

Special Position of *Ashabah's* Heirs in the Sunni Islamic Jurisprudence of Inheritance: A Sociohistorical Approach

Akhmad Jalaludin^{1*}, Md Yazid Ahmad²

¹UIN K.H. Abdurrahman Wahid Pekalongan, Indonesia, E-mail: akhmad.jalaludin@uingusdur.ac.id

²Universiti Kebangsaan Malaysia, Malaysia, E-mail: yazid@ukm.edu.my

Abstract: This study discusses the relationship between the position of male relatives in relation to the heir, either directly or through a male lineage, and not through females (known as *'ashabah*) in Sunni jurisprudence, within the context of the Arab anthropological background. Sunni jurisprudence assigns a special position to *'ashabah*. Regardless of how distant the familial relationship of an *'ashabah* is to the heir, they are not excluded except by another *'ashabah*. This study employs a normative juridical approach with a sociohistorical and *ushul fiqh* perspective to explore the connection between the *'ashabah* system in Islamic inheritance law and the sociohistorical backdrop of Arab society during the development of Islamic jurisprudence by Sunni scholars, especially focusing on the kinship system. The findings indicate that the *'ashabah* system in the Sunni fiqh is an interpretation of the Qur'anic texts and Hadith, and that this interpretation is heavily influenced by the Arab kinship system, which is deeply rooted in a patrilineal local cultural context. The author argues that the association of the *'ashabah* system with the local cultural practices of Arab society conflicts with several inheritance principles in the Qur'an, such as the principle that men and women with the same degree of kinship should have equal inheritance rights, the principle of bilateral inheritance, and the principle of prioritizing closer relatives.

Keywords: *'ashabah*; heirs; Islamic inheritance law; Sunni Islam.

1. Introduction

In the Sunni Islamic jurisprudence of inheritance, heirs are classified into three groups based on the way they are inherited, namely *aṣḥāb al-furūd*, *'ashabah*, and *ẓawī al-arḥām*. *Aṣḥāb al-furūd* are the heirs who have the fixed portion. Whereas *'ashabah* are the heirs who do not have a fixed portion; they get the rest of the inheritance beyond *aṣḥāb al-furūd* portions, or they acquire the entire inheritance when there is no *aṣḥāb al-furūd* at all.¹ People who do not belong to these groups are categorized into the *ẓawī al-arḥām* group.

* Correspondence

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Sunni jurists classify *‘aṣabah* into three classes, namely *‘aṣabah bi nafsih*, *‘aṣabah bi al-gayr*, and *‘aṣabah ma‘a al-gayr*. This study only reveals the *‘aṣabah* of the first class because the second and third classes are not covered in a group of *‘aṣabah*, but *aṣḥāb al-furūd*.

The group of *‘aṣabah bi nafsih* or *‘aṣabah* is the true heir of *‘aṣabah*.² In other words, they are initially the heirs as *‘aṣabah*—inheriting the remainder with others rather than fixed shares—except in the case of the father and grandfather, who are included among the *‘aṣabah* and the *aṣḥāb al-furūd* (fixed share). Therefore, a group that is called *‘aṣabah* only is *‘aṣabah bi nafsih*.³

Sunni jurists agree that the heirs included in the *‘aṣabah* group are all males whose lineage to the heirs does not pass through a female. No female participants were included in this group. This clearly shows that the concept of *‘aṣabah* is highly patrilineal and favors male relatives from the male line.⁴ Regardless of how distant the relationship with the heirs is, as long as it does not pass through a female, an *‘aṣabah* (i.e., a male) can inherit. He can only be hindered by another *‘aṣabah* whose kinship relationship with the heirs is closer and cannot be impeded by relatives from other groups. This privilege is not possessed by *aṣḥāb al-furūd*, who can be hindered by *‘aṣabah* and fellow *aṣḥāb al-furūd*, nor is it possessed by *ẓawī al-arḥām*, who is undoubtedly hindered by both *‘aṣabah* and *aṣḥāb al-furūd*.⁵

The unique position of *‘aṣabah* aligns with the patrilineal kinship system prevalent in Arab society. In a patrilineal kinship system, kin group members include males and females whose lineage to their ancestors does not pass through a female. All males whose lineage to their ancestor did not pass through a female were members of the

¹ Syams al-Din Muhammad bin Muhammad bin al-Khathib Al-Syarbini, *Mughni Al-Muhtaj Ila Ma‘Rifāh Ma‘Ani Alfāz Al-Minhaj* (Beirut: Dar al-Kutub al-Ilmiyyah, 1994), 30.; Muhammad Syalabi, *Abkam Al-Uṣrah Fi Al-Islam* (Beirut: Dar an-Nahdah, 1977), 208.; Fatchur Rahman, *Ilmu Waris* (Bandung: Al-Ma‘arif, 1981), 339.

² Muhammad Abu Zahrah, *Abkam Al-Tirkatwa Al-Mawarits* (Kairo: Dar al-Fikr, 1963), 150.

³ ‘Abd Al-Hamid and Muhammad Muhyi Al-Din, *Abkam Al-Mawarits Fi Al-Syari‘ah Al-Islamiyyah ‘Ala Madzahib Al-A‘Immah Al-Arba‘Ah* (Kairo: Dar al-Tala‘i, 2010), 57.

⁴ Fadoua Ezzarhouni Amhaouch, “*El Derecho Sucesorio de La Mujer En El Islam y Sus Divergencias Con El Derecho Consuetudinario (Al-‘urf) y Secular.*,” *Anaquel de Estudios Árabes*, June 17, 2024, 1–21, <https://doi.org/10.5209/anqe.95692>.

