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Madinan "*Amal*" And Living *Sunna*: A Conceptual Comparison; Islamic Jurisprudence

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ABSTRAK

Asal usul hukum Islam secara eksplisit dinyatakan dalam banyak sumber prinsip-prinsip yurisprudensi (Usul-fiqh) yang ortodoks. Pada awal abad kedua puluh, para sarjana Barat, terutama Joseph Schacht, terlibat dengan sungguh-sungguh dalam mempelajari asal-usul dan evolusi yurisprudensi Islam, serta mengembangkan banyak teori dalam prosesnya. Dari kajian sejarah terhadap sumber-sumber Mezhab fiqh awal seperti Muwatta, muncullah istilah Living Tradition atau Living Sunnah yang menjadi kontinum hukum Islam. Karya ini memanfaatkan materi sumber dari berbagai sumber Islam untuk melakukan perbandingan konseptual antara "Madinan amal" dan "Living Sunnah". Menghidupi Sunnah mengandung arti "amal" dalam cakupan yang lebih luas. Sunah yang hidup sengaja diturunkan dari pengertian "amal" untuk memberikan otoritas hukum terhadap praktik, kebiasaan, atau budaya apa pun yang telah ditetapkan suatu masyarakat, meskipun hal tersebut bertentangan dengan teks, selama hal tersebut lolos uji kejijikan dan kebijakan publik. Meskipun konsep-konsep tersebut tidak diterima secara mutlak sebagai sumber hukum Islam, namun konsep-konsep tersebut memberikan indikasi kuat akan keniscayaan lokalisasi ijtihad dan fatwa.

Keywords
Madinan amal, Living Sunna, Muwatta, Imam Malik, Joseph Schacht.

ABSTRACT

The origin of Islamic law is explicitly stated in many orthodox resources of the principles of jurisprudence (Usul-fiqh). At the dawn of the twentieth century, Western scholars, notably Joseph Schacht, engaged fervently in studying the origins and evolution of Islamic jurisprudence, advancing numerous theories in the process. From the historical studies of the sources of the early fiqh Mezhab such as Muwatta, the term Living Tradition or Living Sunna emerged into the continuum of Islamic law. This work draws on source material from different Islamic resources to run a conceptual comparison between "Madinan amal" and "Living Sunna". Living Sunna implies "amal' in a wider scope. Living sunna is purposefully derived from the understanding of "amal" to give legal authority to any established practice, custom, or culture of a people, even if it is against the text, as long as it passes the repugnancy and public policy tests. Although the concepts are not absolutely accepted as sources of Islamic law, they give a strong indication of the inevitability of localization of ijtihad and fatwa.. .

INTRODUCTION

Undisputedly Islamic jurisprudence takes its source from the glorious Quran which embodies direct revelation from Allah to His messenger. And of course, the Messenger of Allah who functioned as the link between Allah and His creatures interpreted, illustrated, applied, and reiterated the messages contained in the glorious Quran. In addition to these, the messenger of Allah is authorized to legislate and enact some rulings and laws which are not primarily contained and mentioned in the Quran. There is inveterate consensus among the scholars about the incontestable authority of the Messenger of Allah in interpreting and legislating the law. This is in the light of the established doctrines as it is stated in the Quran "*And whatever the Messenger has given you – take; and what he has forbidden you – refrain from*" (al-Hashr 59/7_

As such Prophet Muhammad is the quintessence of the length and breadth of the messages of the glorious Quran, he is thereby considered the most authoritative model for his companions and the subsequent generations of Muslims to emulate and as well as it's having normative value for the setting of legal antecedents and law explication purposes (Ansari, 1992). The prophet discharged his functions vis-a-vis the Quran via his saying, actions, and tacit approval of actions emanated from his companions. To explain his practices, saying, and approval, scholars used various terms such as *sunna*, *hadith*, etc. Consequently, sunna or hadith gained unquestionable second status as the primary source after the Quran in Islamic jurisprudence. In addition to these majority of scholars also considered *ijma* (consensus) and *qiyas* (analogy) as other primary sources of sharia (Ali, 1995).

