

Ijtihad of the Companions in Determining Grandfather's Inheritance Rights with Brothers and Sisters

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Abstract: *The rule on the part inherited by the grandfather together with the siblings of the testator is not found at all from the nagli arguments in the Qur'an or as-Sunnah. The provisions of their share are found through the ijtihad of the Companions. The ijtihad of the Companions has differences with each other. Thus, it is important to conduct an in-depth study of the ijtihad of the Companions. The issue to be discussed in this research is how the grandfather's share of inheritance rights if he is with brothers and sisters based on the ijtihad of the Companions. The purpose of the research is to conduct a study of the grandfather's share of inheritance if he is with brothers and sisters according to the ijtihad of the Companions. This research uses a type of qualitative research whose data comes from secondary data. Documentation study was chosen in collecting data, while data analysis was carried out in three stages, namely data reduction, data verification and data presentation. The results of this study reveal that there are still things that require ijtihad in resolving the issue of grandfather's share of inheritance with the inheritor's siblings that occur in the community. The findings are based on the example of calculating inheritance according to the opinions of Abu Bakr, Zaid bin Tsabit, Umar and Ibn Mas'ud.*

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Introduction

Islam has regulated all aspects of human life. One of the things that has been regulated in detail is the issue of inheritance law (Djuned & Nur, 2016). Inheritance law itself is all the rules governing the transfer of the heir's property to the heirs and the amount of distribution (Djuned & Nur, 2016; Fahrizal Zulkarnain, 2021; Muhibbin & Wahid, 2022). However, although the law of inheritance has been regulated in detail, in practice it still requires the ijtihad of the scholars (Djuned & Nur, 2016; Muhibbin & Wahid, 2022).

The examples of inheritance issues that still require ijtihad are hijab, which prevents other heirs from obtaining inheritance rights due to certain reasons (Djuned & Nur, 2016), gender equality in inheritance law (Permana, 2018), inheritance of grandchildren (Fajri, 2012), inheritance of kuntsa musykil (Abizar, 2020; Ayu, 2020) and so forth.

Ijtihad is necessary because the dynamics of life in society today are a factor in the emergence of a new paradigm in Islamic law (Dahlan, 2020). For example, there is a legal discovery in the field of inheritance relating to the issue of inheritance of different religions. In this case it is not impossible to perform ijtihad for religious court judges to fulfil a sense of justice in accordance with the purpose of the law itself (Khosyi'ah & Fuadah, 2020).

The main reason for inheriting is the existence of kinship. As for the kinship relationship, there are two things that can determine whether the relative is an heir who has the right to inherit or is not entitled. These are the line of kinship and the degree of kinship (Jalaludin, 2013).

One of the relatives who can obtain inheritance rights is the grandfather, but there are problems with the inheritance rights of grandfathers with brothers and sisters. In inheritance, the grandfather is equated as the father (Aen, 2014; Sabdah & Supardin, 2021; Zein & Ibrahim, 2021). The Qur'an and al-Hadith use the word father to mean grandfather. For example in surah al-A'raf 27:

يَا بَنِي آدَمَ لَا يَفْنِنَنَّكُمُ الشَّيْطَانُ كَمَا أَخْرَجَ آبَايَكُمْ مِنَ الْجَنَّةِ ...

"The children of Adam, do not be deceived by the syaithon as he has taken your mothers and fathers out of Paradise...."

The mothers and fathers described by the series of words *abawaikum* in the verse are Prophet Adam and Hawa. Both of them are our ancestors, not the real mothers and fathers.

In surah yusuf 38:

وَاتَّبَعْتُ مِلَّةَ آبَائِي إِبْرَاهِيمَ وَإِسْحَاقَ وَيَعْقُوبَ

"And I (Yusuf) followed the religion of my fathers, Ibrahim, Ismail and Ya'qub..."

Allah attributed Ibrahim, Ishaq and Ya'qub to Yusuf with the father, even though Ibrahim and Ishaq were his grandfathers. In a hadith narrated by Imam al-Bukhari, it is explained that the Rasulullah s.a.w said:

يَا بَنِي إِسْمَاعِيلَ ارْزُقُوا فَإِنَّ آبَاءَكُمْ رَامِيًا. (رواه البخارى)

"All you people of Ismail (learn) archery. For your father was a great archer.."