⁵ Raja Ritonga, “The Concepts And Methods Of Dzawil Arham Heritage Calculation: Analysis And Practice,” *Nurani: Jurnal Kajian Syari‘ah Dan Masyarakat* 21, no. 2 (January 1, 1970): 159–74, <https://doi.org/10.19109/nurani.v21i2.8687>; Sadali Rasban, Adam Abdullah, and Aznan Hasan, “An Analysis of Residue Net Estate Distribution to Bayt Al-Māl in Singapore,” *ISRA International Journal of Islamic Finance* 12, no. 1 (April 1, 2020): 49–67, <https://doi.org/10.1108/IJIF-04-2019-0055>; Zahari Mahad Musa, “Agihan Faraid Melalui Kaedah Al-Radd (Pulangan Semula) Sebagai Mekanisme Kebajikan Waris Dan Amalan Di Malaysia,” *Malaysian Journal of Syariah and Law* 8, no. 2 (December 7, 2020): 1–14, <https://doi.org/10.33102/mjsl.vol8no2.263>.

kin group, whereas males and females whose lineage to their ancestor passed through females were not considered members of the kin group.⁶

Western Islamic jurists view the concept of *'aṣabah* in Islamic law as merely taken from pre-Islamic Arabic customary law. For example, Smith considers *'aṣabah* a term derived from pre-Islamic Arabic customary law.⁷ However, unlike Brunschvig's study showed that pre-Islamic Arabic *'aṣabah* was not identical to *'aṣabah* in Islamic times. He stated that the principle underlying pre-Islamic Arab inheritance was not the principle of "direct descent" as *'aṣabah* in Islamic jurisprudence but the principle of seniority.⁸

Islam introduced entirely new teachings and abolished all customary laws applied in Arab society. Ali Shodiqin divided the Qur'an's response to the Arabic tradition into three models: accepting and perfecting (*taḥmīl*), changing/reconstructing (*tagyīr*), and prohibiting or stopping the enactment (*taḥrīm*). Furthermore, Abdul Sattar classified prophet Muhammad's response to the Arabic tradition into five models: total accommodation, particular accommodation, adjustment and modification, and total rejection.⁹

As a result, the view that the *'aṣabah* concept is entirely based on pre-Islamic Arab customary law is expected. Indeed, it is necessary to study whether *'aṣabah* is a concept adopted by Islam from the Qur'an and ḥadīth or is adopted by jurists when developing their jurisprudence. This is because the concept of *'aṣabah* is very patrilineal, while the Qur'an gives inheritance rights to relatives of two parties, male and female: to son and daughter, to father and mother, to brother and sisters, both siblings, and to father and mother. Overall, the Qur'an tends to the bilateral kinship system. In consequence, this study makes an in-depth critical analysis to determine the relationship between the position of male relatives who have a direct relation to the heirs or through man and

⁶ Alessandra Persichetti, "La Parenté Rahim," *L'Homme*, no. 169 (January 1, 2004): 89–126, <https://doi.org/10.4000/lhomme.253>. Diane E. King, "Patriliney and Modern States in the Middle East," in *State Formations* (Cambridge University Press, n.d.), 305–16, <https://doi.org/10.1017/9781108241380.021>. "Asabiyya' as a Concept, Methodological Principle of Analysis of the Historical Process and the Theory of State Formation: Ibn Al-Azraq," n.d., <https://journals.rudn.ru/philosophy/article/view/39816>. Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *Juris (Jurnal Ilmiah Syaria)* 21, no. 2 (2022): 207–19, <https://doi.org/10.31958/juris.v21i2.7495>. Nebil A. Husayn, "Aḥkām Concerning the Ahl Al-Bayt," *Islamic Law and Society* 27, no. 3 (September 10, 2019): 145–84, <https://doi.org/10.1163/15685195-00260A11>.

⁷ David Stephan Powers, *Peralihan Kekayaan Dan Politik Kekuasaan* (Yogyakarta: PT LKiS Pelangi Aksara, 2001), 111.

⁸ David Stephan Powers, *Peralihan Kekayaan Dan Politik Kekuasaan* (PT LKiS Pelangi Aksara, 2001).

⁹ Abdul Sattar, "Nabi, Respons Nabi Terhadap Tradisi Jahiliyyah: Studi Reportase Hadis," *Theologia* 28, no. 1 (2017): 198–206.

without women (*‘aṣabah* or male agnatic relatives) in the Sunni Islamic jurisprudence of inheritance in the Arab anthropological background.

2. Methods

The research method used normative juridical with the *uṣūl fiqh*¹⁰ and sociohistorical approaches to examine the relationship between the concept of *‘aṣbah* in Islamic jurisprudence and the Arab kinship system by considering the influence of socio-cultural changes¹¹¹² and the reality of the unity of time, culture, group, place and environment that influence the thoughts, beliefs, events, and teachings of society. The research data sources were primary and secondary manuscripts on the heirs of *ashbah*. The primary manuscripts include books on fiqh from the schools of fiqh, mainly from Sunni Islamic jurisprudence. Secondary manuscripts include works by non-*madzhab* authors who describe or criticize the thoughts of the schools of fiqh, especially those concerning the provisions of the patrilineal inheritance law. The research steps include: (1) describing the main ideas that are the object of the research, (2) discussing or interpreting the main ideas, (3) criticizing the interpreted main ideas¹³, (4) conducting analytical studies, and (5) drawing conclusions.¹⁴

3. Results and Discussion

Some Sunni jurists define *‘aṣbah* as heirs who are entitled to gain a portion of the amount that is not determined or the rest of *aṣḥāb al-furūd* portion. They stated that the actual *‘aṣbah (bi nafsih)* covers all male relatives whose kinship to the heir does not pass to a woman.¹⁵ The definition has two possibilities. First, there is no

¹⁰ Iwan Hermawan, *Ushul Fiqh Kajian Hukum Islam* (Hidayatul Quran, 2019); Duhriah Duhriah, “Pokok-Pokok Ushul Fiqh Qadhi Abu Ya’la Dalam Kitab Al-Uddah Fi Ushul Al-Fiqh,” *Ijtihad* 31, no. 2 (2019): 97–110.

¹¹ Ismail Ismail, “Eksistensi Ushul Fiqh Dalam Tafsir Realitas Sosial Dan Peranan Pesantren Dalam Menjaga Dan Mengembangkannya,” *Al Hurriyah: Jurnal Hukum Islam* 4, no. 1 (2019): 1–9, <https://doi.org/10.30983/alhurriyah.v4i1.1264>; Auffah Yumni, “Urgensi Ushul Fiqh Bagi Permasalahan Fiqh Yang Dinamis,” *NIZHAMIYAH* 9, no. 2 (2019).

¹² Nurul Djazimah, “Pendekatan Sosio-Historis: Alternatif Dalam Memahami Perkembangan Ilmu Kalam,” *Jurnal Ilmiah Ilmu Ushuluddin* 11, no. 1 (2016): 43–60; Syamsul Bakri, “Pendekatan-Pendekatan Dalam Islamic Studies,” *Dalam DINIKA, Journal of Islamic Studies*, 2014; Umi Sumbulah and Wilda Al Aluf, *Fluktuasi Relasi Islam Kristen Di Indonesia: Pendekatan Sosio-Historis* (UIN Maliki Press, 2015).

¹³ M Deden Ridwan, *Tradisi Baru Penelitian Agama Islam: Tinjauan Antardisiplin Ilmu* (Bandung: Yayasan Nuansa Cendekia, 2001), 68.

