


SPECIAL POSITION OF 'AŞABAH (MALE AGNATIC RELATIVES) IN THE SUNNI ISLAMIC JURISPRUDENCE OF INHERITANCE

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Abstract: This study aims to reveal the unique and privileged relationship of the position of male relatives who directly relate to the heirs or through a man without a woman ('*aşabah* or male agnatic relatives) in the Sunni Islamic jurisprudence. The Sunni Islamic jurisprudence provides a special and exclusive position to the '*aşabah*. Whatever the extent of the kinship relationship of '*aşabah* with the heirs, he will not be hindered except by the fellow '*aşabah*. This study applies a socio-historical approach and *uṣūl fiqh*. In conclusion, the system of '*aşabah* in the Sunni Islamic jurisprudence has resulted from an interpretation of the Qur'an and hadith, in which the weighty Arab patrilineal kinship system truly and significantly influences the interpretation.

Keywords: '*aşabah*; heirs; Islamic inheritance law; Sunni Islam

Abstrak: Penelitian ini bertujuan untuk mengetahui hubungan antara posisi kerabat laki-laki yang hubungannya dengan pewaris secara langsung, atau melalui laki-laki dan tidak melewati perempuan (*'aşabah*) dalam fikih Sunni dengan latar belakang antropologis Arab. Fikih Sunni memberikan posisi khusus kepada *'aşabah*. Sejauh apapun hubungan kekerabatan seorang *'aşabah* dengan pewaris, dia tidak akan terhalang kecuali oleh sesama *'aşabah*. Karena itu pendekatan yang digunakan dalam kajian ini adalah pendekatan sosio-historis dan ushul fikih. Dari kajian ini diketahui bahwa sistem *'aşabah* dalam fikih Sunni merupakan hasil penafsiran terhadap Teks al-Qur'an dan Hadis, dan penafsiran tersebut sangat dipengaruhi sistem kekerabatan patrilineal Arab.

Kata kunci: *'aşabah*, ahli waris, hukum kewarisan Islam, Islam Sunni

Introduction

In the Sunni Islamic jurisprudence of inheritance, heirs are classified into three groups based on the way they are inherited, namely *aşhâb al-furûd*, *aşabah*, and *żawī al-arḥām*. *Aşhâb al-furûd* are the heirs who have the fixed portion. Whereas *'aşabah* are the heirs who do not have fixed portion; they get the rest of the inheritance beyond *aşhâb al-furûd* portions, or they acquire the entire inheritance when there is no *aşhâb al-furûd* at all¹. The people who do not belong to the group of *aşhâb al-furûd* and *'aşabah* are categorised into the *żawī al-arḥām* group.

Sunni jurists classify *'aşabah* into three classes, namely *'aşabah bi nafsih*, *'aşabah bi al-gayr*, and *'aşabah ma'a al-gayr*. This article will only reveal the *'aşabah* of the first class because the second and third classes are not covered in a group of *'aşabah*, but *aşhâb al-furûd*.

The group of *'aşabah bi nafsih* or *'aşabah* is the true heir of *'aşabah*.² That is, they are initially the heirs of *'aşabah*, not *aşhâb al-furûd*, who receive the remaining portion due to inheriting with others. They will not receive a portion of the inheritance with the fixed amount of $\frac{1}{2}$, $\frac{1}{4}$, etc., except for father and grandfather. Father and grandfather are covered in *'aşabah*, besides the heirs of *aşhâb al-furûd*. So, a group which is called *'aşabah* only is *'aşabah bi nafsih*³.

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

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

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

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

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 without passing through a female are members of the kin group, whereas males and females whose lineage to their ancestor passed through females are not considered members of the kin group.

Western Islamic jurists consider that the concept of *'aṣabah* in Islamic law is merely taken from pre-Islamic Arabic customary law. For example, W. Robert Smith considers *'aṣabah* a term derived from pre-Islamic Arabic customary law.⁴ However, unlike Smith, R. 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.⁵

Islam came with 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 the Prophet Muhammad's response to the Arabic tradition into five models: total accommodation, particular accommodation, adjustment and modification, and total rejection.⁶

As a result, the view that the *'aṣabah* concept is taken entirely from 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 the jurists in formulating 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, father and mother. Overall, the Qur'an tends to the bilateral kinship system.⁷ 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 without women (*'aṣabah* or male agnatic relatives) in the Sunni Islamic jurisprudence of inheritance in the Arab anthropological background.