Allah attributed Ibrahim, Ishaq and Ya'qub to Yusuf with the father, even though Ibrahim and Ishaq were his grandfathers. In a hadith narrated by Imam al-Bukhari, it is explained that the Rasulullah s.a.w said :

سَامُ أَبُو الْعَرَبِ وَحَامٌ أَبُو الْحَبَشِ... (الحدِيثُ فِي مَسْنَدِ أَحْمَد)

"Sam is an Arab father and Ham is a Habsyi father.."

From the above explanations of the Qur'an and the Hadith, it is clear that the father referred to is their grandfather or ancestor. Therefore, the texts that are used as sources of law to determine the father's share in receiving inheritance also apply to determine the share received by the grandfather. As long as the father is still present, the grandfather cannot receive the inheritance, because he is related to the heir through the father (Rahman, 1987).

In regard to the inheritance rights of grandfathers with brothers or sisters, there is no clear evidence from either the Qur'an or al-Hadith. Therefore, *ijtihad* appears from the companions and subsequent scholars, which of course the results of their *ijtihad* vary from one to another. Thus, the author is interested in conducting research with the subject matter of how the *ijtihad* of the companions in determining the inheritance rights of grandfather with brothers or sisters. The purpose of this research is to examine the results of the Companions' *ijtihad* in determining the grandfather's portion if he is with brothers and sisters.

Research method

This research is a qualitative research using secondary data. Secondary data in this study is in the form of scientific literature such as articles in journals, books, websites and others. The data was collected using the documentation method. The data analysis technique is carried out in three stages, namely, data reduction, data verification and data presentation. Data reduction is an activity in sorting data according to its category. Data presentation is an activity carried out when the necessary data has been arranged so that conclusions can be drawn and even determine the actions to be taken (Rijali, 2018).

Results and Discussion

Grandfather's right of inheritance

As explained earlier that the grandfather occupies the status of the father in the receipt of inheritance rights, then he gets a share of inheritance like the share received by the father as well, namely: 1/6 fardh, in a situation where the testator who bequeaths his estate has descendants who are entitled to inherit, namely sons; 1/6 fardh, and *ashabah* in a situation where the testator who bequeaths his estate has descendants who are entitled to inherit, namely daughters; *Ashabah*, in a situation where the testator who bequeaths his estate does not leave descendants of sons and daughters. Meanwhile, the *ghairu shahiah* grandfather according to Abu Bakr, Umar ibn Khattab, Usman bin Affan, Ali bin Abi Thalib and the popular opinion is positioned as *zawil arham* heirs, who are not entitled to receive inheritance as long as there are *zawil furudh* heirs and *ashabah* heirs (Rafiq, 1992).

The Egyptian law of inheritance defines the share of the paternal grandfather as the share of the paternal grandfather (Rahman, 1987), chapter 9 clause 2 as follows:

وَالْجَدُّ الصَّحِيحُ هُوَ الَّذِي لَا يَدُ خُلٌ فِي نَسَبَتِهِ إِلَى الْمَيِّتِ أَنْتَى وَلَهُ فَرَضُ السُّدُسِ عَلَى
الْوَجْهِ الْمُبَيَّنِ فِي الْفُقْرَةِ السَّابِقَةِ.

“The rightful grandfather is a male ancestor who has not been linked to the heir by a woman. He is entitled to one-sixth of the fardh as explained in the previous paragraph.”

Based on this provision of the law, Egyptian jurists determined that the portion of the paternal grandfather is equal to that of the father, but this provision only applies in the absence or death of the father.

Inheritance rights of brothers and sisters

Brothers are included in the group of recipients of inheritance as *'Ashabah binnafsi*, namely male relatives who are related to the testator without being interspersed by women. They are grouped on the sideways relatives (*hawasyi*) the testator close, namely the descendants of the father of the testator. As well as the brother of the heir including the brother's son how low down. Group 'ashabah it consists of several people because it should be held selection, that those who *berjihad-bunuwah* should take precedence over the *berjihad-ubuawah*, who *berjihad-ubuawah* should take precedence over the *berjihad-ukhuwah* and who *berjihad-ukhuwah* should take precedence over the *berjihad-umumah*. The precedence of the 'ashabah heirs in terms of jihad is known by the scholars of faraidh as "*Tarjih bil-jihad*".