¹⁴ Ali Abdul Halim Mahmud and M. Deden Ridwan, *Tradisi Baru Penelitian Agama Islam: Tinjauan Antardisiplin Ilmu* (Bandung: Yayasan Nuansa Cendekia, 2001).

¹⁵ Syams al-Din Abu Bakr Muhammad bin Abu Sahl Al-Sarakhsi, *Al-Mabsuts* (Beirut: Dar al-Fikr, 2000), 150.; Muwaffaq al-Din Abu Muhammad bin ‘Abd Allah bin Ahmad bin Muhammad Ibn Qudamah, *Al-Kafi* (Jizzah: Hajar, 1997), 97.;

intermediary between *'aṣabah* and the heir, such as the son and father of the heir. Second, there is an intermediary between *'aṣabah* and the heir, but the person is male, like the grandson of the male line. If the intermediary is a woman, the heir omits *'aṣabah*. In this case, he becomes a marginalized relative, at least in terms of inheritance. He belongs to *the ḥawī al-arḥām* group, except for the brother of a mother (initially, the brother of the mother was included in the *aṣḥāb al-furūd*) because the scholars of the Companion generation asserted that their portion had been determined in al-Nisā': 12).

In Sunni Islamic jurisprudence, *'aṣabah* holds a strong position. Regarding their kinship relationship with the heirs, not passing through a woman, *'aṣabah* has the chance to inherit. They are more entitled to inherit and can exclude relatives whose relationship with the deceased is closer but passes through a woman (for example, grandchildren from a daughter). No one can exclude *'aṣabah* except another *'aṣabah* whose kinship with the deceased is closer. This privilege does not belong to women or men whose relationship with the heirs passes through women.

In Ja'fari's Islamic jurisprudence, this *'aṣabah* system is wholly rejected. According to them, the system of *'aṣabah* is influenced by the tradition of ignorance, which exalts men and eliminates women in terms of inheritance. In the Indonesian context, the *'aṣabah* system is rejected by Hazairin because it does not follow the Qur'an and is unsuitable for most Indonesians who embrace the bilateral kinship system.¹⁶ The law of inheritance of the Indonesian Religious Court no longer accepts this system of *'aṣabah*.

3.1 Origin of the *'Aṣabah Concept: Sociohistorical Approach*

The word *'aṣabah* is the plural form of the singular *'aṣīb*, although the Arabian people do not speak this singular word. They used to use the word *'aṣabah* for plural and singular, and it was renamed as *'aṣabāt*¹⁷. In etymology, *'aṣabah* means those who surround and protect.¹⁸

The word *'aṣabah* is a term that was known in Arab society before the arrival of Islam in the sense of a close relative (who is considered close) of a person that covers the

Yahya bin Abu al-Khayr bin Salim bin As'ad bin 'Abd Allah ibn Muhammad bin Musa bin 'Imran Al-'Imrani, *Al-Bayan Fi Fiqh Al-Imam Al-Syafi'i* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2002), 63.; Muhammad Amin Ibn 'Abidin, *Radd Al-Mukhtar 'ala Al-Durr Al-Mukhtar Syarh Tanwir Al-Absar* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2003), 516–17.; Mushthafa Syalabi, *Ahkam Al-Mawarits Bayna Al-Fiqh Wa Al-Qanun* (Beirut: Dar al-Nahdah al-'Arabiyah, 1978), 208.

¹⁶ Sakirman Sakirman, "Konvergensi Pembagian Harta Waris Dalam Hukum Islam.," *AL-'ADALAH* 13, no. 2 (2016): 161.

¹⁷ *Ibnu Abidin and Muhammad Amin, Radd Al-Mukhtar 'ala Al-Durr Al-Mukhtar Syarh Tanwir Al-Absar* (Beirut: Dâr al-Fikr, 1979).

¹⁸ Ibn Manzur, *Lisan Al-'Arab* (Kairo: Dar al-Ma'arif, n.d.), 2965 dan 2966; N.J. Coulson, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 2008), 29.

entire men who are connected to that person through a male person: relatives of the line (*ṭarf*) descent, parents, siblings, and uncles. Because the male relatives of the male line surround and appear to bind someone, they are called *‘aṣabah*.¹⁹

The *‘aṣabah* group in Arab society is a consequence of the patrilineal kinship system. In a society with a patrilineal kinship system, people belonging to a group of relatives are connected through men. A person with another person does not belong to a group of relatives if they are not connected through men. Consequently, a man who belongs to a specific group of relatives is a man who is connected through a man, not through a woman. If kinship is seen from a person (ego), the ego’s relatives are only men (and women) whose kinship with the ego is through men, not women. Alternatively, all men (and women) whose kinship with the ego through women is excluded from the group of relatives. Thus, a group of male relatives in Arabic society, referred to as *‘aṣabah* is necessary for the patrilineal kinship system. All men who belong to the kin group of ego are *‘aṣabah*, and conversely, *‘aṣabah* of ego are all men who belong to that group of relatives of that ego.

In old Arabic times, only adult men from the group of *‘aṣabah* could inherit. Restricting inheritance rights only to *‘aṣabah* was in exchange for their responsibilities within the patrilineal kinship system, where the security and survival of the family became their responsibility. They were accountable for protecting their relatives (especially children and women) from external threats and providing for them when the primary provider (husband or father) was absent. If someone passes away and leaves behind children, the *‘aṣabah* would act as guardians. Similarly, when a woman was to be married, the *‘aṣabah* was responsible for arranging the marriage.²⁰ Adult *‘aṣabah* were also responsible for paying the diyat, which is the compensation paid to the family of a murder victim.²¹

Considering these sociohistorical facts and the weakness of the ḥadīth on the *‘aṣabah* inheritance, it makes sense to say that the group of heirs *‘aṣabah* in Islamic inheritance law and the rules of priority that apply between them are taken over from the ancient Arab agnatic system.²² Western Islamic jurists view the concept of *‘aṣabah* in Islamic inheritance law as taken from pre-Islamic Arabian tribal customary law. Powers viewed at Smith, with his work *Kinship and Marriage in Early Arabia*, first published

¹⁹ Hisam Al-Din and Karim Zaki, “Al-Lughah Wa Al-Thaqafah: Dirasah Anthrolughawiyah Li Alfaz Wa ‘Ilaqat Al-Qarabah Fi Al-Thaqafah Al-Arabiyyah,” n.d., 336.

²⁰ Jawad ‘Ali, *Al-Mufashshal Li Tarikh Al-‘Arab Qabl Al-Islam*, V (Bagdad: Jami‘ah Baghdad, 1993), 491.

