores that even though the Prophet Muhammad *Shallallâhu ‘alaihi wa sallam* performed *ijtihād* by drawing on his intelligence and life experiences under numerous situations, during which heaven revelations did not come down to him, Allah, may He be praised and exalted, did not just “abandon” him.<sup>25</sup> Allah, may He be praised and exalted, always justified it when the Prophet *Shallallâhu ‘alaihi wa sallam* did right and, on the other hand, reprimanded him if he, peace and blessings of Allah be upon him, did wrong.<sup>26</sup> Hence, the *ijtihād* of the Prophet *Shallallâhu ‘alaihi wa sallam* are basically counted as Divine revelation as well.<sup>27</sup> *Usûl* scholars named the laws established through Prophetic *ijtihād al-wahy al-bâtin*—they resemble Divine revelation but, in fact, are not Divine revelation.<sup>28</sup>

Al-Qarâfiy is regarded as the first man to sort out the sayings and acts of Muhammad *Shallallâhu ‘alaihi wa sallam*. According to him, Muhammad *Shallallâhu ‘alaihi wa sallam* at times acted as a great imam or *qâdiy*, but at other times he acted as a deeply knowledgeable *mufti*. This notion by contextualists is described and developed further, so it is a must to find the context of every *sunnah* as to whether it was said or acted upon by the sublime man in his position as:

(1) a *rasûl*, and therefore, it must be true as it originates from Allah, may He be praised and exalted; (2) a *mufti*, who established a *fatwa* based on his understanding and the authority given to him by Allah, may He be praised and

<sup>20</sup>Muhammad Asriady, “Metode Pemahaman Hadis” *Ekspose* 16, no. 1 (2017): 314- 323.

<sup>21</sup>Read Muhammad Rawwâs, *Qirâ’ah Jadidah li al-Sirah al-Nabawiyah* (Beirut: Dâr al-Buhûth al-Ilmiyyah, 2012), 186.

<sup>22</sup>Q.S. al-Najm (53): 3-4.

<sup>23</sup>al-Qurtûbiy, *al-Jâmi’ li Ahkâm al-Qur’ân* (Cairo: Dâr al-Kutub al-Misriyyah, 1980), 241-242.

<sup>24</sup>Yûsuf al-Qaradawiy, *al-Sunnah Masdar li al-Ma’rifah wa al-Hadârah* (Beirut: Dâr Ihyâ’ al-Turâts al-‘Arabiyy, 1996), 86-87.

<sup>25</sup>Q.S. al-Hijr (15):87-99 and Q.S. al-Nahl (16):125.

<sup>26</sup>For instance, a case preceding the revelation of Q.S. ‘Abasa and the explanation. See Abû Fidâ’ Ismâ’il bin Kathîr, *Tafsîr al-Qur’ân al-‘Azîm, Juz IV* (Singapore: Sulaiman Mar’i, t.th.), 470-471. See also Muhammad bin ‘Alî al-Syawkânîy, *Fath al-Qadîr* (Beirut: Dâr al-Fikr, 1973), 381-387.

<sup>27</sup>Muhammad Muhammad Abû Zahwu, *al-Hadîth wa al-Muhaddithûn* (Beirut: Dâr al-Kitâb al-‘Arabiyy, t.t.), 15-16.

<sup>28</sup>al-Qaradawiy, *al-Sunnah Masdar li al-Ma’rifah wa al-Hadârah*, 87.

exalted. This, too, must be true and is generally accepted by every Muslim; (3) a judge, who ruled upon a case. In this event, the ruling, although formally must be correct, might have fallacy materially. This was due to the ability of either of the disputing parties to cover up the truth, while on the other hand, the ruling was only applicable to the disputing parties;<sup>29</sup> (4) a leader of a community, who adjusted his attitude, guidance, and instruction to the condition and culture of the community he, peace and blessings of Allah be upon him, encountered. In this event, his attitude and guidance must be true and suit the community. Other communities, however, could learn the values contained in such instruction and guidance and apply them according to their respective condition; and (5) a person, because of the privileges bestowed to or imposed onto him by Allah, may He be praised and exalted, in relation to his prophethood (e.g., the obligation to offer night prayer or the permission to gather more than four wives at one time) or because of his uniqueness resulting from his human nature, which differed from that of others (e.g., like or dislike of something). The latter was not the focus of those who are mainly concerned with the sayings and acts of the Prophet *Shallallâhu ‘alaihi wa sallam* that are related to legal matters.<sup>30</sup>

People may be of differing stances regarding the description above. However, it seems that sorting out the sayings and acts of the Prophet *Shallallâhu ‘alaihi wa sallam* is inevitable in that it was also done by his companions. The following are some of the examples.

Buraydah insisted that she be divorced from her husband despite the intercession by the Prophet *Shallallâhu ‘alaihi wa sallam*. This was because she realized that the counsel of the Prophet *Shallallâhu ‘alaihi wa sallam* did not constitute any religious obligation she had to observe.<sup>31</sup>

<sup>29</sup>M. Quraish Shihab, “Kata Pengantar” in Muhammad al-Ghazali, *Studi Kritis atas Sunnah Nabi*, 9-10.

<sup>30</sup>Ibid., 10.

<sup>31</sup>Ibid.

When the Prophet *Shallallâhu ‘alaihi wa sallam* was choosing an army post for his army in the Battle of Badr, al-Habbâb bin al-Mundzir asked whether the location was chosen based on Divine guidance or based on reason and strategy. Upon the answer of the Prophet *Shallallâhu ‘alaihi wa sallam* that it was the result of his reasoning and *ijtihad*, al-Habbâb proposed another location he deemed more fitting and it was accepted by the Prophet *Shallallâhu ‘alaihi wa sallam*.<sup>32</sup>

It can be seen that from the beginning, the sorting of the sayings and acts of the Prophet *Shallallâhu ‘alaihi wa sallam* was familiar among his companions.