The evidence that establishes the inheritance of 'ashabah binnafsi is the hadith narrated by ibnu Abbas.r.a. The Prophet said :

أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَلِأَوْلَى رَجُلٍ ذَكَرَ. (متفق عليه)

“Give the inheritance to those who are entitled. After that, the remainder is for the man who is better off than you.” (Al-Bukhari, n.d.)

Siblings get inheritance rights from the testator consists of four kinds of circumstances, namely:

- $\frac{1}{2}$ fardh, which is the case if he is alone and does not inherit together with a sibling who makes him *'ashabah bil-ghair*.
- $\frac{2}{3}$ fardh, that is, if there are two or more of them, and they do not inherit together with siblings who make them *'ashabah bil-ghair* (Rafiq, 1992).
- 'Ashabah bil-ghair*, which is when he is one or more inherit together with siblings, they can all receive the entire inheritance or the rest of

the dzawil-furudh with the provision that the brother receives twice the receipt of the sister.

- d. *'Ashabah ma'al-ghair*, namely siblings get the right of inheritance from the heir if he inherits together :
1. One or more daughters.
 2. One or more male progeny granddaughters.
 3. Daughters and granddaughters of male progeny provided that the real sister is not together with the sibling who is the ma'ashib (Rafiq, 1992).

The evidence used as the basis for determining the sister's portion, which is $\frac{1}{2}$, $\frac{2}{3}$ and *'ashabah*, is the word of Allah in Surah an-Nisa 176 :

يستفتونك قل الله يفتيكم في الكلالة ان امرؤ اهلك ليس له ولد وله اخت فلها نصف ماترك وهو يرثها ان لم يكن لها ولد فان كانتا اثنتين فلهما الثلث مما ترك وان كانوا اخوة رجالا ونساء فللذكر مثل حظ الانثيين يبين الله لكم ان تضلوا والله بكل شيء عليم. (النساء: 176)

“They ask you for a fatwa (about kalalah). Say that Allah has given you a fatwa on kalalah, which is : If a man dies and he has no children, and he has a sister, then his sister shall inherit $\frac{1}{2}$ of what he leaves behind, and his brother shall inherit the whole of his sister's estate if she has no children. But if the sisters are two, then both of them $\frac{2}{3}$ of the property left behind. And if they are heirs composed of brothers and sisters, then for the man as much as the share of two sisters. Allah has made this clear to you so that you may not be astray. And Allah knows all things.” (an-Nisa’ :176).

Grandfather's inheritance rights with brothers and sisters

At the beginning, it was explained that the right of inheritance of grandfather with brother or sister is not explicitly stated in the Qur'an or the Hadith, so the ijthihad of the companions and subsequent scholars arose, which of course the results of their ijthihad varied from one to another.

Ibn Rusyd thought that the stronger evidence is the qiyas of those who equate fathers with grandfathers, because grandfathers are fathers in the second or third degree, just as sons are sons too, whether in the second or third degree. The son does not hermetically block the grandfather as an heir, but the son can hermetically block the brothers and sisters as heirs, so the grandfather should block the one who is blocked by the son. Furthermore, the brothers and sisters are not the cause of the testator or his descendants, but are together with the testator in the same line of descent, whereas the grandfather is the cause of the testator, so he is certainly more entitled to something than the person who is together with the testator in the line of descent (Rusyd, 1970).

The following companions of the Prophet who have contributed to the determination of the grandfather's share with the siblings of the heir who are worthy of legal consideration, especially by judges and other legal practitioners in cases of inheritance distribution involving both of them, they

are the companions of Ibn Mas'ud, Ali Bin Abu Talib, Abu Bakr As-Siddik, and Zaid bin Tsabit, the following are their ijtihad :

Dividing the inheritance by *muqasamah*.