²¹ Al-Din and Zaki, “Al-Lughah Wa Al-Thaqafah: Dirasah Anthrolughawiyah Li Alfaz Wa ‘Ilaqat Al-Qarabah Fi Al-Thaqafah Al-Arabiyyah”; ‘Ali, *Al-Mufashshal Li Tarikh Al-‘Arab Qabl Al-Islam*.

²² Abid Hussain, *The Islamic Law of Succession* (Riyadh: Darussalam, 2005).

in 1885, was the first person to regard *'aşabah* as a term taken from pre-Islamic Arab tribal customary law.²³ Smith stated that the basic principles in pre-Islamic Arabian inheritance systems, even in Islamic inheritance law, determined the entire right of inheritance based on *al-hayy* or greater than the individuality of its members. He added that Muhammad ordered to give the rest to every male relative after the distribution of *al-furūḍ al-muqaddarah*. Smith states that when no heir or inheritance is left, the inheritance falls to the *'aşabah*.²⁴ In his conclusion on the law of Islamic inheritance based on the concept of *'aşabah*, Smith indirectly stated that the idea of *'aşabah* was taken from pre-Islamic Arabian customary law.

According to Powers, the adoption of the *'aşabah* concept from pre-Islamic Arabic tribal law has spread widely in Western intellectual discourse. In their view, not only the term *'aşabah* has been taken over from pre-Islamic Arabic tribal law but also its meaning. This underlies the beliefs of Western Islamic jurists, such as Marçais, Bousquet, and Coulson, about the possibility of reconstructing pre-Islamic tribal inheritance law by filtering it from Islamic inheritance law. However, Powers stated that the persistent view for 20 years met serious refutation. Brunschvig's study shows that the pre-Islamic Arabian *'aşabah* was not identical with *'aşabah* at the time of Islam. According to Brunschvig, as quoted by Powers, the principle underlying pre-Islamic Arabian inheritance is not the principle of "direct descent" as in Islamic *'aşabah* but the principle of seniority.²⁵

Brunschvig's statement, according to the author, does not contradict—and does not necessarily cancel—the views of the previous orientalist but complements them. As is well-known, in the pre-Islamic Arabian inheritance system, people who had the right to inherit were male relatives (*'aşabah*) who protected their family and group of relatives. Thus, inheritance practices at that time often showed that senior relatives inherited the deceased. Meanwhile, their children are not given an inheritance because they are not adults yet and live under the custody of senior relatives. The seniority principle in inheritance is rational in a patrilineal tribal society. In such a society, the leadership and responsibilities of a group of relatives rest with the senior male. In consequence, when the Qur'an gave inheritance rights to immature children, boys, and girls, the Arabs (the Companions) thought it strange and objective.²⁶ Granting inheritance rights to children is a departure from—and part of—the changes made by the Qur'an to—pre-Islamic Arabic inheritance.

²³ David Stephan Powers, *Peralihan Kekayaan Dan Politik Kekuasaan* (Yogyakarta: PT LKiS Pelangi Aksara, 2001).

²⁴ W. Robert Smith, *Kinsyip & Marriage in Early Arabia* (Netherlands: Anthropological Publications, 1966), 65–66.

²⁵ David Stephan Powers, *Peralihan Kekayaan Dan Politik Kekuasaan* (Yogyakarta: PT LKiS Pelangi Aksara, 2001).

²⁶ Abu Ja'far Muhammad bin Jarir Al-Thabari, *Jami' Al-Bayan 'an Ta'wil Ayi Al-Qur'an* (Kairo: Maktabah Ibn Taymiyyah, n.d.).

In addition to giving children absolute rights, the Qur'an makes them primary heirs. The inheritance ruling by the Qur'an begins by granting inheritance rights to children and making the children a factor that influences the rights and other portions of the heirs. Provisions regarding the rights and position of a child's inheritance are definite (*qat'i*) and are part of the Islamic inheritance system (including Sunni Islamic inheritance law). Thus, the seniority principle has been replaced by Islam with the direct descent principle.

However, the difference between the seniority principle in the pre-Islamic Arab inheritance system and the direct descent principle in the Islamic inheritance system does not negate the influence of the pre-Islamic Arab inheritance system on Islamic inheritance law. Although the descendants become the primary heirs in Islamic inheritance law, the order of people entitled to receive a remnant or an indefinite portion (*fard*) in the Sunni Islamic inheritance law is adopted from the pre-Islamic system.

3.2 Legal construction of the 'aṣabah system

The Qur'an, Surah al-Nisā', verses 11, 12, and 176 explain the heirs and their rights, respectively. In verse 11, the Qur'an outlines the inheritance rights of sons, daughters, fathers, and mothers. Furthermore, verse 12 of the Qur'an details the inheritance rights of husbands, wives, and siblings. Verse 176 also addresses the inheritance rights of siblings, but their shares differ from those described in verse 12.

Concerning the right of children's inheritance, the initial verse of al-Nisā': 11 determines the share of girls but not of sons. This verse explicitly states that the portion of a man is equal to the portion of two daughters. Thus, the right to the boy's inheritance is the rest of the other heirs whose portion has been determined. The statement in al-Nisā': 176 explains that a man's inheritance has the same provision as al-Nisā': 11; that is, the son's portion is not mentioned, and it is only stated that when there are men and women, a man gets a portion equal to the portions of two women. In this regard, the brother is only entitled to the rest of his inheritance. Likewise, regarding the portion of father and mother, al-Nisā': 11 states that their share is one-sixth if they have a child. If there are no children, the mother's share is one-third; if there are siblings, the mother's share is one-sixth. This verse does not reveal how much share the father gets in the last two situations is. In summary, it is said that in the two situations, the father obtains the rest after giving the inheritance to the mother. Because the Qur'an does not give many men a definite share, it is said that they get the rest.²⁷

²⁷ Muhammad Abu Zahrah, *Abkam Al-Tirkat wa Al-Mawarits* (Beirut : Dar al-Fikr al-Arabi, 1963).

The hadith from Ibn 'Abbas supports the above statement: "Give certain portions to the rightful heir, and the rest is given to the most important male (*awlā rajul*).” The hadith, which was narrated by eight ḥadith authors (including al-Bukhārī and Muslim), is seen by the Sunni fuqaha as a principle in Islamic inheritance, that is, the rest of inheritance outside the *aṣḥāb al-furūd* shares belongs to the foremost male right.²⁸ Who is the foremost male?