Methodology

This study applied a normative, socio-historical, and *uṣūlfiqh* approach. The normative approach aims to reveal the explanations of the Qur'an and ḥadīth on the inheritance of *'aṣabah*. The socio-historical approach functions to see the relationship between the concept of *'aṣabah* in Islamic jurisprudence and the Arab kinship system. With these two approaches, there stated the position of *'aṣabah* in Islamic inheritance

⁴David Stephan Powers, *Peralihan Kekayaan Dan Politik Kekuasaan* (Yogyakarta: PT LKiS Pelangi Aksara, 2001), 111.

⁵Powers, *Peralihan Kekayaan Dan Politik Kekuasaan*.

⁶Abdul Sattar, "Nabi, Respons Nabi Terhadap Tradisi Jahiliyyah: Studi Reportase Hadis," *Theologia* 28, no. 1 (2017): 198–206.

⁷Ahkmad Jalaludin, "Nasab: Antara Hubungan Darah Dan Hukumserta Implikasinya Terhadap Kewarisan," *Isyraqi* 10, no. 1 (2012): 73–78.

jurisprudence and the process of its entry into Sunni Islamic jurisprudence. The socio-historical approach is an understanding to consider the influence of local socio-cultural changes on religious thought.⁸ This approach sees the reality of the unity of time, culture, group, place, and environment that influences people's thoughts, beliefs, events, and teachings. While *uṣūlfiqh* is a science that elaborates the principles and provisions to study and formulate Islamic sharia law from its sources⁹. In nature, *uṣūlfiqh* and *fiqh* are getting to evolve and get dynamic to face and provide solutions to the challenges of the reality of modern life¹⁰. This article uses a socio-historical approach to explain the relationship between the *'aṣabah* system in Islamic inheritance jurisprudence and the socio-historical background of Arab society at the time when Islamic jurisprudence was developed by Sunni jurists, mainly focusing on the kinship system.

This study used the critical analysis method¹¹ since the research object is the product of human thought in printed works. The research data sources refer to primary and secondary texts. The primary manuscripts cover books of *fiqh* from the Jurisprudence schools. Meanwhile, the secondary manuscripts comprise the works of non-school authors that elaborate on or criticise the jurists' school thoughts regarding the patrilineal provisions of inheritance law in particular.

Here are some steps of critical analysis research: (1) describing the primary idea that is the object of research, (2) discussing or interpreting the primary idea, (3) criticising the primary idea being interpreted, (4) conducting an analytical study, and (5) drawing conclusions¹².

Results and Discussion

Some Sunni jurists define *'aṣabah* as heirs who are entitled to gain a portion of which the amount is not determined or the rest of *aṣḥāb al-furūd* portion. They stated that the actual *'aṣabah (bi nafsih)* covers all male relatives whose kinship to the heir does not pass to a woman.¹³ The definition has two possibilities. First, there is no intermediary

⁸Nurul 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).

⁹Iwan 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.

¹⁰Ismail 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).

¹¹M Deden Ridwan, *Tradisi Baru Penelitian Agama Islam: Tinjauan Antardisiplin Ilmu* (Bandung: Yayasan Nuansa Cendekia, 2001), 68.

¹²Ridwan, *Tradisi Baru Penelitian Agama Islam: Tinjauan Antardisiplin Ilmu*.

¹³Syams 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.; 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-'Arabiyyah, 1978), 208.

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 marginalised relative, at least in terms of inheritance. He belongs to the *ẓawī al-arḥām* group, except the brother of a mother (initially, the brother of the mother was included in the *aṣḥāb al-furūd*) since the scholars of the companion generation asserted that their portion had been determined in al-Nisā': 12).

In the 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.¹⁴ The law of inheritance of the Religious Court in Indonesia no longer accepts this system of *'aṣabah*.

The origin of the *'aṣabah* concept

The word *'aṣabah* is the plural of the singular *'aṣib*, although the Arabian people do not speak this singular word. They used to say the word *'aṣabah* for plural and singular, and it was renamed as *'aṣabāt*¹⁵. In etymology, *'aṣabah* means those who surround and protect¹⁶.

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 entire men who are connected to that person through a male person: relatives of the line (*ṭarf*) descent, parents, siblings, and uncles. Since the male relatives of the male line surround and appear to bind someone, they are called *'aṣabah*¹⁷.