However, in addition to the aforementioned primary sources, different schools of thought based their principles of Islamic jurisprudence on some other sources. For instance, Imam Malik (d. 795) who lived in Madinah throughout his life, gave *amal ahlil Madinah* (Medinan amal) a special recognition in the premises of legislating laws. He preferred it to *khabar al-wahid* (solitary reports) in many jurisdictions where there is a contradiction. He equalizes it with *mutawatir* reports (mass-transmitted) (Ahmad, 2017). He often said after his submission on some issues "this is what is agreed upon among us" (Muhammad, 1984) referring to the established practices of Madinans. Nevertheless, there are some aspects of the

nature of the concept of *amal ahlil Madinah* that are not clearly understood. This is due to lack of clear elucidation vis-à-vis the nature and criterion of *amal ahlil Madinah* by Imam Malik himself. Therefore, it is not clear whether it is to be considered *Sunnah* or *ijma* (consensus) of Madinans. Due to this ambiguous essence, it has been met with much criticism from different scholars who viewed it from different perspectives.

On the other hand, Joseph Schacht (d. 1969) who followed the idea of Ignaz Goldziher (d. 1921), in an attempt to trace the origin of Islamic law and in an effort to conceptualize and distinguish the Sunnah from the hadith, took alternative approaches to arrive at the concept of "Living Tradition" or "Living Sunna". This indeed opened a new phase in the field of hadith studies in the West. In the same context, a Muslim-born Fazlurrahman (d. 1988), who lived in the West, postulated a similar insight and classified the Sunnah into two namely: "Nabawi sunna" and "living sunna" (Fazlurrahman, 1984).

Therefore, this study sheds more light on the concept of "Madinan amal", as well as relates it to the concept of "Living Sunna". In the end, a precise comparison and contraction point from the two concepts is divulged.

1. BETWEEN SUNNA AND HADITH

In a general sense, the term *Sunna* is said to designate "the Traditions of the Prophet" (Hasan, 1968) Nevertheless, the *Sunna* may be used to refer to the practices of the *Sahabah* (the Companions of the Prophet), or the practices pf the *Tabiun* (the followers of Sahabah), regardless whether these practices were taken from the Quran or from the *Sunna* of the Prophet, or from their own personal *ijtihad*. This was based upon the fact that their practices fundamentally stemmed from the Sunna of the prophet or a consensus agreed upon by them or the Caliphs (Ridaat, t.th). Imam Malik and Imam Ahmad, considered the *fatwas* of the Companions, part of the Sunna of the Prophet (Rifaat, t.th). Apart from etymological meaning, Sunna refers to different meanings depending on the context, whether used in the sense of the practice of a people or the behaviour of an individual, it always has a normative element. It is this quality that distinguishes it from other synonyms (Ahmad, t.th). However in the context of Islamic Law, the Sunna of the Prophet basically refers to

his normative practice or model behaviour (Ali, 1980). Although, Muhammad Yousuf Guraya remarks that the term "*Sunnatu al-Rasul*" (the Sunna of the Prophet) as such does not occur in the Qur'an; and it is not easy to ascertain with certainty that the Prophet used the term himself, rather different but close terms such as *uswatun hasanah* (an excellent model) *ittiba` al-Rasl* (following of the Prophet); ita'atu al-Rasul (obedience to the Prophet); etc were used. These terms, particularly the term *uswatun hasanah*, categorically bear the meaning of the Sunna (Muhammad, 1972). Guraya finally expresses his incredulity when he says " …the absence of the term Sunnah al Rasul as such from the Quran and the prominence it later gained in Islamic jurisprudence is in itself a remarkable phenomenon (Guraya, t.th).

In the same veın, Hadith originally implied, "narrative", "story", "speech" or "news" (Ridaat, t.th). But just like the Sunna, the term "Hadith" later acquired a specific status to designate any relation to the word, action, or reaction of the Prophet Muhammad. Similarly, mentioning the term Hadith in the Qur`an is never in a way that clearly or tacitly refers to it as a saying of the Prophet or as a source of law, or as guidance to follow. In fact, the Qur'an clearly indicates that it is the only 'hadith' to be followed (Dixon, 2022). However, specifying the Hadith with what the sayings and actions of the Prophet began during his lifetime. This is categorically expressed in a hadith reported by Bukhari in his Sahih: Abu-Hurayra asked: "O Allah's Messenger! Who will be the luckiest person that will gain your (Shafa`at) intercession on the Day of Resurrection?" Allah's Messenger replied: O Abu Hurayra! "I have thought that none will ask me about this Hadith before you as I know your longing for the (learning of) Hadiths" (Bukhari, t.th).

Although, Hadith and Sunna are used interchangeably. But it will be more accurate to uphold that Hadith and Sunna are two different terms entailing different meanings, Hadith is the account of the behaviour of the Prophet, while Sunnah is the law inferred from this account. In other words, Hadith is the "carrier' and "vehicle' of the Sunna. Sunna is contained in Hadith (Naqvi, t.th).