First, Sunni jurists stipulated that the foremost male includes male relatives whose relationship with the heir does not pass to the woman. This limitation, as elaborated in the previous section, is referred to as *‘aṣabah* in the system of Arabic patrilineal kinship. However, from a normative perspective, this limitation gets justification from the principle of *al-nasab li al-ab* (patrilineal descent), which they consider the principle of lineage in Islam. Al-Khattabi and Ibn Battal explicitly said that *awlā rajul* (foremost male) in the ḥadith of Ibn 'Abbas above is *‘aṣabah* (agnatic male relative), the closest kinship to the heir. Moreover, in some books of *fiqh*, the ḥadith of Ibn 'Abbas was written as "*awlā ‘aṣabah ḥakar*" (foremost male *‘aṣabah*), not "*awlā rajul ḥakar*" as written in all the ḥadith books.²⁹

Second, Sunni jurists describe the order of the foremost male. They stated that to determine the foremost person, the first is the direction of the kinship (*jibah al-qarābah*). Men from a more critical kinship are more entitled than—and prevent—those from a lower kinship. There are four directions to note, namely (1) the hereditary direction (*jibah al-bunuwwah*), that is, the descendants of the heirs of the male line, including the son, the grandsons of the son, and so on from the male line; (2) the descending direction (*jibah al-ubuwwah*), i.e., all men who descend the heirs and their relationship with the heirs through the male line, including the father, the grandfather from the father, and so on up from the male line; (3) the brotherhood direction (*jibah al-ukhuwwah*), that is, all the brothers and their descendants, including all the descendants of the heir's father, such as the brothers of the heirs and their descendants and so on down; and (4) the uncle's direction (*jibah al-‘umūmah*), i.e., all uncles of the father and his descendants, encompassing all the descendants of agnatic grandfathers and their male descendants from the pure male lineage no matter how far descended.³⁰

²⁸ Abu 'Abd Allah Muhammad bin Isma'il Al-Bukhari, *Sahih Al-Bukhari* (Damaskus: Dar Ibn Katsir, 2002), 1668 dan 1670.; Muslim bin al Hajjaj bin Muslim bin Kausyaz al-Qusyairi An-Naisaburi, *Shahih Muslim* (Riyad: Dar Thaybah, 1426), 757.

²⁹ Ahmad bin 'Ali Ibn Hajar Al-'Asqalani, *Fath Al-Bari Bi Syarh Shahih Al-Bukhari* (Kairo: al-Maktabah al-Salafiyyah, n.d.), 11–12.; Muhammad Asyraf ibn Amir al-'Azim Abadi, *'Awn Al-Mabud 'ala Sunan Abi Dawud* (Amman: Bayt al-Afkar al-Dawliyyah, n.d.), 1235.

³⁰ Syalabi, *Abkam Al-Mawarits Bayna Al-Fiqh Wa Al-Qanun.*; Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh* (Beirut: Dar al-Fikr, 2010), 7796–97.; Rahman, *Ilmu Waris*.

Furthermore, if some people come from the same direction (*jibah*), the person who gets the portion is the one who gets closer to the degree of *al-qarābah* (level of kinship). If some people have the same *jibah* and degree of *al-qarābah*, the person who receives the portion is the one who has stronger *quwwah al-qarābah*, that is, the one who comes from the same father and mother than the one who comes from the same father. In addition, if several people have the same *jibah*, degree, and *quwwah al-qarābah*, they receive the inheritance with the same portion.

The jurists defined *awlā rajul* in the ḥadīth above from a patrilineal perspective, namely, as male relatives of male kinship line and the order in which they make raises questions—while the ḥadīth does not mention these two things—where did the fuqaha take the meaning of *‘aṣabah* and how did they formulate the order? Are the two things widely known among Muslims at that time so that they did not refer to the text of the Qur’an and the Sunnah of the Prophet?

Several ḥadīth narrated by al-Bukhārī, Muslim, Aḥmad and al-Bayhaqī mention the term *‘aṣabah* concerning inheritance.³¹ For example, here is the ḥadīth narrated by Muslims, which originated from Abu Hurairah; the Prophet said:

"For the sake of Allāh in which Muhammad’s soul is in His hand, there is not a single believer on earth except me who is most responsible for him. Whoever leaves the debt or the displaced family, I become the guarantor, and whoever leaves the property is for the *‘aṣabah*, whoever he is."³²

Some ḥadīth that cover the term *‘aṣabah* regarding inheritance explicitly mention *aṣabah*. However, there are two anomalies in these ḥadīth. First, according to the ḥadīth, the inheritance is directly inherited by the *‘aṣabah*. In fact, before inheriting the *‘aṣabah*, the inheritance is initially given to the *aṣḥāb al-furūd* whose portion has been determined in the Qur’an. If the inheritance is directly inherited by the *‘aṣabah* group (in fuqaha’s definition), they will receive no other heirs, including *aṣḥāb al-furūd*, who will inherit.

Second, several similar ḥadīth narrated by Muslims, al-Bukhārī and al-Turmudhī do not use the term *‘aṣabah*, instead *waraṣah* (the heirs).³³ For example, in the ḥadīth narrated by al-Bukhārī from AbūHurayrah, the prophet Muhammad said:

“I am foremost to the believers than themselves. So, whoever dies in debt and does not leave property to pay it, I will be responsible for paying it. And whoever leaves the property, it’s for his heirs (*waraṣah*).”³⁴

³¹ Al-Bukhari, *Sahib Al-Bukhari*.; An-Naisaburi, *Shahih Muslim*.

³² An-Naisaburi, *Shahih Muslim*.

³³ An-Naisaburi.

³⁴ Al-Bukhari, *Sahib Al-Bukhari*.

A number of the hadiths stated that the property that a person left is inherited by his heirs (*waraṣah*) (one ḥadīth narrated by Aḥmad uses the word *ahlīhi* [his family]), and does not state that he was inherited by his *‘aṣabah*. On the one hand, the text of the hadith is almost the same as the text of the above *‘aṣabah* hadith, but on the other hand, the hadith does not mention the term *‘aṣabah* instead *waraṣah* (or *ahl* according to a narration of Aḥmad). It is assumed that the hadith mentioning the term *‘aṣabah* has a false narration. In other words, the people who narrated the hadith of *‘aṣabah* made a mistake by substituting, intentionally or unintentionally, the word *waraṣah* with *‘aṣabah*.