### Correlation between the Understanding of *Sunnah* and the Functions Served by the Prophet

The main task given to Muhammad *Shallallâhu ‘alaihi wa sallam*, by Allah, may He be praised and exalted, in this world was to be a *rasûl*<sup>33</sup> to guide mankind in the path of Allah, may He be praised and exalted, and to set a concrete example of how to “promote” Islamic teachings. The Prophetic *sunnah*, in addition to the Qur’ân, provide directions on what Muhammad *Shallallâhu ‘alaihi wa sallam* has done to “promote” the teachings of Allah, may He be praised and exalted.<sup>34</sup>

Not only did he serve as a messenger of Allah, Muhammad *Shallallâhu ‘alaihi wa sallam* also held the status of an ordinary man<sup>35</sup> as a husband, a family member, a friend, a teacher, an educator, a *muballigh*, a leader, a warlord, a judge, and a head of state.<sup>36</sup> The predicate *uswah hasanah* (the best role model) conferred by Allah, may He be praised and exalted, to Muhammad *Shallallâhu*

<sup>32</sup>Ibid.

<sup>33</sup>Q.S. Ali ‘Imrân (3): 144.

<sup>34</sup>M. Syuhudi Ismail, *Sunnah Nabi Menurut Pembela, Pengingkar dan Pemalsunya* (Jakarta: Gema Insani Press, 1995), 97.

<sup>35</sup>Q.S. al-Kahfî (18):100.

<sup>36</sup>Muhammad Sa’id Ramadhân al-Buthi, *Fiqh al-Sirah* (Beirut: Dâr al-Fikr, 1980), 18. A book specifically discussing about the self of Muhammad *Shallallâhu ‘alaihi wa sallam* and his various functions, among other ‘Abbas Mahmud al-‘Aqqad, *‘Abqariyyah Muhammad* (Cairo: Dâr al-Hilal, 1969).

'*alaihi wa sallam*,<sup>37</sup> encompasses all of the functions attributed to him. Mahmud Syaltūt said that knowing what the Prophet, peace and blessings of Allah be upon him, did when it was done had immense benefits.<sup>38</sup> The knowledge on the relationship between the *sunnah* and the functions of the Prophet *Shallallâhu 'alaihi wa sallam* is useful for the research of the *sunnah* status seen from the *dalâlah*.

On the relationship between the *sunnah* and the functions of Muhammad *Shallallâhu 'alaihi wa sallam*, Muslim scholars agreed that such *sunnah* must be obeyed.<sup>39</sup> The *sunnah* teachings that must be obeyed in this case were not confined to the Prophet's elucidation of Qur'anic verses, but also the Prophet's stipulation not included in the Qur'ân.<sup>40</sup> Muslim scholars exemplified the Prophetic *sunnah* related to the Prophet's function as a *rasûl* with his explanation on the Qur'ân's content, observance of worship, and legal stipulation regarding the lawful and the unlawful (*halâl* and *harâm*).

That it is mandatory to obey the guidance contained in the Prophetic *sunnah* does not mean that all of the *dalâlah* is *qath'iy* in nature. It is not easy to even distinguish between the Prophetic *sunnah* guidance given in his capacity as a *rasul* and that in his other functions. Some examples of Prophetic *sunnah* containing guidance in his function as a head of state and as a leader of community are the deployment of an army and the collection of funds for *bayt al-mâl*. Some Muslim scholars state that such *sunnah* do not contain generally applicable *sharia* provisions.<sup>41</sup> In this

<sup>37</sup>Q.S. al-Ahzâb (33): 21.

<sup>38</sup>Mahmûd Syaltût, *al-Islâm 'Aqidah wa Syari'ah* (Cairo: Dâr al-Qalam, 1966).

<sup>39</sup>Abd al-Wahhab Khallâf, *Ilm Usûl al-Fiqh* (Jakarta: al-Majlis al-A'la al-Indonesia li al-Da'wah al-Islâmiyyah, 1972). Other grounds on which such opinion is based are as follows: Q.S. al-Nisâ' (4): 59 dan al-Hashr (59): 7.

<sup>40</sup>According to the majority of Muslim scholars, the Prophetic *sunnah* not only elucidate and support what is stated in the Qur'ân, but also establish the law not stated in the Qur'ân. See Muhammad 'Ajjâj al-Khatîb, *Usûl al-Hadîth 'Ulûmuhu wa Musthalahuhu* (Beirut: Dâr al-Fikr, 1975), 46-50.

<sup>41</sup>Abd al-Wahhab Khallâf, 43.

case, the Prophetic *sunnah* present an opportunity and encouragement to the mind to create benefits based on general *sharia* instructions.

What often constitutes a problem is that there exist some Prophetic *sunnah* that seem to be related to, on the one side, the function of Muhammad *Shallallâhu 'alaihi wa sallam* as a "*rasûl*" and, on the other side, his function as a "head of state" or a "leader of community". For instance, the following *hadîth* content (*matn*) reads:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ نَهَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ أَكْلِ أَحْوَمِ الْحُمْرِ الْأَهْلِيَّةِ يَوْمَ خَيْبَرَ (رواه البخاري ومسلم وغيرهما بلفظ البخاري)

"Narrated Ibn 'Umar, may Allah be pleased with him: The Prophet Muhammad, peace and blessings of Allah be upon him, forbade (eating) the meat of domesticated himar (donkey) during the Battle of Khaibar".<sup>42</sup>

Some Muslim scholars state that the *hadîth* above is an example showing that Muhammad *Shallallâhu 'alaihi wa sallam* had the authority to establish a law that is not explicitly stated in the Qur'ân.<sup>43</sup> Such opinion is well-grounded when seen from the clarity of the *hadîth* content and related to another *hadîth* that reads:

حَدَّثَنَا أَبُو نُعَيْمٍ حَدَّثَنَا زَكَرِيَاءُ عَنْ عَامِرٍ قَالَ سَمِعْتُ النَّعْمَانَ بْنَ بَشِيرٍ يَقُولُ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ الْحَلَالُ بَيِّنٌ وَالْحَرَامُ بَيِّنٌ وَبَيْنَهُمَا مُشَبَّهَاتٌ لَا يَعْلَمُهَا كَثِيرٌ مِنَ النَّاسِ (رواه البخاري ومسلم وغيرهما)

*Verily, the lawful is clear and the unlawful is clear, and between the two of them are doubtful*

<sup>42</sup>Abu 'Abd Allâh Muhammad bin Ismâ'il al-Bukhârîy, *Sahîh Bukhârî*, Juz 13 (Beirut: Dâr al-Fikr, t.th.), 118; Abu Husayn Muslim bin al-Hajjâj al-Qushayriy, *Sahîh Muslim*, Juz 10 (Damascus: Isa Babi al-Halabi, t.t.), 84. This *sunnah* was also narrated by al-Turmudhi, al-Nasa'i, Ibn Majah, al-Darimi, and Ahmad bin Hanbal. See A.J. Wensinck, *al-Mu'jam al-Mufahras li Alfaz al-Hadîth al-Nabawî* (Leiden: A.J. Brill, 1936), 132.

<sup>43</sup>Muhammad bin 'Ali al-Syaukany, *Nayl al-Awtâr min Ahâdith Sayyid al-Akhyâr Syarh Muntaqa al-Akhhâr* (Beirut: Dar al-Jil, 1973).

matters about which many people do not know.<sup>44</sup>

The *hadîth* above explains that the lawfulness and the unlawfulness of matters is clear, but there still exist certain matters that are doubtful. Only a few people are aware of the doubtfulness of such matters. Those who are aware are the *mujtahid*.<sup>45</sup> The *hadîth* above indicates that the Prophet, peace and blessings of Allah be upon him, acknowledged matters of *zanni* status, namely those that belong to the *musytabihât* category.

When the first *hadîth* is linked to the second one, the impression rendered is that the *dalâlah* of the first *hadîth* was *qath'iy al-dalâlah*. Is that really the case? Regarding the first *hadîth*, the companions of the Prophet *Shallallâhu 'alaihi wa sallam* generally adhered to the textual meaning. Ibn 'Abbas, one of the companions of the Prophet *Shallallâhu 'alaihi wa sallam* who had narrated a lot of *hadîths*, challenged such general opinion. He argued that the meat of domesticated donkeys is *halâl* to eat based on the Qur'ânic ground.<sup>46</sup> He said that he did not understand the background of the unlawful status of the domesticated donkey meat, as in whether the ban was intended to preserve the domesticated donkey population or whether the application of such ban was specific to the Battle of Khaibar only.

The majority of Muslim scholars beyond the era of the companions of the Prophet *Shallallâhu 'alaihi wa sallam* also adhere to the textual meaning of the *hadîth*. Various *kitâb* have discussed the background (*'illah*) of the unlawful status of domesticated donkey meat as to whether it was intended to preserve the population, whether it was based on the account that the animal is dirty (*rijs*), whether it was based on the account that the animal is domesticated, or whether it was based on the account that the

Prophet, peace and blessings of Allah be upon him, banned it? The reason believed strongly by most Muslim scholars is because the Prophet, peace and blessings of Allah be upon him, banned it.<sup>47</sup> The Qur'ânic argument referred to by Ibn 'Abbâs was not spared from the discussion. Most Muslim scholars indirectly rejected the use of such argument. To them, the *dalâlah* of the *hadîth* in question is *qath'iy*.<sup>48</sup>

Al-Tahâwiy, a scholar of *hadîth*, stated that even if the *hadîth* concerning the unlawfulness of domesticated donkey meat is not *mutawâtir*, rational consideration can then be used for stipulating the legal status of the animal.<sup>49</sup> Al-Tahâwiy drew a relation between the *asbâb al-wurûd* of the *hadîth* and the *dalâlah*, while not all *nash* of *qath'iy al-wurûd* status also have a *qath'iy al-dalâlah* status.

From the description above, it can be confirmed that apparently, the clear textual meaning of a *nash* (in this case a Prophetic *hadîth*) does not warrant consensus between Muslim scholars in the *dalâlah* understanding. The problem is, does the difference in the opinions of Muslim scholars in understanding the *dalâlah* of a given *nash* justify that the *nash* in question is *zanni*? It appears that the validity and strength of each argument underlying the differing opinions should first be assessed before determining the *dalâlah* status of the *nash* concerned.<sup>50</sup>

As for the *sunnah* relating to the function of Muhammad *Shallallâhu 'alaihi wa sallam* as an ordinary man, Muslim scholars hold that the Prophetic *sunnah* do not constitute general *sharia* provisions, unless there is an indication that what was done contained *sharia* aspects. There are also Prophetic *sunnah* that exclusively applied

<sup>44</sup>al-Bukhâriy, *Sahîh al-Bukhâriy*, Juz I, 90; Muslim, *Sahîh Muslim*, Juz 7, 290. This *sunnah* was also narrated by Abu Dâwud, al-Turmudzîy, al-Nasâ'iy, Ibn Mâjah, al-Dârimi, and Ahmad bin Hanbal. See A.J. Wensinck, 258.

<sup>45</sup>Ibn Hajar al-'Asqalaniy, *Fath al-Bâri* (Beirut: Dâr al-Fikr, t.t.), 127.

<sup>46</sup>Q.S. al-An'âm (6): 145.

<sup>47</sup>Muhammad bin Isma'il al-Shan'ani, *Subul al-Salâm Syarh Bulûgh al-Marâm min Jam' Adillah al-Ahkâm* (Cairo: Musthafa Bâbiy al-Halabiyy, 1960), 73-75.