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 one 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 man, not by woman. If the 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. On the other hand, all

¹⁴Sakirman Sakirman, "Konvergensi Pembagian Harta Waris Dalam Hukum Islam.," *AL-ADALAH* 13, no. 2 (2016): 161.

¹⁵Abidin, *Radd Al-Mukhtar 'ala Al-Durr Al-Mukhtar Syarh Tanwir Al-Absar*.

¹⁶Ibn 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.

¹⁷Hisam 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, www.kotobarabia.com.

men (and women) whose kinship with the ego through women is not included in 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 the 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, wherein 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 passed away and left behind young children, the '*aṣabah* would act as guardians. Similarly, when a woman was to be married, the '*aṣabah* was responsible for arranging the marriage.¹⁸ Adult '*aṣabah* were also responsible for paying *diyat*, which is compensation that must be paid to the family of a murder victim.¹⁹

Considering these socio-historical 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 is taken over from the ancient Arab agnatic system²⁰. Moreover, as stated earlier, western Islamic jurists view the concept of '*aṣabah* in Islamic inheritance law as taken from pre-Islamic Arabian tribal customary law. David S. Powers viewed W. Robert Smith, with his work *Kinship and Marriage in Early Arabia*, first published in 1885, as the first person to regard '*aṣabah* as a term taken from pre-Islamic Arab tribal customary law²¹. 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-furūd al-muqaddarah*. Smith says that when no heir or inheritance is left, the inheritance falls to the '*aṣabah*.²² In his conclusion on the law of Islamic inheritance based on the concept of '*aṣabah*, Smith indirectly said that the idea of '*aṣabah* was taken from the pre-Islamic Arabian customary law.

According to Powers, adopting the '*aṣabah* concept from pre-Islamic Arabic tribal law has widely spread in Western intellectual discourse. In their view, not only the term '*aṣabah* 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 twenty years met serious refutation. R. Brunschvig's research shows that pre-Islamic Arabian '*aṣabah* was not identical with '*aṣabah* at the time of Islam. According to

¹⁸ Jawad 'Ali, *Al-Mufashshal Li Tarikh Al-'Arab Qabl Al-Islam*, V (Bagdad: Jami'ah Baghdad, 1993), 491.

¹⁹ Al-Din and Zaki, "Al-Lughah Wa Al-Thaqafah: Dirasah Anthrolughawiyah Li Alfaz Wa 'Ilaqat Al-Qarabah Fi Al-Thaqafah Al-Arabiyyah," 239; 'Ali, *Al-Mufashshal Li Tarikh Al-'Arab Qabl Al-Islam*, 488.

²⁰ Abid Hussain, *The Islamic Law of Succession* (Riyadh: Darussalam, 2005).

²¹ Powers, *Peralihan Kekayaan Dan Politik Kekuasaan*.

²² W. Robert Smith, *Kinsyip & Marriage in Early Arabia* (Netherlands: Anthropological Publications, 1966), 65–66.

Brunschvig, as quoted by Powers, the principle underlying pre-Islamic Arabian inheritance is not the principle of “direct descent” as in Islamic *‘aṣabah*, but the principle of seniority²³.

Brunschvig’s statement, according to the author, does not contradict—and does not necessarily cancel—the views of the previous orientalists but complements. As is well known, in the pre-Islamic Arabian inheritance system, people who have the right to inherit are male relatives (*‘aṣabah*) who protect their family and group of relatives. Thus, the 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 yet adults 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 in 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.²⁴ Granting inheritance rights to children is a departure from—and part of the changes made by the Qur’an to—pre-Islamic Arabic inheritance.

Besides giving children absolute rights, the Qur’an makes them the primary heirs. The inheritance ruling by the Qur’an begins with 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 the child’s inheritance are definite (*qaṭ’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 the 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.

The legal construction of the ‘aṣabah system

The Qur’an, Surah al-Nisā’, verses 11, 12, and 176 explain heirs and their rights. In verse 11, the Qur’an outlines the inheritance rights of sons, daughters, fathers, and mothers. Furthermore, in verse 12, 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 sons. This verse explicitly states that the portion of a man is equal to the portion of two daughters. Thus, it is clear that the right of the boy’s inheritance is the rest of the other heirs whose portion has been determined. The

²³Powers, *Peralihan Kekayaan Dan Politik Kekuasaan*.