However, throughout the author's research, no scholar has raised the possibility of false narration. Scholars did not question the validity of the hadith despite the above anomaly. This peculiarity does not seem to cause them to question the authenticity of the hadith since the chain of hadith is authentic. However, it is presumed that they were aware of this oddity. This assumption is based on their reading of the term *‘aṣabah* in the above hadith. Some interpreted *‘aṣabah* as heirs in general, while others composed the ḥadīth by stating that inheritance becomes the right of *‘aṣabah* after *aṣḥāb al-furūd* takes his share.³⁵

The authenticity of the chain of hadith *‘aṣabah* does not fully guarantee the authenticity of the text of the hadith word by word. The hadith is said to be authentic based on the authentic chain and essence. Therefore, the hadith scholars used the term *ṣaḥīḥ al-isnād*, which states the authenticity of the hadith chain without any guarantee of its authenticity. When quoting the authentic chain and material of the hadith, they use the term authentic hadith. A hadith is said to be genuine when the chain is connected from the last narration to its source, and all the narrators have high integrity (*‘adl*) and vital memorization or record (*dābiṭ*) and no defects (*‘illah*). It is said to be authentic when the content of the hadith is not contrary to other hadith narrated by more people, is more trustworthy and does not have defects.³⁶

Moreover, *‘illah* within the ḥadīth text is known after collecting various hadith whose substance is the same as paying attention to its paths.³⁷ When we find a word in one path text that is different from the word in another line, it can be assumed that the hadith contains *‘illah*. *‘illah* in the ḥadīth text can be attributed to the narration of the

³⁵ Al-‘Asqalani, *Fath Al-Bari Bi Syarh Shahih Al-Bukhari*.

³⁶ Shubhi Al-Shalih, *‘Ulum Al-Hadits Wa Mushthalabuhu* (Beirut: Dar al-‘Ilm li al-Malayin, 1988), 154.

³⁷ Nur al-Din ‘Atar, *Manhaj Al-Naqd Fi ‘Ulum Al-Hadits* (Damaskus: Dar al-Fikr, 1979), 450–52.

hadith *bi al-ma'nā* (by the meaning).³⁸ Although on the condition that the narrator of *bi al-ma'nā* knows the correct words and differences in meaning, hadith scholars allow the narration of *bi al-ma'nā*. This permitted the narration of *bi al-ma'nā* because the Companions and the generation of Salaf often narrated hadith with different words but the same substance. They did so because they were concerned about the substance of the hadith (not the word).³⁹

The *bi al-ma'nā* narration of the hadith provides the narrator with an excellent opportunity for interpretation. With *bi al-ma'nā* narration, the narrator plays a huge role as part of the authorship community in a hadith. The narrator can replace one word with another word or sentence structure with another sentence structure that he thinks can further clarify the original sentence or sentence structure. Of course, such a replacement would involve interpreting the original text. His understanding of the original text significantly influences his interpretation, which is influenced by many factors, such as the kinship system established in the society in which he lives.⁴⁰

The hadith, which mentions *'aṣabah* as heirs, is narrated by al-Bukhārī, Muslim, Aḥmad, and al-Bayhaqī with different words but the same substance and all originate from Abu Hurayrah. Although all these texts originated from Abu Hurayrah, the diversity of words strongly indicates *bi al-ma'nā* narration. Likewise, the hadith uses the word *waraṣah* (heirs). The words of this second group of hadith are varied, but they all come from Abu Hurayrah. The word diversity of the ḥadīth on the one hand, and the difference between the first group and the second group of ḥadīth, namely, the first group uses the word *'aṣabah* while the second group uses the word *waraṣah*, indicating the occurrence of *bi al-ma'nā* narration that may lead to error or word replacement. Meanwhile, since someone's inheritance is the right of the heirs (*aṣḥāb al-furūd* and *'aṣabah* [those who have the right to the rest]), provided that *'aṣabah* can only take the remaining inheritance after *aṣḥāb al-furūd* portion, it is firmly suspected that this error occurs in the group of hadiths that mention the term *'aṣabah*. In other words, there has been an error or replacement of the word *waraṣah* with the word *'aṣabah*.

How errors or replacements occur is explained by the pre-Islamic Arab heritage system. As discussed in the previous section, in principle (who has) the right to inherit is the adult male among one's *'aṣabah*. Conversely, children and girls, in principle, do not have the right to inherit. This inheritance system is rooted in pre-Islamic Arab

³⁸ Abu 'Amr 'Uthman ibn 'Abd al-Rahman ibn al-Shalah Al-Syahrāzwari, *Ulum Al-Hadīth Li Ibn Al-Shalah* (Damaskus: Dar al-Fikr, 1986), 92.; Siraj al-Din 'Umar ibn 'Ali ibn Ahmad Al-Anshari, *Al-Muqni' Fi 'Ulum Al-Hadīth* (Saudi Arabia: Dar Fawwaz, 1992), 215–18.

³⁹ Al-Shahrazwari, *Ulūm al-Ḥadīth li Ibn al-Ṣalāh* (Damascus: Dar al-Fikr, 1934).

⁴⁰ R. Cecep Lukman Yasin, *Atas Nama Tuhan: Dari Fikih Otoriter Ke Fikih Otoritatif* (Jakarta: Serambi, 2004), 157–59.

society, so when the Qur'an gave the right to inheritance to children and women, some Companions considered it odd and objected. Even some Companions had thought to hide the verse while hoping that the Prophet would forget or the provisions in the verse would change, and some people later conveyed their objections to the Prophet.⁴¹ The strong Arabic kinship system, which only gives the right of heirs to the *'aṣabah* adult, seems to be the background for replacing the word *waraṣah* with the word *'aṣabah*.

This seems ambiguous because of the weak validity of the hadith about *'aṣabah* in showing the position of *'aṣabah* as a group of heirs, but jurists do not seem to consider the hadith important. They might consider the hadith not worthy of being used as a legal basis for the existence of *'aṣabah* as a group of heirs, as is known in Islamic inheritance law. When displaying the right of *'aṣabah* inheritance, scholars do not use this hadith, except for the Ibn 'Abbas hadith about "the foremost male."⁴² The hadith does not reveal who is meant by the foremost male, although it is known as the closeness of kinship.

3.3 Objection to *'Aṣabah* System

The Qur'an attempts to make radical reforms to the pre-Islamic Arab inheritance system that excludes women by stating that women have the same position as men to get the right to inherit from their parents and relatives (al-Nisā': 7). Although they do not have the same portion, the merit (*istiḥqāq*) of women is the same as that of men. When a man has the right to inherit, a woman equal to him also has the right to inherit. This principle is well-known from the *istiḥqāq* that the Qur'an gave to daughters as given to sons, to mothers as given to fathers, to wives as given to husbands, and to brothers women as given to brothers (al-Nisā': 11-12).