Irrefutably, the classical Muslim scholars and those who follow their paths are of the consensus that the Sunna is the second origin of Islamic Law after the Qur`an (Dutton, 1993). They never doubted its authority in giving and explaining the law.

The apple of discord always lied in the level of the authenticity of a certain hadith. For instance, in the hadith of "asking permission to enter" Umar ibn al-Khattab asked Abu Musa al-Ashari to come with the witnesses to confirm the saying of the Prophet; "ask permission to enter three times. If you are given permission, then enter. If not, go away" (Malik, 1768). This act from Umar indicates purely how cautious early Muslims were in terms of the authenticity of the hadith rather than its authority in Islamic jurisprudence. To remove any form of rancour and bitterness from the mind of Abu Musa al-Ashari, Umar then said, "I did not suspect you, but I feared lest people forge sayings of the Messenger of Allah, may Allah bless him and grant him peace." (Muwatta, 1768).

On the other hand, the twentieth century saw serious efforts of some western scholars to completely dismantle Islamic jurisprudence from one of its fundamental sources namely, hadith. In 1848, Gustav Weil (1808-1889) and Aloys Springer (1813-1893) intensified these efforts by questioning the authenticity of Sahih Bukhari. They boldly suggested that European scholars should unhesitatingly discard at least half of Sahih Bukhari and concluded that: "many of hadith material cannot be considered authentic" (Khan, 2016). However, in Europe, the modern Islamic studies began with Ignaz Golziher (Khan, t.th), who "penetrated where others were afraid to tread" (American, 1922).

Nevertheless, Joseph Schacht built upon the work of his predecessors and delved even deeper into challenging the core sources of Islamic jurisprudence. Norman Calder, who largely agrees with Schacht's fundamental approach, describes these "revolutionary achievements" by Schacht as follows:

Joseph Schacht, following the methodological and historical positions of Goldziher, in his study of early Muslim jurisprudence (1950), broke the historical link between hadith and fiqh. He is against the implications of the Muslim hermeneutical tradition the structures of fiqh were initially independent of (and so, in time, provoked) the major corpus of hadith literature (Norman, 1993). In contrast, Harald Motzki, one of the prominent critics of Schacht's views, describes his work as "a reversal of traditional historiography and a severance of the direct connection between sunna and fiqh" (Maghen, t.th).

2. MADINAN "AMAL"

As it is previously elucidated, all Sunni Muslims are of agreement on the authority of Sunna in Islamic jurisprudence. It is the second of the twin cornerstones upon which the entire structure of Islamic law is constructed (David, 1978). They both signify the primary sources of fiqh. However, there is a misconception regarding the nature, scope, and definition of the Sunna. For instance, the Hanafis, Shafi'is, and Hanbalis efficiently equate the Sunna with the hadith (Dutton, 1996). Conversely, Imam Malik (d. 795) and Imam Ahmad (d. 855), regarded the fatwas of the Companions, as part of the Sunna (Rifaat, t.th). Similarly, the traditional Maliki school of thought even expands the scope to include "amal", i.e. the practice inherited from the people of Madina, which is perceived as a more dependable source of the Sunna, and therefore higher than the *ahad* (solitary report) hadith (Mustafa, 1982).

The word "amal" simply means work, behaviour, and action based on the will. Here, the point of our discussion is only the relationship between "amal" and the Sunna within the framework of meaning. In this context, it can be said that there are general and specific relationships between the term Sunna and "amal". The two denote both the ordinary practice and the action of an individual or group, but the meaning of normativity in the Sunna is broader than that of "amal". Hence, it can be concluded that literally, all Sunnahs are "amal", but not all "amal" are Sunna. As a matter of fact, when Madinan amal is mentioned, it refers to the jurisprudence and practices on which the scholars and peoples of Madinah were allied from the time of the Prophet to the generation of *tabiu't-tabiin (the followers of the sahabas` followers)* (Dunya, 2019). In another word "amal" is a composite term whose basic elements are Qur`an and Sunna, dating from the period of the Prophet; but there is also the added element of the *ra'y* of later authorities, as this *ra'y*, in turn, becomes assimilated into the existing "amal" (Dutton, t.th).

The opinion of accepting the practice of the people of Madinah as a shred of evidence and giving it a special position to their consensus on a legal issue was not put forward by Imam Malik. To this extent, it is narrated that his teacher, Rabi`ah Ar-Ra`yi (d. 753) , said, "I think the report of a thousand people from a thousand is better than the report of one person from another." (Abu, 1965.) Malik (d. 795)

reported to have said: "hadith used to be narrated to some men of knowledge and the *Tabiuun*, and the would say: We are not oblivious of this (hadith), but the "amal" goes on the contrary (Muhammad, 1946)." This is a clear indication that the whole idea did not emanate from Malik himself, he rather built on the already established attitude of the predecessor scholars.