The scholars who divided the inheritance between grandfather and brother by way of *muqasamah* differed in their calculations, they were Zaid bin Tsabit r.a., Ali bin Abi Thalib r.a, Ibnu Mas'ud r.a

a. Zaid bin Tsabit.

Zaid bin Tsabit ruled on grandfather's inheritance together with brothers and sisters in three circumstances :

- 1) If the brothers are with the grandfather and not with the *ashhabul-furudh*, then the grandfather will receive more than *muqasamah* or than one-third, he will receive *ashabah* with the brothers who have the right to one male portion or two female portions. The grandfather should not receive less than one-third by way of *muqasamah*; if he receives less than one-third, then he is stipulated to receive one-third by way of fardh and the rest is given to the brothers. However, in the matter of Akdaiyah Zaid bin Tsabit excluded the grandfather's *ushubah* towards the sister. In this case the sister received by way of fardh, i.e. $\frac{1}{2}$ not by way of *ushubah*, even though the sister was with the grandfather (Ashabuni, 1988).
- 2) If the siblings are with the grandfather together with the *ashhabul-furudh*, the grandfather gets $\frac{1}{6}$ in fardh and the siblings do not get anything, for example: *ashhabul-furudh* mother $\frac{1}{6}$, husband $\frac{1}{4}$, daughter $\frac{1}{2}$, grandfather $\frac{1}{6}$, and *ashabah* siblings.
- 3) If the brothers and sisters are together with the grandfather, together with the *ashhabul-furudh*, the grandfather gets more than the *muqasamah* or than the remaining $\frac{1}{3}$ or $\frac{1}{6}$ of the entire inheritance, for example: *ashhabul-furudh* grandfather receives *ashabah*, brother receives *ashabah*, *ashal mashalah* 2. Grandfather receives 1 share brother receives 1 share. Or the grandfather receives one-third of the brother's share, *ashal mashalah* 3: The grandfather receives one share and the brother receives two shares. Of the two ways the grandfather is more profitable if the way *muqasamah* than the way $\frac{1}{3}$ or than the way $\frac{1}{6}$ inheritance assets (Syarifuddin, 2004).

b. Ali bin Abi Thalib

Ijtihad of Ali bin Abi Thalib: Grandfather with brothers has three conditions, namely :

- 1) One-sixth portion for the grandfather. The grandfather shares with the brothers as long as his right to one-sixth is not reduced. If it decreases then the grandfather is given one-sixth.

If the grandfather is with two brothers or three, four then sharing is better for him. If there are five of them, they share the sixth equally.

In the case of grandfather, mother, husband, daughter and two brothers, the mother gets one-sixth, the husband one-fourth and the daughter half. If the remainder is less than one-sixth, the grandfather gets one-sixth. The origin of the issue of *aul* becomes thirteen (13). Two brothers get nothing.

2) Grandfather inherits with *ashabah*. The grandfather takes the remainder after the *ashabul furudh*. If the grandfather is with his brothers or a sister, the brothers get two-thirds - in the case of multiple siblings and half in the case of being alone, and the remainder goes to the grandfather by way of *ashabah*. If the grandfather is with a biological sister and a paternal sister, the former gets half, the latter one-sixth, and the grandfather gets the remainder.

3) *Muqasamah* (sharing). The grandfather shares with the brothers, meaning that the grandfather is included in their share, and he gets twice as much as the woman. If the grandfather is with one sibling and one brother, the property is divided equally between the grandfather and the siblings. The fatherless brothers or fatherless sisters are not counted in the division along with the brothers. In the case of the grandfather, two siblings, and a brother, the grandfather shares with them. The *tirkah* becomes three groups for them. Furthermore, the grandfather does not inherit *ashabah* along with the sisters. Sisters are heirs with a certain share (*fardh*). If the grandfather is with a full sister and a half sister, the former gets half, the latter gets one-sixth, and the grandfather gets the remainder. (Ashabuni, 1988).

c. Abdullah ibnu Mas'ud.