<sup>48</sup>Syuhudi Ismail, *Sunnah Nabi Menurut Pembela, Peningkar dan Pemalsunya*, 101-102.

<sup>49</sup>al-Syaukânîy, *Nayl al-Awtâr*, 273.

<sup>50</sup>Syuhudi Ismail, *Sunnah Nabi Menurut Pembela, Peningkar dan Pemalsunya*, 102.

to Muhammad *Shallallâhu ‘alaihi wa sallam*, for example, the permission to be married to more than four wives (polygamy). What exclusively applied to Muhammad *Shallallâhu ‘alaihi wa sallam* does not constitute generally applied *sharia* provisions.<sup>51</sup>

The effort to understand Prophetic *sunnah* by relating them to the function of Muhammad *Shallallâhu ‘alaihi wa sallam* as an ordinary man is evidently still faced with disagreement. An example in case is the Prophetic *sunnah* of growing beard and mustache. Some Muslim scholars regard this *sunnah* as a *sharia* provision, but some others see otherwise. The arising disparity in view has caused a *nash* to have multiple meanings. If the difference in the points of view can be used as a factor to determine the *dalâlah* status of a *nash*, the number of *nash* with the *qath’iy al-dalâlah* status will be lowered.<sup>52</sup>

### Sorting Out *Sunnah Tasyrî’iyyah* from *Sunnah Ghair Tasyrî’iyyah*

It should be underlined that a *sunnah* may be considered to contain a *tasyrî’* element – thereby requiring Muslims to follow and apply the *sunnah* – or not to contain any *tasyrî’* and *taklif* elements.<sup>53</sup> It is also important to be clear about the line between *sunnah* with *tasyrî’* element that is universal and eternal in character (applicable for all mankind until the Day of Judgment) and those with *tasyrî’* element that is local and temporal (specific to particular conditions or situations).<sup>54</sup>

In this context, Muslims are polarized into two relatively antagonistic cohorts. The *first* is those who are obsessed with making all *sunnah* to be in accordance with *tasyrî’* purposes, causing it to be compulsory for all people of all ages, places,

and conditions to adhere to the *sunnah*. They overlook the fact that some *sunnah* emanated from Muhammad *Shallallâhu ‘alaihi wa sallam* in his capacity of an ordinary man, some were driven by tradition, some were influenced by his environment and experience, and some were even accidental beyond his will. Therefore, *Usûl* scholars maintain that *sunnah* of this type are no more than arguments of permission (*ibâhah*) and exhortation (*masyrû’ah*), unless ritual indications (*taqarrub*) for Allah, may He be praised and exalted, are found within.<sup>55</sup>

For case in point, in the present time, we can still encounter those who believe that carrying a stick (for a *khatîb* during Friday sermons) is a *sunnah* although it is actually not necessary and is not part of the community’s tradition. The stick, instead, becomes a burden for the *khatîb* or gets in his way as he does not use it as a support or for instructing the congregation or for any other purposes. Regrettably, we still can see fanatics reproaching a modern *khatîb* who mounts a *khutbah* platform without carrying a stick.<sup>56</sup>

The *second*, as opposed to the first cohort, is those who intend to set aside *sunnah* from all worldly practical affairs. Traditions, *muamalah*, economic and political affairs, management, war, and many other affairs should be completely handed over to humans. *Sunnah* should not interfere with those affairs by commanding, prohibiting, directing, or demonstrating. Their argument in this case is based on a *hadîth* that is interpreted into a meaning that is irrelevant or incongruent with the context:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَرَّ بِقَوْمٍ يُلْقِحُونَ فَقَالَ عَنْ أَنَسٍ لَوْ لَمْ تَفْعَلُوا لَصَلَحَ قَالَ فَخَرَجَ شَبِيصًا فَمَرَّ بِهِمْ فَقَالَ مَا لِنِخْلِكُمْ قَالُوا قُلْتَ كَذَا وَكَذَا قَالَ أَنْتُمْ أَعْلَمُ بِأَمْرِ دُنْيَاكُمْ

“Narrated Anas, may Allah be pleased with him, the Prophet *Shallallâhu ‘alaihi*

<sup>51</sup>Ibid., 104.

<sup>52</sup>Ibid.

<sup>53</sup>Muhammad Habibi Siregar, “Legalitas *Sunnah Tasyrî’iyyah* dan Non *Tasyrî’iyyah*: Kritik Motivasi Sahabat dalam Meriwayatkan Hadis”, *Analytica Islamica* 1, no. 2 (2012): 258-280.

<sup>54</sup>Read Kaizal Bay, “Kriteria *Sunnah Tasyrî’iyyah* yang Mesti Diikuti”, *Jurnal Ushuluddin* 23, no. 1 (2015): 78-85. Muhammad Sa’id Ramadhani al-Buthi, *Dawâbith al-Maslahah fi Al-Syarî’ah al-Islâmiyyah* (Beirut: Muassasah Al-Risâlah, 1977), 23.

<sup>55</sup>Yusuf al-Qaradâwiy, *al-Sunnah Masdar li al-Ma’rifah wa al-Hadârah*, 17-18.

<sup>56</sup>Ahmad Bu’ûd, *Fiqh al-Wâqi’: Usûl wa Dhawâbith* (Beirut: Dâr al-Buhûth al-‘Asriyyah, 1421 H), 29.

