

## THE PROBLEMATICS OF JAD MAAL IKHWAH: PERSPECTIVES OF IBN ABBAS AND ZAIID IBN TSABIT

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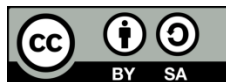
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### ABSTRACT

*The issue of jad ma'al ikhwah is one of the most problematic issues in Islamic inheritance law because it involves the inheritance relationship between the paternal grandfather and the testator's siblings, who are both categorized as 'asabah heirs. The absence of explicit provisions in the Qur'an regarding the grandfather's position in the inheritance structure has opened up a wide space for ijtihad since the time of the companions. This study aims to comparatively analyze the views of Ibn 'Abbās and Zayd ibn Thābit in the case of jad ma'al ikhwah, by exploring the methodological basis, normative arguments, and theoretical implications for the construction of faraidh science. This study uses a qualitative approach with a normative-juridical research type through a literature study of classical and contemporary fiqh literature. The analysis is carried out using content analysis methods and a comparative approach to identify differences in the ijtihad paradigms of the two figures. The results of the study indicate that Ibn 'Abbās used the qiyās nasab approach which equates grandfathers completely with fathers, thus preventing siblings from inheriting, while Zaid ibn Thābit developed the ta'līl al-aḥkām approach which is oriented towards the benefit and distributive justice by opening the possibility of inheritance distribution between grandfathers and siblings. This finding confirms that the difference is not dichotomous, but rather reflects the dialectic between legal certainty and substantive justice in Islamic law. Theoretically, this study contributes to enriching the faraidh discourse by emphasizing the flexibility of the Companions' ijtihad and its relevance for the development of contemporary Islamic family law based on maqāṣid al-sharī'ah.*

**Keywords:** Islamic inheritance law, jad ma'al ikhwah, faraidh, ijtihad friends, maqāṣid al-sharī'ah

## 1. INTRODUCTION

Islamic inheritance law (‘ilm al-farā’id) is one of the main pillars of the Islamic legal system, functioning not only as a mechanism for distributing property but also as a

normative instrument for maintaining justice, social stability, and family harmony after the death of the testator. Islamic inheritance provisions are systematically designed, taking into account closeness of lineage, social responsibility, and protection of the rights of vulnerable family members, making it an integral part of the *maqāsid al-sharī'ah* (obligatory functions of the law), particularly in safeguarding property (*ḥifẓ al-māl*) and distributive justice (*al-ʿadl*) (Al-Zuhailī, 2007; Al-Shāṭibī, 2004).

Although the basic principles of Islamic inheritance are explicitly regulated in the Qur'an, as in QS. Al-Nisā' [4]: 11 and 176, the practice of interpretation and application is not always singular and final. In this context, the *ijtihād* of the Companions played a crucial role in bridging the limitations of normative texts with the complexities of social reality. One of the most controversial and still debated inheritance issues to date is the case of the *jad ma'al ikhwah*, namely the position of the grandfather (*al-jadd al-ṣaḥīḥ*) when dealing with the testator's siblings in a single inheritance structure (Ibn Rushd, 2004; Ibn Qudāmah, n.d.).

The issue of *jad ma'al ikhwah* raises fundamental legal problems, because both grandfathers and siblings are categorized as *ʿaṣabah* heirs. In classical *faraidh* theory, the principle of *al-aqrab yuḥjabu al-ab'ad* (the closer relative precludes the more distant) is a general rule in determining inheritance priority. However, problems arise when the grandfather is positioned as a substitute for the father in the vertical line of descent, while siblings are in the lateral line and are also biologically closely related to the heir. This situation gives rise to a debate: does the grandfather absolutely preclude the rights of the siblings, or can both share the inheritance based on considerations of justice and benefit (Al-Sarakhsī, n.d.; Al-Nawawī, 1997).