²⁴Abu Ja’far Muhammad bin Jarir Al-Thabari, *Jami’ Al-Bayan ‘an Ta’wil Ayi Al-Qur’An* (Kairo: Maktabah Ibn Taymiyyah, n.d.).

statement in al-Nisā': 176 explains that man's inheritance has the same provision asal-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 the 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. In summary, it is said that in the two situations, the father obtains the rest after giving the inheritance to the mother. Since the Qur'an does not give many men a definite share, it is said that they get the rest.²⁵

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*)."²⁶ The hadith, which was narrated by eight ḥadīth authors (including al-Bukhārī and Muslim), is seen by 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 right²⁶. Who is the foremost male?

First, Sunni jurists stipulated that the foremost male covers 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 ḥadīth of Ibn 'Abbas above is *'aṣabah* (agnatic male relative), the closest kinship to the heir. Moreover, in some books of *fiqh*, the ḥadīth of Ibn 'Abbas was written as "*awlā 'aṣabah ḥakar*" (foremost male *'aṣabah*), not "*awlā rajul ḥakar*" as written in all the ḥadīth books.²⁷

Second, Sunni jurists formulate the order of the foremost male. They stated that to determine the foremost person, the first is the direction of his kinship (*jihah al-qarābah*). The men from a more critical kinship get more entitled than—and prevent—those who come from a lower kinship. There are four directions to note, namely (1) hereditary direction (*jihah al-bunuwwah*), that is, the descendants of the heirs of the male line, including son, grandsons of the son, and so on from the male line; (2) the descending direction (*jihah al-ubuwwah*), i.e. all men who descend the heirs and their relationship with the heirs through the male line, including the father, grandfather from the father and so on up from the male line, (3) the brotherhood direction (*jihah 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) Uncle's direction (*jihah al-'umūmah*), i.e. all uncles of the father and his

²⁵Zahrah, *Ahkam Al-Tirkat wa Al-Mawarits*.

²⁶Abu '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.

²⁷Ahmad bin 'Ali Ibn Hajar Al-'Asqalani, *Fath Al-Bari Bi Syarh Shahih Al-Bukhari* (Kairo: al-Maktabah al-Salafiyah, 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.

descendants, encompassing all the descendants of agnatic grandfathers and their male descendants from the pure male lineage no matter how far descended.²⁸

Furthermore, if some people come from the same direction (*jihah*), the person who gets the portion is the one who gets closer to the degree of *al-qarābah* (level of kinship). And if some people have the same *jihah* 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. Besides, if several people have the same *jihah*, degree and *quwwah al-qarābah*, they receive the inheritance together with the same portion.

The jurists defined *awlā rajul* in the ḥadīth above in a very 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 they formulate the order? Were 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 mentioned the term *'aṣabah* concerning inheritance.²⁹ 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."³⁰

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 get the inheritance 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)³¹. For example, in the ḥadīth narrated by al-Bukhārī from Abū Hurayrah, 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*)."³²

A number of the hadith stated that the property that a person left is inherited by his heirs (*waraṣah*) (one ḥadīth narrated by Aḥmad uses the word *ahlihi* [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,

²⁸Syalabi, *Ahkam 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*.

²⁹Al-Bukhari, *Sahih Al-Bukhari*.; An-Naisaburi, *Shahih Muslim*.

³⁰An-Naisaburi, *Shahih Muslim*.

³¹An-Naisaburi.

³²Al-Bukhari, *Sahih Al-Bukhari*.

the hadith does not mention the term *'aṣabah* instead *warāṣah* (or *ahl* according to a narration of Aḥmad). It is assumed that the hadith mentioning the term *'aṣabah* has false narration. In other words, the people who narrated the hadith of *'aṣabah* made a mistake by substituting, intentionally or unintentionally, the word *warāṣah* with *'aṣabah*.

Yet, throughout the author's research, no scholar raises the possibility of false narration. The scholars did not question the validity of the hadith despite the above anomaly. This peculiarity does not seem to make them question the authenticity of the hadith since the chain of hadith is authentic. However, it is presumed that they were aware of the 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 hadith by stating that the inheritance becomes the right of *'aṣabah* after *aṣḥāb al-furūd* takes his share.³³

The authenticity of the chain of hadith *'aṣabah* does not fully guarantee the authenticity of the text of hadith word by word. That a hadith is said to be authentically is based on the authentic chain and essence. That is why the hadith scholars use the term *ṣaḥīḥ al-isnād*, which is meant to state the authenticity of the hadith chain without any guarantee of its authenticity. As for quoting the authentic chain and material of 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 memorisation 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 defects³⁴.