*wa sallam passed some people who were fecundating some date palms. He then suggested: Had you not done that, perhaps (the yield) would be better. A few moments later, the Prophet Shallallâhu ‘alaihi wa sallam saw them again and asked: How was the yield of your date palms? They told him (that it was unsatisfactory). The Prophet Shallallâhu ‘alaihi wa sallam then said: You know better about worldly matters’.*<sup>57</sup>

This *hadîth* was narrated by Muslim in his *Sahîh* regarding an account of date palm fecundation and fertilization.<sup>58</sup>

Indeed, matters belonging to worldly, experimental experiences such as agriculture, manufacturing, medicine, among other things, are entirely technical – none of them are included in *sunnah tasyrî’iyyah* that must be obeyed. For this reason, al-Nawawy placed this *sunnah* in *Sahîh Muslim* in the chapter “It is Obligatory to Follow the Prophet’s Sayings in *Syar’iy* Affairs and Optional to Follow the Prophet’s Sayings in Worldly Affairs on Account of His Personal View.” However, the notion that such *hadîth* as above mentioned lays the basis for setting aside *sunnah*, even eliminating all religious teachings, from public affairs, and isolating them from social affairs on the grounds that religion is only a mental treatise is rejected by Islam, the Qur’ân, and the *sunnah*.<sup>59</sup>

If we take a closer look at the attitude of each cohort abovementioned, we can conclude that the first one departs from an immense desire to follow the examples set by the Prophet Shallallâhu ‘alaihi wa sallam in his every move that reflects modesty, simplicity, *qanâ’ah*, and *zuhud* attitude from the hustle and bustle of the world, away from glamor and wasteful behavior. People of this group are worth praising and rewards for

their good intention and enthusiasm to preserve the perfect examples of the Prophet Shallallâhu ‘alaihi wa sallam as was done by Ibn ‘Umar and other companions.<sup>60</sup>

Nonetheless, it is wrong of them to judge that all these behaviors are part of *sunnah* and religious doctrines that must be observed and then reprove those who abandon them without considering the settings in which the events were taking place in the time of the Prophet Shallallâhu ‘alaihi wa sallam. What they perceived as *sunnah* were no more than Arabic customs suiting the contexts at that time which the Prophet Shallallâhu ‘alaihi wa sallam performed only for preserving the traditions of his people.<sup>61</sup>

Meanwhile, the second group is wrong in mixing up between religious and non-religious affairs. While the religion (read: *sunnah*) is not concerned with whether we eat on the ground or at a table or whether we eat with hand or with spoon, it reminds us that we should eat and drink with the right hand as opposed to the left. The use of the right hand is not only based on the preference of the Prophet Shallallâhu ‘alaihi wa sallam of the right in all things but also based on the grounds that his teaching in this matter is already clear, be it in the form of commandment or prohibition.

حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ أَخْبَرَنَا سُفْيَانُ قَالَ الْوَلِيدُ بْنُ كَثِيرٍ أَخْبَرَنِي أَنَّهُ سَمِعَ وَهْبَ بْنَ كَيْسَانَ أَنَّهُ سَمِعَ عُمَرَ بْنَ أَبِي سَلَمَةَ يَقُولُ كُنْتُ غُلَامًا فِي حَجْرٍ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَكَانَتْ يَدِي تَطْيِشُ فِي الصَّحْفَةِ فَقَالَ لِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَا غُلَامُ سَمَّ اللَّهُ وَكُلَّ بِيَمِينِكَ وَكُلَّ مِمَّا بِيَاكِكَ

“Narrated Umar bin Salamah: When I was a young boy who lived in the residence of the Messenger of Allah Shallallâhu ‘alaihi wa sallam, he advised me when I sneezed: O boy, say the name of Allah, eat with your right

<sup>57</sup>Muslim bin al-Hajjaj al-Qushayri, *Sahîh Muslim*, Juz XII, 54.

<sup>58</sup>Yusuf al-Qaradâwiy, *al-Sunnah Masdar li al-Ma’rifah wa al-Hadârah*, 18.

<sup>59</sup>Ibid., 22.

<sup>60</sup>Yusuf al-Qaradâwiy, *Malâmiḥ al-Mujtama’ al-Islâmiy Alladzi Nunsiyiduhu* (Cairo: Maktabah Wahbah, 2001), 345.

<sup>61</sup>Sa’îd Hawwa, *al-Asâs fi al-Sunnah wa Fiqhiha* (Cairo: Dâr al-Salâm, 1994), 537-538.

hand, and eat what is near to you.”<sup>62</sup>

He *Shallallâhu ‘alaihi wa sallam* also said:

و حَدَّثَنِي أَبُو الطَّاهِرِ وَحَرْمَلَةُ قَالَ أَبُو الطَّاهِرِ أَخْبَرَنَا وَ قَالَ  
حَرْمَلَةُ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ حَدَّثَنِي عُمَرُ بْنُ مُحَمَّدٍ حَدَّثَنِي  
الْقَاسِمُ بْنُ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ حَدَّثَهُ عَنْ سَالِمٍ عَنْ  
أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَأْكُلَنَّ أَحَدٌ مِنْكُمْ أَيْبَهُ  
بِشِمَالِهِ وَلَا يَشْرَبَنَّ بِهَا فَإِنَّ الشَّيْطَانَ يَأْكُلُ بِشِمَالِهِ وَيَشْرَبُ بِهَا

“Do not eat and drink with the left hand, for the shaytan eats with his left hand.”<sup>63</sup>

The right way to respond to the two antagonistic groups above mentioned is to be poised and take the middle position. It is suggested to draw a line between *sunnah* containing *tasyrî* that must be followed and those that do not contain *tasyrî* (also frequently termed *sunnah irsyâdiyyah*) as well as between *tasyrî* that is universal and eternal in character and one that is specific. This will require caution and deep understanding of the book of Allah, may He be praised and exalted, and the *sunnah* of His Messenger *Shallallâhu ‘alaihi wa sallam*.