Abdullah ibn Mas'ud chose the middle way, i.e. he distributed the grandfather as Ali ibn Abi Thalib had done, if the heirs were only the grandfather together with the brother, and if there were other *furudh* heirs besides the grandfather and brother, then the grandfather's right was as Zaid ibn Tsabit had done. The sisters who are alone get a share (*furudh*) in the presence of the grandfather. This is in accordance with the opinion of Ali in the second part. It should be noted that this method is a combination of the two concepts of 'Ali and Zaid.

The grandfather shares with the brothers, so long as his one-third right is not diminished, according to the madhhab of Zaid. The brothers in paternity are not considered in terms of the grandfather's share, when together with the brothers in paternity. Thus, a sister who is a father is not counted when she is with a full sister.

Father as the recipient of inheritance rights that have been explained in the Qur'an (an-Nisa') 1/6 if with *far'u warits mudzakkar*, 1/6 and *ashabah* if together with *far'u warits muannats* and *ashabah* if not together with *fa'u warits* either *muzakkar* or *muannats*. The father as an *ashabah* heir can veil the heirs of the grandfather, siblings in the same family, uncles in the same family, paternal grandmother (Rahman, 1987). The paternal grandfather as a beneficiary of inheritance rights occupies the status of the father when not together with the father and siblings (Rahman, 1987). The rightful grandfather as the recipient of inheritance rights cannot veil brothers/sisters of the same sibling or the same father. The rightful grandfather as the recipient of inheritance rights can veil brothers/sisters as a mother, sons and daughters of biological brothers and fathers, biological uncles, paternal uncles, children of biological and paternal uncles (Rafiq, 1992).

The difference between a father and a righteous grandfather is that a father cannot be veiled by anyone, whereas a grandfather can be veiled by his father or by the nearest righteous grandfather. The father can veil the father's mother (paternal grandmother) while the grandfather cannot veil her. If the father is with the mother and one of the spouses, the mother receives one-third of the residue after the husband's or wife's share, while the grandfather, if he is with the mother and the husband or wife, receives one-third of the estate. The father can veil the biological or paternal sisters by scholarly consensus, while the paternal grandfather is still a matter of dispute (Rahman, 1987).

The grandfather with the brothers is entitled to one of the two best things, between a share and a third of all the property, if they are not with the heirs *ashabul furudh*. So, the grandfather is made to share like one of the brothers. The estate is divided between them and the sisters. The man gets the share of two women. The grandfather's share is made with the brothers as one of them, so long as sharing is better for him. If the share is less than one-third of the estate then we give him one-third. If the grandfather is with a brother, the grandfather takes one half of the property. In conclusion, if they are not with the *ashabul furudh* then the grandfather may take the more favourable of sharing and one-third of all the property.

In contrast to the way Zaid's inheritance is divided, the brothers of the father are counted when with the brothers of the father, at the expense of the grandfather. If there is a sister of the father then she takes her share and the grandfather takes his share. If there is any left over then it is for the brothers. If there is none then they get nothing, as in the case of the heirs consisting of the grandfather, a full sister, and two half sisters. So, sharing is better for the grandfather. The origin of the problem is based on their number, which is five. The grandfather gets two shares, one half sister gets half of the entire wealth i.e. two shares, while the remaining share is for the two half sisters. The origin of the problem is recognised as twenty.

If in this example, two brothers are replaced by one sister, she does not get anything. This is because the grandfather by *muqasamah* (sharing) takes half the property. This is better for him than a third. The remaining half is for a full sister. The father's sister does not get anything (Ashabuni, 1988).

Various examples of settlement of inheritance calculations between grandfather and siblings

According to Abu Bakar's method, the solution is as follows: If there is an inheritance of IDR 216 million with the following heirs: the husband receives $\frac{1}{2}$ as *furudh*, the mother receives $\frac{1}{3}$ as *furudh* and the grandfather receives the remaining $\frac{1}{6}$ as *ashabah*. Meanwhile, the sister is blocked by the grandfather and thus does not get the inheritance. Since the grandfather has received the best possibility, the problem is considered solved. (Imron, 2019). An example of the calculation according to Abu Bakr can be seen in table 1.