Moreover, *'illah* within the hadith text is known after collecting various hadith whose substance is the same as paying attention to its paths.³⁵ When we find a word in one path text different from the word in another line, it can be assumed that the hadith contains *'illah*. *'illah* in the hadith text can be attributed to the narration of the hadith *bi al-ma'nā* (by the meaning)³⁶. As is well known, hadith scholars allow the narration of *bi al-ma'nā*, although on the condition that the narrator of *bi al-ma'nā* knows the correct words and differences in meaning. 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 that since they were concerned about the substance of the hadith, not the word.³⁷

The *bi al-ma'nā* narration of hadith will give the narrator an excellent interpretation opportunity. With *bi al-ma'nā* narration, the narrator has a huge role as part of the authorship community in a hadith. The narrator can replace one word with another word or one sentence structure with another sentence structure that he thinks can further clarify the original word or sentence structure. Of course, such a replacement would involve interpreting the original text. His understanding of the

³³Al-Asqalani, *Fath Al-Bari Bi Syarh Shahih Al-Bukhari*.

³⁴Shubhi Al-Shalih, *'Ulum Al-Hadits Wa Mushthalahuhu* (Beirut: Dar al-'Ilm li al-Malayin, 1988), 154.

³⁵Nur al-Din 'Atar, *Manhaj Al-Naqd Fi 'Ulum Al-Hadits* (Damaskus: Dar al-Fikr, 1979), 450–52.

³⁶Abu 'Amr 'Uthman ibn 'Abd al-Rahman ibn al-Shalah Al-Syahrzawari, *'Ulum Al-Hadith 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-Hadits* (Saudi Arabia: Dar Fawwaz, 1992), 215–18.

³⁷Al-Shahrzawari, *'Ulum al-Hadith li Ibn al-Ṣalāh*.

original text will significantly influence his interpretation, which is influenced by many factors, such as the kinship system established in the society in which he lives.³⁸

The hadith, which mentions *'aṣabah* as heirs, narrated by al-Bukhārī, Muslim, Aḥmad, and al-Bayhaqī with different words but the same substance and all originated from Abu Hurayrah. Even though all originated from Abu Hurayrah, the diversity of words strongly indicates *bi al-ma'nā* narration. Likewise, the hadith that uses the word *warāṣah* (heirs). The words of this second group of hadith are varied, but they all come from Abu Hurayrah. The words diversity of the ḥadith on the one hand, and the difference between the first group and the second group of ḥadith, namely the first group uses the word *'aṣabah* while the second uses the word *warāṣah*, indicating the occurrence of *bi al-ma'nā* narration that may lead to error or words 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 hadith which mention the term *'aṣabah*. In other words, there has been an error or replacement of the word *warāṣah* with the word *'aṣabah*.

How errors or replacements occur is explained by seeing 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 society, so when the Qur'an gave the right of 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.³⁹ 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 *warāṣah* with the word *'aṣabah*.

It seems ambiguous due to the weak validity of the hadith about *'aṣabah* in showing the position of *'aṣabah* as a group of heirs, but the jurists do not seem to consider the hadith important. They might consider the hadith not worthy to be used as a legal basis for the existence of *'aṣabah* as a group of heirs as it is known in Islamic inheritance law. When displaying the right of *'aṣabah* inheritance, scholars do not use this hadith, except Ibn 'Abbas hadith about "the foremost male."⁴⁰ The hadith does not reveal who is meant by the foremost male, although it is known as the closeness of kinship.

Objection to 'Aṣabah System

The Qur'an attempts to make radical reform for 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

³⁸R. Cecep Lukman Yasin, *Atas Nama Tuhan: Dari Fikih Otoriter Ke Fikih Otoritatif* (Jakarta: Serambi, 2004), 157–59.

³⁹Al-Thabari, *Jami' Al-Bayan 'an Ta'wil Ayi Al-Qur'an*, 32.

⁴⁰Al-Sarakhsi, *Al-Mabsuts.*; Al-Qarafi Al-Maliki, *Al-Dhakhirah* (Beirut: Dar al-Gharb al-Islami, 1994), 51.; Al-Rafi' al-Quzwini Al-Syafi'i, *Al-'Aziz Sharh Al-Wajiz* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), 474.; Qudamah, *Al-Kafi*.

not have the same portion, the merit (*istiḥqāq*) of women is the same as the merit 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, given to mothers as given to fathers, given to wives as given to husbands, and given to brothers women as given to brothers (al-Nisā': 11-12).