Inheritance of the *'aṣabah* system is contrary to this principle. The *'aṣabah* system presents the distinction between men and women in their right to inherit even though they have the same degree of kinship. For example, suppose the heir consists of a daughter (بنت), son of a brother (ابن الأخ), and daughter of a brother (بنت الأخ). In this case, the daughter is entitled to receive half of the inheritance as *aṣḥāb al-furūd*, the son of a brother is entitled to the rest as *'aṣabah*, and the daughter of a brother is not entitled to inherit because she only belongs to the group of *z'awī al-arḥām*. Meanwhile, the daughter of a brother is in a kinship position with the son of a brother. Another example is if the heirs consist of two daughters (بنت), uncle from the father (عم) and aunt from the father (عمة), the two daughters are entitled to obtain

⁴¹ Tafsir Al-Thabari, *Jamī' Al-Bayan 'an Ta'wil Ayi Al-Qur'an*.

⁴² Al-Sarakhsi, *Al-Mabsuts*.; Al-Qarafi Al-Maliki, *Al-Dhakhirah* (Beirut: Dar al-Gharb al-Islami, 1994), 51.; Al-Rafi'i al-Quzwini Al-Syafi'i, *Al-'Aziz Sharh Al-Wajiz* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), 474.; Qudamah, *Al-Kafi*.

two-thirds of the inheritance as *aṣḥāb al-furūd*, and the uncle is entitled to the rest of *aṣābah*. Aunts are not entitled to inherit because they are only included in the *ẓawī al-arḥām* group. The uncle and aunt are the heirs of the father's brother. Because the system of *'aṣābah* causes discrimination against women, it received criticism from the Shiites, who referred to it as resembling the law of ignorance.⁴³

Furthermore, the *'aṣābah* system is not in line with the bilateral basis in the inheritance law of the Qur'an. The fact that the Qur'an gives the right to inherit female relatives as given to male relatives indicates the allegiance of the Qur'an to the bilateral/parental inheritance system.⁴⁴ The new principles of the Qur'an indicate the Qur'an's recognition of the equality of women and men in their relationships with their parents and relatives. The Qur'an considers men and women to have the same relationship with their parents and relatives, and their descendants will also have the same relationship with their parents and relatives.

The *'aṣābah* system gives privileges to (male) relatives of the male line and excludes relatives from the female line despite having a degree of kinship. For example, suppose the heirs consist of one daughter (ابنة), a grandson of a son (الإبن ابن) and a granddaughter of a daughter (بنت البنت). In this case, the daughter acquires half of the inheritance as *aṣḥāb al-furūd*, the grandson of a boy gets the rest *aṣābah*, and the grandson of a girl does not get a share because he only belongs to the group of *ẓawī al-arḥām*. Alternatively, a daughter's grandson is equal to a son's grandson.

Inheritance with the system of *'aṣābah* is also not in line with the principle of closeness in al-Anfal: 75 and al-Ahzab: 6. Al-Sarkhasi revealed that the two verses show the principle of proximity or degree of kinship (degree of *al-qarābah*); heirs whose relationship with the heirs is closer (more entitled to inherit) than the heirs who are further away.⁴⁵ They preferred male relatives to the male line because of his defeat or the elimination of female relatives who omit *aṣḥāb al-furūd* and relatives from the female line, male and female. However, relatives are closer to kinship. For example, in the case of inheritance where the heirs comprise three daughters (ابنة), and one son is an uncle (ابن العم), the three daughters get two-thirds (so each gets only two-ninth), whereas his uncle's son gets the rest (a third); it seems to be an unfair division if one considers the level of closeness of their kinship with the heirs. Another example is the case in which the heirs consist of a grandson of a daughter (ابن البنت) and a grandson

⁴³ Al-Syarif al-Murtadha 'Ali ibn al-Husayn Al-Musawi, *Al-Intishar* (Qum: Mu'assasah al-Nasyr al-Islami, 1415), 553–54.

⁴⁴ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana Media Grup, 2004), 19–21.; Al Yasa Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab* (Jakarta: INIS, 1998), 22.; Afidah Wahyuni, "Sistem Waris Dalam Perspektif Islam Dan Peraturan Perundang-Undangan Di Indonesia," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 5, no. 2 (2018): 153–54.

⁴⁵ Al-Sarakhsi, *Al-Mabsuts*.

of a grandson of his uncle (ابن ابن العم), the mother obtains one-third, the grandson of the grandson of his uncle's son acquires the rest (two-thirds), and the grandson of the daughter is not entitled to inherit. Strangely, the grandson does not inherit, whereas the grandson of his uncle's son inherits a significant share (two-thirds of the inheritance). The relationship between the great-grandson of the grandson of his uncle's son and the heir is far (because it passes five people, namely the grandson of his uncle's son, his uncle's son, uncle, grandfather, and father) compared with the grandson of a daughter whose relationship with the heir only passes the daughter.

Regarding the inconsistency of the *'aṣabah* system with the above three principles, though the ḥadīth chain of *awlā rajul* above is strong and narrated by many ḥadīth scholars such as al-Bukhārī and Muslims, it is necessary to review the authenticity and the application of the ḥadīth. Moreover, it should consider the content of the ḥadīth, whether it applies as a general rule for all cases of inheritance or just casuistic for some instances where there are certain male relatives.⁴⁶

Furthermore, a Shiite scholar, Ja'far Subḥānī, views the provisions in the ḥadīth of *awlā rajul* under a condition that is only applicable to specific cases. He provided some cases, namely: 1) inheritance cases where the heirs consisted of two sisters from a brother, a son of a brother, a daughter of a sister, and a brother of a father, then the two sisters from a mother get one-third and the rest of portions for the male closest to the heir, that is, the identical sibling; 2) the heirs comprise a wife, an uncle, and aunt from the mother's side, an uncle and aunt from the father's side, and a son of a brother, with the wife inheriting a quarter and the son of the brother receiving the rest as the foremost male heir; 3) the heirs consist of a wife and two half-brothers, with the wife receiving a quarter, and the remainder going to the brother, and a sister from the same father not inheriting from an older brother; and 4) a case of inheritance in which the heirs cover a husband, uncles from the father (عم لأب وأم) and aunt of a father from the father's side (عمة لأب).⁴⁷

An expert in Indonesian customary law introduced the idea of bilateral inheritance law. In addition, Hazairin argues that Ibn 'Abbas's ḥadīth regarding *awlā rajul* may be applicable in certain cases. Here are the cases: 1) The heir leaves a son, father, wife or husband, and brother. After being given to the father, wife/husband, and brother, the rest of the portion becomes the son's right as *awlā rajul*. The sons hinder the brother according to an-Nisa': 176 and 12. 2). The heir leaves his/her brother, mother, and husband/wife. Therefore, the *awlā rajul* covers the brothers, and all other men are not

⁴⁶ Abubakar, *Abli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin and Dan Penalaran Fikih Mazhab*.