### Consequences of *Sunnah Tasyrî’iyyah* and *Sunnah Ghair Tasyrî’iyyah* in Life Practices

After sorting out between *sunnah tasyrî’iyyah* and *sunnah ghair tasyrî’iyyah*, the next concern is on what basis, and how, the sorting is performed. This discussion will subsequently be more concerned with *Usûl al-Fiqh* than *Usûl al-Hadîth* although both are interlinked. Among the most intensive in elucidating this matter in modern times is Syaikh Mahmûd Syaṭûṭ. He largely refers to the writings by Syah Wali Allâh al-Dahlawi, Syihâb al-Dîn al-Qarâfy al-Misriy, Rasyîd Ridhâ, and more.<sup>64</sup>

According to Syaṭûṭ, everything emanating from Muhammad *Shallallâhu ‘alaihi wa sallam*

that are codified in *sunnah* books, in the form of either statements, acts, or *taqrîr*, can be classified into several categories. Among the *first* are those that have the nature of human needs, such as eating, drinking, sleeping, walking, making visits, reconciling two conflicting people in traditional manners, helping out, and bargaining in trades. The *second* is those that are experimental and related to personal and social habits in nature, such as *sunnah* on agriculture, medicine, and the length of clothing. The *third* is those related to personal prowess as a manifestation of interaction with particular conditions, such as division of an army into battlefields, hiding, returning, running, or other things under certain conditions.<sup>65</sup> The three things aforementioned do not belong to *syara* that must be either performed or deserted. The acts of Muhammad *Shallallâhu ‘alaihi wa sallam* above neither constitute *tasyrî* nor source of *tasyrî*.<sup>66</sup>

The *fourth* category covers those of *tasyrî* purpose, which are divided into three: (1) the *sunnah* delivered by Muhammad *Shallallâhu ‘alaihi wa sallam* in the form of *tablîgh* in his capacity of a *rasul*, as in his explanation of verses that are *mujmal* (having global meanings), with him performing *takhsîs* on verses that are general in nature and *taqyîd* on verses that are absolute in nature, or his explanation on worship practices ordained in the Qur’ân, lawfulness and unlawfulness, and matters of *aqîdah*, *akhlâq*, and others related to the aforementioned. *Sunnah* such as these are delivered for general *tasyrî* purpose and are applicable until the Final Day. If they are prohibitive, everybody is obliged to abandon what are prohibited, and there is no other way than knowing and obeying them.

(2) The *sunnah* delivered by Muhammad *Shallallâhu ‘alaihi wa sallam* in his capacity as an

<sup>62</sup>al-Bukhâriy, *Sahîh al-Bukhâriy*, Juz 16, 470.

<sup>63</sup>Muslim bin al-Hajjâj al-Qushayriy, *Sahîh Muslim*, Juz 10, 297.

<sup>64</sup>Ibrâhim al-Hasnayâni, *al-Ta’sîl al-Syar’iy li Fiqh al-Wâqî’* (Cairo: Dâr al-Fikr, 2009), 61.

<sup>65</sup>Read Muhammad Ahmad Burkab, *al-Masâlih al-Mursalâh wa Atsaruhâ fi Murûnah al-Fiqh al-Islâmi* (Beirut: Dâr al-Fikr, 2001), 98.

<sup>66</sup>Yusuf al-Qaradâwiyy, *al-Sunnah Masdar li al-Ma’rifah wa al-Hadârah*, 49-50.

*imâm* and leader of Muslims, such as deploying an army, using and distributing the treasure in *bayt al-mâl* for the entitled, collecting the treasure from lawful sources, appointing *qâdhi* and *wali*, dividing spoils of war (*ghanîmah*), establishing agreements, and other things that are *imâmah* and intended for public interest. *Sunnah* such as these are not for general *tasyrî*' purposes, so not anyone is permitted to follow them without the permission of the *Imâm*, and in no way is one allowed to do something as he wills on the account that the Prophet *Shallallâhu 'alaihi wa sallam*, himself performed or commanded it.

(3) The *sunnah* performed by Muhammad *Shallallâhu 'alaihi wa sallam* as trial (*qadhâ*') measures. Besides serving the functions as a *rasûl* who delivered the law of Allah, may He be praised and exalted, and as a leader of Muslims who governed and took care of every sociopolitical affairs of theirs, he also served the function of a judge who delivered rulings on various cases with evidence, oaths, or threats. As with the previous type of *sunnah*, these *sunnah* are not for general *tasyrî*' purpose, so it is not permissible for one to conduct something on the grounds that it is the stipulation of the Prophet *Shallallâhu 'alaihi wa sallam*, who imposed upon it an undisputable law. However, in this case, he is bound to the decision of the judge on it, while the Prophet *Shallallâhu 'alaihi wa sallam* acted as one whose measures had the nuance of adjudication.<sup>67</sup>

Thus, it is critical to know where the behavior of Muhammad *Shallallâhu 'alaihi wa sallam* was headed because what often happens is uncertainty of where the *sunnah*'s meaning is leaning to. Oftentimes, Muhammad *Shallallâhu 'alaihi wa sallam* is not seen in his capacities other than as a *rasûl* in performing, saying, or establishing something. In light of that, we can find that most *sunnah* are interpreted as *syara*' and *mandûb* although there is a possibility that something was delivered for purposes other than *tasyrî*'.

<sup>67</sup>Ibid., 50-51.

Many *sunnah* only constitute human character, behavior, actions, and experience. Besides, many *sunnah* that have the *imâmah* or *qadhâ*' nuance are interpreted to have general *tasyrî*' purpose. From this misunderstanding come legal disorder and overlapping of meanings.

An example of this is as follows. It is true that the Prophet *Shallallâhu 'alaihi wa sallam* said:

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ

“Whoever cultivates a dead land, it becomes his.”<sup>68</sup> To this *sunnah*, Muslim scholars respond in different ways as to whether it was delivered as a general *tablîgh* or *fatwa*, so it becomes a general law, that is, everyone is entitled to cultivate an empty land and then own it, either with the permission of the *imâm* or not, or whether it was delivered in the capacity of Muhammad *Shallallâhu 'alaihi wa sallam* as an *imâm* or leader, causing it not to be a general *tasyrî*' and, thus, no one has the right to cultivate an empty land without the permission of the *imâm*.<sup>69</sup>

For another example, the Prophet *Shallallâhu 'alaihi wa sallam* spoke to Hindun binti ‘Utbah when she was bringing a charge about her husband, Abu Sufyan, to him *Shallallâhu 'alaihi wa sallam* as narrated below.