Inheritance with 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 that 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 *zawī 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 (بنات), uncle from the father (عم) and aunt from the father (عمة), the two daughters are entitled to obtain two-thirds of the inheritance as *aṣḥāb al-furūd*, uncle is entitled to the rest of *aṣabah*. Aunt is not entitled to inherit because she is only included in the *zawī al-arḥām* group. Even though the uncle and aunt are both the heirs of the father's brother. Since the system of *'aṣabah* causes discrimination against women, it gets criticism from the Shiites, who referred to it as resembling the law of ignorance.⁴¹

Furthermore, the *'aṣabah* system is not in line with the bilateral basis in the inheritance law of the Qur'an. 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.⁴² As presented, the new principles of the Qur'an indicate the Qur'an's recognition of the equality of women and men in their relationships with parents and relatives. The Qur'an considers both 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 *'aṣabah* system gives privileges to (male) relatives of the male line and excludes relatives from the female line even though they have 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 that case, the daughter acquires half of the inheritance as *aṣḥāb al-furūd*, the grandson of a boy gets the rest *aṣabah*, and the grandson of a girl does not get a share because he only belongs to the group of *zawī al-arḥām*. On the other hand, a daughter's grandson is equal to a boy's.

Inheritance with the system of *'aṣabah* 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

⁴¹Al-Syarif al-Murtadha 'Alī ibn al-Husayn Al-Musawi, *Al-Intishar* (Qum: Mu'assasah al-Nasyr al-Islami, 1415), 553–54.

⁴²Amir 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.

further away.⁴³ They preferred male relatives to the male line as a result of his defeat or the elimination of female relatives who omit *aṣḥāb al-furūd* and relatives from the female line, male and female. However, the 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) while his uncle's son got the rest (a third); it seems to be unfair division if one considers the level of closeness of their kinship with the heirs. Another example is the case where the heirs consist of a grandson of a daughter (ابن البنت) and a grandson of a grandson of his uncle (ابن 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, while the grandson of the grandson of his uncle's son inherited 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 to 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 ḥadith chain of *awlā rajul* above is strong and narrated by many ḥadith scholars such as al-Bukhārī and Muslims, it is necessary to review the authenticity and the application of the ḥadith. Moreover, it should consider the content of the ḥadith, whether it applies as a general rule for all cases of inheritance or just casuistic for some instances where there are certain male relatives.⁴⁴

Furthermore, a Shiite scholar, Ja'far Subḥānī, views the provisions in the ḥadith of *awlā rajul* as a condition that is only applied 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, uncle, and aunt from the mother's side, an uncle and aunt from the father's side, and a son of a brother. The one who gets the right to inherit is the wife, who is a quarter, and the son of a brother gets the rest as the foremost man. 3) The heirs consist of a wife, a half-brother, and a half-brother. So, the wife receives a quarter, and the rest of the portion goes to the brother. Meanwhile, the sister from the same father does not inherit from the older brother. And 4) a case of inheritance in which the heirs cover a husband, uncles from the father (عم) (عمّ وأب) and aunt of a father from the father's side (عمّة لأب)⁴⁵.

The expert in Indonesian customary law conveyed the idea of bilateral inheritance law. Besides, Hazairin argues that Ibn 'Abbas's hadith regarding *awlā rajul* may pertain to certain cases. Here are the cases: 1) The heir leaves a son, father, wife or husband, and a 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 a brother, mother, husband/wife. So, the *awlā*

⁴³Al-Sarakhsi, *Al-Mabsuts*.

⁴⁴Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab*.

⁴⁵Ja'far Subḥānī, *Al-Mirath Bi Al-Qarabah Aw Bi Al-Ta'Shib* (Asfihan: Markaz al-Qa'imiyah, n.d.), 17.

rajul covers brothers, and all other men are not *awlā rajul*. This aligns with an-Nisa 11, 12, and 176. 3). The heir leaves a mother, father, 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. And 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 176.⁴⁶