Later on, Maliki Mezhab, made Madinan amal an authoritative and important source of Islamic Law. It is an element that distinguishes it from other schools of thought. It is accepted as binding evidence by Imam Malik and his followers. In this regard, Imam Malik wrote a later to al-Layth b. Sa'd (d. 791), where he puts great trust in the amal of the people of Madinah, and strongly condemns those who take a different path from their paths (Muhammad, t.th).

Significantly, it is necessary to clarify the nature of this Madinan amal. Is it *ijma (consensus)* or common sunna? In this context, in al-Muwatta the most important book of the Maliki school of thought, expressions like: "*al-amrulladhi la ikhlafe fihi 'indenâ*" (our indisputable stand), "*al-amru'l-mujtama' aleyh* " (the consensus stand), etc. are used to express Madinan amal. Some scholars, especially those who are not Malikis thought that Madinan amal is considered as the consensus of the people of Madinah by Malikis, and therefore they discuss it under the title of "consensus" in their works (Dunny, 2019). Also the basic chronological difference between 'amal originating from the Prophet and 'amal originating from later authorities is manifest from Malik's letter to al-Layth b. Sa'd, where he intensively speaks about the Companions and the Successors following the Prophet's sunna where the Prophet had established a sunna, and exercising their own ijtihad where there was no established model (Dutton, t.th). The same distinction is well echoed in the writings of the later scholars such as Kadi Iyad and Ibn Taymiyya who speak more specifically of Madinan ijma` rather than Madinan amal in a more detailed sense, as such, they come up with two broad categories namely: those that can be traced back to the time of the Prophet (ijma'/'amal naql) and those that are derived from later authorities (ijma'/'amal ijtihadi) (Dutton, t.th).

In a nutshell, in Muwatta' Medinan 'amal is described as an uninterrupted development of the 'practice' of Islam from its early beginning in the Qur'an, through the sunna of the Prophet and the itihad of Sahaba (Companions), right through the

period of the early Umayyad caliphs and governors and other authorities among the *tabiun* (the followers of sahabah) and those who followed them up to Imam Malik (Harald, 2015).

3. LIVING SUNNA

"Living sunna", or "living tradition of schools" is a concept used intensively by Joseph Schacht to explain his view on the origin of Islamic law. Schacht asserts that sunna represents the living tradition established by earlier schools of fiqh, which can manifest either as "tradition" or as the "amel (practice) agreed upon by the community" (amel, al-amr al mujtama alaih) (Mustafa, 2005).

Schacht concentrates on the entirety of Islamic jurisprudence, including its origins, development, and the authenticity connected to the emergence of the sunna. His theories on the origins of Islamic jurisprudence focus on two main objectives, as outlined by Rafael Talmon (Rafael, 1987):

a. to establish a critical historical account of the early development of Islamic jurisprudence. Schacht argues that the origins of fiqh should not be traced back to the era of the Prophet in the 7th century, but rather to various sources of juristic thought, including the customary practices and administrative regulations of the Umayyad administration, as well as the letter and spirit of the Qur'an and other recognized Islamic religious norms (Schacht, 1950)." And from these several local schools emerged in various centres of the early Islamic Empire, of which we know about the Iraqi, Hejaz, and Syrian schools (Talmon, t.th). In the same perspective, Harald Motzki submits that:

Schacht tried, through an analysis of the growth of traditions, to prove the theory that the "living tradition" of the ancient schools-originally anonymous and based primarily on independent reasoning (ra`y) was disturbed and influenced by the imposition of prophetic traditions ... no earlier than the middle of the second [Islamic] century (Meghen, t.th).

This theory is an audacious attempt to sever the direct link between Islamic jurisprudence and the Sunnah.

b. "to explain the irreconcilable contradiction between his description, based on a critical approach, and the traditional account of the development of fiqh"

(Meghen, t.th). Schacht concentrates on "the growing self-awareness" of the local schools (Talmon, t.th). He adopted several techniques such as the analysis of *isnad*, use of *conclusio e silentio* (that is to prove that a particular doctrine does not exist at a particular moment) (Meghen, t.th), the study of the development of legal terminology, etc to conclude that there had not been any authentic hadith of the Prophet with legal matters at all (Forte, 2010).

Schacht concludes that Islamic law was designed and developed by the newly forming schools of law, primarily through ra'y, but mostly by consensus. Another Sunna called the "living tradition of the schools" is fashioned through the doctrines of the schools of thought" (Forte, 2010).