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنَا يَحْيَى عَنْ هِشَامٍ قَالَ أَخْبَرَنِي أَنَّ هِنْدَ بِنْتَ عُتْبَةَ قَالَتْ يَا رَسُولَ اللَّهِ إِنَّ أَبَا أَبِي عَائِشَةَ سُفْيَانَ رَجُلٌ شَحِيحٌ وَلَيْسَ يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي إِلَّا مَا أَخَذْتُ مِنْهُ وَهُوَ لَا يَعْلَمُ فَقَالَ خُذِي مَا يَكْفِيكِ وَوَلَدِكَ بِالْمَعْرُوفِ

“Abû Sufyân is a miser. He does not give what is sufficient to me and my children,” complained Hindun. Then, the Prophet *Shallallâhu 'alaihi wa sallam* said, “Take what is sufficient for you and your children, and the amount should be just and reasonable.”<sup>70</sup> Muslim scholars are in disagreement regarding the *dalâlah* of this

<sup>68</sup>al-Bukhâriy, *Sahîh al-Bukhâriy*, Juz VIII, 144.

<sup>69</sup>This matter is also explained in the *Kitab Ihyâ' al-Mawât*. The first school of thought adhered by the majority of *fuqahâ*', while Abu Hanifah subscribed to the second school of thought. See al-Qaradâwiy, *al-Sunnah Masdar li al-Ma'rifah wa al-Hadârah*, 51.

<sup>70</sup>al-Bukhariy, *Sahîh al-Bukhâriy*, Juz XVI, 448.

*sunnah* as to whether it was delivered as a general *tabligh* or *fatwa*, so that one who feels that he or she does not receive what he or she is entitled to may take from someone else who keeps his or her entitlement without the knowledge of this someone or whether it was delivered as a judicial case, so one may not take his or her entitlement or the like – due to the difficulty taking – except through a judicial process.<sup>71</sup>

### Camel Urine as a Medicine: A Case Study of *Sunnah Ghair Tasyri'iyah*

A factual case in point regarding the differing types of understanding of the *ummah* on Prophetic *sunnah*, as to whether they are for *tasyri'* purpose or not, is the recently heating disagreements and controversies,<sup>72</sup> particularly those taking place via such social media as WhatsApp and the like, surrounding the pros and cons of the use of camel urine as a medicine, which is based on the following Prophetic *hadith*:

عَنْ قَتَادَةَ عَنْ أَنَسٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ نَاسًا اجْتَوَوْا فِي الْمَدِينَةِ فَأَمَرَ هُمُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَلْحَقُوا بِرَاعِيهِ - يَعْنِي الْإِبِلَ - فَيَسْرُبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا ، فَلَحَقُوا بِرَاعِيهِ فَشَرِبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا ، حَتَّى صَلَحَتْ

“Narrated Qatadah from the companion Anas, may Allah be pleased with him, that some people in Medina were complaining about their sickness. Hearing their complaint, the Prophet Muhammad Shallallahu ‘alaihi wa sallam then directed them to a camel shepherd to drink the milk and urine of the camels. They

<sup>71</sup> Among *fuqahâ* this matter is known as *zafir*. That is, when one is entitled to others and he or she has the capability to take his or her belongings of the same type or value as the belongings of those people, is he or she allowed to take those belongings? On this matter Muslim scholars are of different opinions. Some scholars allow it regardless of whether the items taken are his or her right of the same type not, without the knowledge of those other people or not, under the condition that this taking should not cause *fitnah* and malignance. Some others, on the other hand, are against it. Some scholars provide a detailed explanation of this matter. al-Qaradâwiy, *al-Sunnah Masdar li al-Ma'rifah wa al-Hadârah*, 52-53.

<sup>72</sup> Read Johar Arifin, “Pendekatan Ulama Hadis dan Ulama Fiqh dalam Menelaah Kontroversial Hadis”, *Jurnal Ushuluddin* XXII, no. 2 (2014): 148.

followed his command and, as a result, they regained their health”<sup>73</sup>.

On the basis of the literal (*harfiyyah*) sound, without attention to the historical context, some Muslims have a conviction that camel urine is an efficacious medicine.<sup>74</sup> Some others are of view that drinking the urine of living things, including camel, poses a considerable risk, as medically, urine is metabolic waste of the body potentially containing bacteria or poisons, which unquestionably pose a great danger to the health of the human body.<sup>75</sup>

Moreover, most Muslim scholars declare the urine of living things, including camel, as *najis*, although a different view of some *mujtahid*, like Mâlik and Imâm Ahmad, regarding the purity of the urine of animals whose flesh is allowed to eat exists. In the book *al-Fiqh al-Islâmi wa Adillatuhu*, Wahbah al-Zuhaili states:

بولُ الحيوان المأكول اللحم وفضلاته ورجيعه: هناك اتجاهان فقهيان: أحدهما القول بالطهارة، والآخر القول بالنجاسة، الأول للمالكية والحنابلة، والثاني للحنفية والشافعية (الفرق الإسلامي وأدلته).

“With regard to animals whose flesh, as well as other metabolic waste, is lawful to consume, Muslim scholars are split into two in their legal view. The first one declares its purity, while the second does its impurity. The first one is the legal view of Mâliki and Hanbali, while the second is of Hanafi and Syâfi’i.”<sup>76</sup>

This is supported by Ibnu Hajar in *Fathul Bari*:

وذهب الشافعي والجمهور الى القول بنجاسة الأبول والأرواث كلها من مأكول اللحم وغيره

<sup>73</sup> al-Bukhariy, *Sahih al-Bukhâriy*, 781.

<sup>74</sup> Sulastrî Chaniago, “Fikih dan Kesehatan: Tinjauan terhadap Hukum Terapi Urin”, *JURIS* 10, no. 2 (2011): 162-169.