Table 1. Calculation of inheritance based on the opinion of Abu Bakr

Heirs	FM	Portion	AM	Correction	HW (million)	Receipt (million)
			6		IDR 216	
Husband	1/2	3	3/6		IDR 216	IDR 108
Mother	1/3	2	2/6		IDR 216	IDR 72
Sister	blocked					
Grandfather	<i>Ash</i>	1	1/6		IDR 216	IDR 36
		6	Total			IDR 216

According to the way Umar and Ibn Mas'ud gave the following solution: $\frac{1}{2}$ husband, $\frac{1}{2}$ sister, $\frac{1}{6}$ grandfather as *furudh* and $\frac{1}{6}$ mother. Then the division was resolved by *'aul*. The mother was given $\frac{1}{6}$ with the consideration that her rights did not exceed the rights of the grandfather. However, the reason for the change in the percentage of the mother's share ($\frac{1}{6}$) from that stipulated by the Qur'an was never explained by either Umar or Ibn Mas'ud. In this case, it means that both of them are more concerned with feelings than the demands of the law (Imron, 2019). Examples of calculations according to Umar and Ibn Mas'ud can be seen in table 2 below.

Table 2. Calculation of inheritance based on the opinions of Umar and Ibn Mas'ud

Heirs	FM	Portion	AM	Corretion	HW (million)	Receipt (million)
			6		IDR 216	
Husband	1/2	3	3/8		IDR 216	IDR 81
Mother	1/6	1	1/8		IDR 216	IDR 27
Sister	1/2	3	3/8		IDR 216	IDR 81
Grand father	1/6	1	1/8		IDR 216	IDR 27
		8	Total			IDR 216

Zaid ibn Tsabit provided a genius solution and gave a larger portion to the grandfather even though it contradicted some other principles. His method is that each person is determined by his furudh as explained in table 3, namely :

Table 3. Calculation of inheritance based on the opinion of Zaid bn Tsabit

Heirs	FM	Portion	AM	Corretion	HW (million)	Receipt (million)
			6	3	IDR 216	
Husband	1/2	3	3/9	3x3=9	IDR 216	IDR 72
Mother	1/3	2	2/9	2x3=6	IDR 216	IDR 48
Sister	1/2	3	3/9	3x3=9, 1/3x12/27	IDR 216	IDR 32
Grand father	1/6	1	1/9	1x3=3, 2/3x12/27	IDR 216	IDR 64
		9	Total	9x3=27		IDR 216

Description:

- Husband $\frac{1}{2} = \frac{3}{6}$
 - Mother $\frac{1}{3} = \frac{2}{6}$
 - Sister $\frac{1}{2} = \frac{3}{6}$
 - Grandfather $\frac{1}{6} = \frac{1}{6}$
- Total : $\frac{9}{6}$

After the 'aul' is done, the respective rights are as follows:

- Husband becomes $\frac{3}{9}$
- Mother becomes $\frac{2}{9}$
- Sister becomes $\frac{3}{9}$
- Grandfather becomes $\frac{1}{9}$

Each of the mother and husband as outsiders accompanying the grandfather and sister are given their rights, and the rights of the sister and grandfather are combined into $\frac{3}{9} + \frac{1}{9} = \frac{4}{9}$. This amount is distributed to the grandfather and sister in the ratio 2 : 1. Therefore :

- Grandfather's right to be $\frac{2}{3} \times \frac{4}{9} = \frac{8}{27}$
- Sister's portion $\frac{1}{3} \times \frac{4}{9} = \frac{4}{27}$

The solution according to Zaid has indeed satisfied the desire to make the grandfather's right ($\frac{8}{27}$) greater than the sister ($\frac{4}{27}$) and mother. However, the sister who was supposed to get $\frac{1}{2}$ or after being 'aul' to $\frac{3}{9}$ or $\frac{9}{27}$ became $\frac{4}{27}$. This means that she is a victim of the above policy.

Conclusion

Based on the study of the companions' ijtihad in determining the grandfather's portion of inheritance rights when together with the testator's siblings, it is found that ijtihad is still necessary even though the Qur'an and Hadith have very detailed explanations of the rights of each heir. This finding is reinforced by the example of the results of calculating the grandfather's share of inheritance based on the ijtihad of the companions. Ijtihad needs to be done in order to solve various problems regarding inheritance in society.

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