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

The issue of siblings' inheritance with grandparents emerged and became a conflicting discussion and heated debate during the Companion's time, and they raised their diverse opinions. When the Companions' diversity of views reached the generations of Jurisprudence schools, each scholar followed the opinion he thought was better and made its arguments.⁴⁷ This complicated problem of the Companions was shown in the two narrations put forward by Ibn Hajar al-‘Asqalānī, ‘Umar bin al-Khaṭṭāb, who made a hundred 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 grandfather when together with brother becomes a problem due to the absence of explicit text, so *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 *‘aşabah*⁴⁸. Grandparents and brothers are both *‘aşabah* heirs, so they have a sequence according to the system of *‘aşabah*. Regarding this order, on the one hand, the grandfather is more important than the brother because the *jihah al-qarābah* of grandfather that replaces the position of the father (i.e. *jihah al-ubuwwah*) is considered higher than the *jihah al-qarābah* of brother (i.e. *jihah al-ukhuwwah*). But on the other hand, both grandparents and brothers are connected to the heir through the father.

Moreover, the more complicated and interesting issue is the case of *himāriyyah*, where the heirs consist of a husband, 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 *‘aşabah*, who is entitled to the rest of the inheritance property, does not inherit because in the case this heritage runs out when given to the heirs of the *aşhāb al-furūd* following their respective rights.

Thus, blood brothers do not inherit due to the distinction by the 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 *‘aşabah* because of their relationship with the heirs through men (i.e. father), while siblings from the mother's side are not included in *‘aşabah* because due to their relationship through women (i.e. mother).

⁴⁶Hazairin, *Hukum Kewarisan Bilateral Menurut Alqur'an Dan Sunnah* (Jakarta: Tintamas, 1981), 96–97.

⁴⁷Al-‘Asqalānī, *Fath Al-Bari Bi Syarh Shahih Al-Bukhari*.

⁴⁸Al-‘Asqalānī..

During his caliph time, Umar ibn al-Khaṭṭāb 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, while 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 sibling from the father 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 the mother got 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 argument⁴⁹.

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*.

Conclusion

'Aṣabah is a group of men within the patrilineal kinship system practised by Arab society. They are all male relatives whose kinship relationship to an individual (*ego*) does not pass through a female. All *'aṣabah* are members of a single patrilineal kin group in Arab society. In matters of inheritance, essentially only *'aṣabah* are entitled to receive an inheritance, particularly senior *'aṣabah*. This provision is due not only to the patrilineal system but also because *'aṣabah* is responsible for providing protection and livelihood security for their relatives.

The privileged position of *'aṣabah* is also present in Sunni Islamic inheritance jurisprudence. All male relatives whose kinship relationship to the heir does not pass through a female are included in this group of heirs, no matter how distant their relationship is. They are prioritised in receiving inheritance over female relatives whose kinship ties to the heir are closer but pass through a female. Although their shares are not specified, and in many cases, they receive the remainder of the estate, they will not be excluded except by another *'aṣabah* whose kinship relationship to the heir is closer or more robust according to the structure of *'aṣabah* as regulated in Sunni Islamic jurisprudence.

The Qur'an does not implicitly state *'aṣabah*, including its position and structure. Indeed, the Qur'an mentions the inheritance rights of some male relatives without specifying their shares. They are sons, brothers, and fathers only when no sons exist. Based on these provisions, Sunni jurists have concluded that the inheritance shares for

⁴⁹Abu al-Fida' 'Imad al-Din Ibn Kathir, *Tafsir Al-Qur'an Al-'Azhim* (Kairo: Maktabah al-Iman, 2006), 602–3.

male heirs are essentially unspecified. This conclusion is supported by a hadith that instructs giving the remaining inheritance to the foremost male (*awlā rajul*).

Sunni jurists then elaborated on the concept of the foremost male by adopting the idea of *'aṣabah*, which is prevalent in the Arab kinship and inheritance system. Thus, the *'aṣabah* system in Sunni Islamic jurisprudence of inheritance is the result of *ijtihād* by scholars interpreting the Qur'an and Hadith while taking into account the customs (*'urf*) prevalent in the societies where they lived, specifically the patrilineal kinship system. Therefore, even if this *ijtihād* is considered 'correct', its correctness is very much tied to the historical context of Arab society at that time.

However, the *'aṣabah* system does not align with several inheritance principles in the Qur'an, namely the principle that men and women with the same kinship position have equal inheritance rights, the principle of bilateral inheritance, and the principle of prioritising closer relatives. Furthermore, considering the connection of the *'aṣabah* system with Arab culture, which does not conform to some of the inheritance principles in the Qur'an, the *'aṣabah* system needs to be reviewed. This review is also relevant because most societies adhere to a bilateral kinship system, and gender equality has become a demand of modern life.

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