<sup>75</sup> Fitri Yeni M. Dalil, “Hadis-Hadis tentang Farmasi: Sebuah Kajian Integratif dalam Memahami Hadis Rasulullah”, *Batusangkar International Proceeding*, 15-16 Oktober 2016, 309-326.

<sup>76</sup> Wahbah al-Zuhailiy, *al-Fiqh al-Islâmiy wa Adillatuhu* (Beirut: Dâr al-Fikr, 1428), 333.

“Imam Syâfi’i and the majority of Muslim scholars are of view that the urine and excrement of animals, either ones whose flesh is lawful to consume or ones whose flesh is not, is najis”.<sup>77</sup>

The next question is how we should understand the Prophetic *hadîth* instructing the use of camel urine as medicine above. To answer this question, we may identify the right attitude by analyzing the *fatwa* of a *mufti* from al-Azhar, Egypt, Athiyyah Syaqr, in the book *Fatâwa al-Azhar*, in which he states:

أما التداوى بالنجس غير الخمر، وتناول النجس حرام، فقد قال العلماء: إنه لا يجوز إلا عند الضرورة، أما عند الاختيار وتوافر الدواء الحلال فلا يجوز

“Using something that is najis, other than khamr, as a medicine, including consuming it, is haram. The ulema hold that taking medication with something that is najis is not permissible except in a compelling emergency. Under a normal condition and in the presence of halal medicines, taking medication with something that is najis is haram”.<sup>78</sup>

The opinion of the *mufti* above is clearly consistent with the commandment of Allah, may He be praised and exalted, in *surah* al-Baqarah verse 173, stating that Allah, may He be praised and exalted, set the boundaries of what is prohibited we must never transgress except in emergencies.

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخَنزِيرِ وَمَا أُهِلَّ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

“He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit],

there is no sin upon him. Indeed, Allah is Forgiving and Merciful”.<sup>79</sup>

Based on the description and explanation above, it can be concluded that the advice of the Prophet *Shallallâhu ‘alaihi wa sallam* in the *hadîth* above to drink camel urine as a medicine must be understood in the right context, namely in an emergency with no medicine other than camel urine available.<sup>80</sup>

Back to the main theme of this writing, there is a possibility that certain Prophetic *sunnah/hadîths* are better understood based on the textual (explicit) dictum. But at times, some others are better understood contextually (while capturing their implicit message). Textual understanding and implementation of a *sunnah* is preferred if it, after being related to the sides relevant to it (e.g., the background of event), still requires understanding according to what is written in the text of the *sunnah*. On the other hand, contextual *sunnah* understanding and implementation is preferred if “behind” the text of the *sunnah* lies a strong indication requiring that such *sunnah* be understood and implemented not as written.<sup>81</sup>

Thus, it can be reconfirmed that Prophetic *sunnah* can be broken down into two, namely *sunnah tasyri’iyyah* (ones containing *sharia*, so it is mandatory to observe such *sunnah* as he *Shallallâhu ‘alaihi wa sallam*, delivered them in his capacity as a *rasul* and as a *mufti* who was guided by Divine revelation) and *sunnah ghayr tasyri’iyyah* (ones delivered by the Prophet *Shallallâhu ‘alaihi wa sallam* not for the promulgation of religious law as they were based on his human reasoning and *ijtihad*). It is beyond question that the *sunnah* of the latter type should not be understood in a *harfiyah* and textual

<sup>79</sup>Q.S. al-Baqarah: 173.

<sup>80</sup>Rahmawati, “Studi Pendekatan Hadis-Hadis tentang Berobat dengan Benda-Benda Najis atau Haram”, *Al-Hurriyah* 16, no. 2 (2015): 93-104.

<sup>81</sup>Zainul Arifin, “Asbab Wurud al-Hadits dalam Memahami Hadis Ahkam”, *de Jure: Jurnal Syariah dan Hukum* 3, no. 2 (2011): 184-196.

<sup>77</sup>Ibn Hajar, *Fath al-Bâri* (Cairo: Dâr al-Kutub al-Arabiyyah, 1431), 562.

<sup>78</sup>Athiyyah Syaqr, *Fatâwa al-Azhar* (Cairo: Dâr al-Buhûth al-Ilmiyyah, 1430), 444.

manner.<sup>82</sup> Contrarily, they should be understood contextually lest ahistorical understanding that is inconsistent with the dynamics of world development happens as is the case of the use of camel urine as a medicine.<sup>83</sup>

## Conclusions

Most *sunnah* – sayings, acts, or *taqrîr* – are delivered for *tasyrî* purposes and obliges following. Some *sunnah* were not delivered for *tasyrî* purposes and no obligation to follow these *sunnah*. In order to properly sort out the *sunnah*, a good understanding of the status played by the Prophet Muhammad was needed when the *sunnah* occurred (as *rasûl*, *mufî*, judge, community leader and person).

The results identified that the advice of the Prophet to drink camel urine as a medicine is categorized as *sunnah ghayr tasyrî'iyah*. The *hadîth* must be understood in the emergency context with no medicine other than camel urine available. This conclusion is supported by the opinion of the majority of Moslem scholars that taking medication with something that is *najis* is not permissible, except in a compelling emergency. Under a normal condition and in the presence of *halal* medicines, taking medication with something that is *najis* – like camel urine – is *harâm*.

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<sup>82</sup>Rakhmawati Zulkifli, “Moderasi Pemahaman Hadis dan Hukum Islam Menurut Al-Qaradhawiy”, *el-Buhuth* 1, no. 1 (2018): 41-55.

<sup>83</sup>Osama A. Alkhamees, Saud M. Alsanad, “A Review of the Therapeutic Characteristics of Camel Urine”, *African Journal of Traditional, Complementary and Alternative Medicines* 14, no. 6 (2017): 120-126.

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