Fazlur Rahman follows the view of Schacht and classifies the Sunna in to two categories namely: "ideal or Nabawi Sunna " and "living Sunna". He defines "ideal/ Nabawi Sunna" as the established words and behaviours of the prophet; while Living Sunna is the accepted practice that a Muslim community agrees up within the frame of the ideal Sunna (Karatas, t.th).

He further explains that the "Living Sunna" is still an ongoing process that depends on Ijtihad and Ijma. Consequently, it falls exclusively within the jurisdiction of expert lawyers, who are the interpreters of the Prophet's Sunna and the architects of the Living Sunna (Fazlur, 1962). This development suggests that the decisions of judges and political leaders who are well-grounded in the knowledge of Islamic law and possess a high degree of intelligence may be allowed to have a stand in structuring the Living Sunna. He concludes that while the concept of the Living Sunna is not denied, there is a need for a firm and reliable methodology to underpin this Living Sunna (Rahman, 1962).

a. Popular Practice

The term "practice" seems to be the central point around which many contradictory concepts reported from Joseph Schacht revolve. This can be traced back to his extensive use of the same word in a different context as follows:

1. Schacht occasionally employs the term "practice" to denote "the common and administrative practices of the later Umayyad era," which evolved from the utilization of the ra'y method by the early official qadis or judges appointed by the Umayyad dynasty.. (Meghen, t.th).

2. Also, he uses the term in question to denote the "popular practice" or "recognized practice" (of the inhabitants of a given region? of the Muslims in general (Meghen, t.th).
3. The "idealized practice" that ultimately became the "living tradition" of the ancient schools of law (Meghen, t.th).
4. Schacht also uses "practice" to refer to "amal ahl al-Madinah" (the practices of Madinans) or "ijma' ahl al-madinah" the Medinan scholarly consensus which embodies a key source in Maliki school (Meghen, t.th).
5. Schacht uses the term "practice" to signify Pre-Islamic sunna " i.e jahiliyyah" (Meghen, t.th).

He acknowledges the pre-Islamic Arabian origins of numerous fiqh norms specifically the ones concerning inheritance law (Meghen, t.th). In contrast to the traditional principles of fiqh, Schacht also contends that the majority of Islamic law, along with its sources, originated from a process of historical development (Ahmad, t.th). He argues that before Shafi'i (d. 204/819), the legal schools of thought prioritized the 'living tradition' over traditions directly attributed to the Prophet (Mawlana, 2017). He alludes to the claim that the Prophet Muhammad was never seen as a lawgiver and he states: '*Generally speaking, Muhammad had little reason to change the existing customary law. His aim as a Prophet was not to create a new system of law* (Schacht, 1950)…

However, many scholars have criticized Schacht`s theories. Mustofa Azami, concludes that Schacht`s theories on the origin of the hadith and its development are false. He suggests that these theories stem from certain misunderstandings of the theories and terms formulated by classical scholars of hadith, as they clearly conflict with the historical realities of the early Islamic world (Ahmad, t.th). Azami criticizes Schacht's use of the e silentio method as 'unscientific' and merely consisting of 'unwarranted assumptions' (Chaudri, 2017). Among the Western scholars who disapprove of Schacht's theories is Harald Motzki, who raises concerns about Schacht's methodology and the limited sources he used to reach his conclusions (Chaudri, 2017).

CONCLUSION

In a simple term, it can be concluded that the concept of "Living Sunna" implies "Amal" in a broader sense. This is because Madinan amal is specifically talking about the authenticity of the practice of Madinans during a certain period of time while the concept of "Living Sunna" generalizes it. The historical studies of Madinan Amal and the principles of the jurisprudence of early Mezhab gave Schacht and co an insight into the possibility of making the practice of a community a strong source of Islamic law. Living sunna is deliberately derived from an understanding of "amal" to give authority to any established practice, custom, or culture of a people even if it is against the text, as long as it passes the repugnancy and public policy tests.

Also Living tradition is used to describe the level of reliance on certain principles laid down by mezhab before Imam Shafi`. This makes it applicable to two mazhab namely, Hanafi and Maliki out of the four popular schools of Sunni Muslims. As such it is seen as a wider concept than Madinan amal.

Although all the theories surrounding "Amal" and Living sunna may not be absolutely accepted, but they give a strong impetus to the necessity of localization of *ijtihad* and *fatwa*. In the same way, it also indicates that the door of ijtihad is ever opened to the scholars of a particular location to probe their acumen within the frame of "the sources of Islamic law (Quran and Sunna) to arrive at the befitting way of life of the community.

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