⁴⁷ Ja'far Subhani, *Al-Mirath Bi Al-Qarabah Aw Bi Al-Ta'Shib* (Asfihan: Markaz al-Qa'imiyah, n.d.), 17.

awlā rajul. This aligns with an-Nisa 11, 12, and 176. 3) The heir leaves his/her mother, father, and husband/wife. The *awlā rajul*, in this case, comprises the father with the rest of the portion. This is based on an-Nisa 11 and 12. Thus, all other men are not *awlā rajul* group. 4) The heir leaves a father, a mother, and one or more siblings. The *awlā rajul* here is the father. This corresponds to an-Nisa 11, 12, and 176.⁴⁸

In addition to the above principal problems, the *‘aṣabah* system poses some problems in terms of its implementation. One problem concerns sibling inheritance with a grandparent and sibling inheritance when they inherit with brothers from the same mother, husband, and mother. This second problem is known as the *ḥimāriyyah* case.

The issue of siblings’ inheritance with grandparents emerged and became a conflicting discussion and heated debate during the Companion’s time, and family members raised diverse opinions. When the Companions’ diversity of views reached the generations of jurisprudence schools, each scholar followed his or her opinion and made its arguments.⁴⁹ This complicated problem of the Companions was shown in the two narrations put forward by Ibn Ḥajar al-‘Asqalānī, ‘Umar bin al-Khaṭṭāb, who made 100 contradictory or different decisions regarding this issue. Even when the discourse is seen as a questionable issue or exaggeration (*mubālaghah*), the appearance of the narrations indicates the complication of the grandfather’s inheritance with the brothers.

The inheritance of the grandfather when with the brother becomes problematic due to the absence of explicit text; thus, *ijtihād* is required. However, *ijtihād* to solve the issue raises a complication not only due to the lack of text but also the system of *‘aṣabah*⁵⁰. Grandparents and brothers are *‘aṣabah* heirs, so they have a sequence according to the system of *‘aṣabah*. Regarding this order, on the one hand, the grandfather is more important than the brother because the *jibah al-qarābah* of the grandfather that replaces the position of the father (i.e., *jibah al-ubuwwah*) is considered higher than the *jibah al-qarābah* of the brother (i.e., *jibah al-ukhuwwah*). Alternatively, grandparents and brothers are connected to the heir through the father.

Moreover, a more complicated and interesting issue is the case of *ḥimāriyyah*, in which the heirs consist of a husband, a mother, several cousins, and a half-brother. In that case, the husband is entitled to 1/2, the mother is entitled to 1/6, some cousins are entitled to 1/3, and the biological brother, as *‘aṣabah*, who is entitled to the rest of the inheritance property, does not inherit because this heritage runs out when given to the heirs of the *aṣḥāb al-furūd* following their respective rights.

⁴⁸ Hazairin, *Hukum Kewarisan Bilateral Menurut Alqur’an Dan Sunnah* (Jakarta: Tintamas, 1981), 96–97.

⁴⁹ Al-‘Asqalānī, *Fath Al-Bari Bi Syarh Shabih Al-Bukhari*.

⁵⁰ Al-‘Asqalānī.

Thus, blood brothers do not inherit because of the distinction by fuqaha between the siblings—siblings from the father's side and siblings from the mother's side. The siblings and siblings from the father's side are included in the group *'aṣabah* because of their relationship with the heirs through men (i.e., father), while siblings from the mother's side are not included in *'aṣabah* because of their relationship through women (i.e., mother).

During his Caliph's time, Umar ibn al-Khattab twice decided on the like case. In the first case, 'Umar gave the verdict by dividing it above so that the biological brothers did not inherit. They accepted this decision with displeasure. However, in the second case, the biological brother did not accept such a verdict, considering it unfair. The case is how a sibling does not inherit, whereas a sibling from the mother's side inherits. He protested to the Caliph 'Umar, saying, "O *Amirul mukminin*, suppose our father is a donkey, but don't we come from the same mother?"

The objection was then heard by the Caliph 'Umar. He changed his decision, which was in line with the rules in Islamic inheritance law as accepted by the Companions, that is, siblings from the mother's side are distinguished from siblings and siblings from the father's side; siblings from the mother's side are *aṣḥāb al-furūd* while siblings and siblings from the father's side are *'aṣabah*. In his new decision, 'Umar inherited the sibling by dividing the remaining inheritance between the sibling and the sibling from the mother's side after the husband and mother received their portion.' This distribution is well-known as *musyarrakah*, and this case is called *ḥimāriyyah* (donkey case) because the sibling used the word *ḥimār* (donkey) as his argument.⁵¹ On the one hand, the division by way of the *musyarrakah* is a deviation from the *'aṣabah* system and shows its weakness; on the other hand, it shows the effort to secure the rights of the biological brothers as *'aṣabah*.

4. Conclusion

'Aṣabah is a group of men who belong to the patrilineal kinship system adopted by Arab society. The special position of *'aṣabah* is also present in Sunni jurisprudence. The Sunni jurists elaborated on the concept of male leadership by adopting the concept of *'aṣabah*, which is common in the kinship and inheritance systems of Arab society. Thus, the *'aṣabah* system in Sunni jurisprudence regarding inheritance is the result of the ulama's ijtihad in interpreting the Al-Qur'an and Hadith by taking into account the customs (*'urf*) that apply in the society where they live, especially the patrilineal kinship system. Therefore, even though this ijtihad is considered "correct," its truth is very closely related to the sociohistorical and local cultural context of Arab

⁵¹ Abu al-Fida' 'Imad al-Din Ibn Kathir, *Tafsir Al-Qur'an Al-'Azhim* (Kairo: Maktabah al-Iman, 2006), 602–3.

society at that time. The Qur'an does not implicitly mention *'aṣabah*, including its position and structure. The *'aṣabah* system is also inconsistent with several inheritance rules in the Qur'an, namely, the rule that men and women who have the same kinship have the same inheritance rights, the rule of bilateral inheritance, and the rule of prioritizing closer relatives. Furthermore, if we examine the relationship between the *'aṣabah* system and Arab culture, which is inconsistent with several inheritance rules in the Qur'an, then the *'aṣabah* system needs to be reviewed. This study is still relevant because most people adhere to a bilateral kinship system, and gender equality has become a demand for life in contemporary Muslim society.

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