The roots of this difference of opinion can be traced back to the time of Caliph ʿUmar ibn al-Khaṭṭāb, when two prominent companions, Ibn ʿAbbās and Zayd ibn Thābit, presented methodologically different views. Ibn ʿAbbās argued that the grandfather fully occupies the position of the father, thus precluding the inheritance rights of the siblings through the *tarjīḥ qiyāsī* approach, which emphasizes the structural analogy of lineage (Ibn Qudāmah, n.d.). In contrast, Zayd ibn Thābit developed the *ijtihād ta'līlī* approach by considering legal reasons (*ʿillah*) and public interest, thus opening up space for grandparents and siblings to share inheritance through a more flexible mechanism (Ibn Rushd, 2004; Al-Zuhailī, 2007).

This methodological difference not only impacts the technical aspects of inheritance distribution but also forms the foundation of the thinking of the major schools of jurisprudence. The Hanafi and Maliki schools, as well as the majority of Shafi'i scholars, tend to adopt Zayd ibn Thābit's view because it is considered more in line with the principles of distributive justice and the benefit of the poor. In contrast, the Hanbali school and some Shafi'i scholars are closer to the views of Ibn ʿAbbās, who emphasized legal certainty and the hierarchy of lineage (Al-Kāsānī, 1997; Al-Qarāfi, 2001).

However, contemporary studies on the *jad ma'al ikhwah* still tend to be descriptive-normative and have not provided a comparative examination of the methodological dimensions of the Companions' *ijtihād* and its relevance in the context of modern inheritance law. However, understanding the differences in the approaches of Ibn ʿAbbās and Zayd ibn Thābit has important theoretical significance, particularly in interpreting the

dynamics of the flexibility of Islamic law and the contribution of the Companions' *ijtihad* to the development of contemporary Islamic family law (Rahman, 1982).

Based on this background, this study aims to comparatively analyze the views of Ibn ‘Abbās and Zaid ibn Thābit in the case of *jad ma‘al ikhwah*, by exploring the methodological basis, normative arguments, and legal implications for the construction of *faraidh*. With a normative-juridical approach and qualitative analysis of classical and contemporary *fiqh* sources, this study is expected to provide a theoretical contribution in enriching the discourse of Islamic inheritance law, while also offering a more relevant and contextual framework for understanding inheritance practices in the modern era.

## 2. RESEARCH METHOD

This research uses a qualitative approach with a normative-juridical approach, focusing on the study of Islamic legal texts and classical Islamic jurisprudence (*fiqh*) thought related to the issue of the legal system of the *ikhwah* (brotherhood). This normative approach was chosen because the object of this research is not empirical social behavior, but rather the construction of legal norms, *ijtihad* arguments, and methodological differences in determining Islamic inheritance law, which are sourced from the Qur'an, Sunnah, and the *ijtihad* of the Companions (Creswell, 2014; Soekanto & Mamudji, 2015).

The data sources in this study consist of primary and secondary data. Primary data includes classical Islamic jurisprudence texts (*kutub al-turāth*) that directly address the issue of the legal system of the *ikhwah* (brotherhood), including the works of Ibn Qudāmah, Ibn Rushd, Al-Sarakhsī, and Al-Kāsānī. These sources were selected because they represent the views of the major Islamic schools of thought and contain arguments that explicitly reference the *ijtihad* of Ibn ‘Abbās and Zayd ibn Thābit.

Secondary data includes supporting literature in the form of contemporary Islamic law books, reputable scholarly journals, and academic studies discussing the methodology of *ijtihad* of the Companions, the theory of *maqāṣid al-sharī‘ah*, and the development of Islamic inheritance law. Secondary data is used to strengthen the analysis, broaden the theoretical context, and avoid a purely textual reading of classical sources (Rahman, 1982; Kamali, 2008).

Data collection techniques were conducted through library research by tracing, inventorying, and critically examining written sources relevant to the research focus. This process included in-depth reading of classical and contemporary Islamic jurisprudence texts and exploring the legal arguments used by each figure in formulating their views (Zed, 2014).

Data analysis was conducted using qualitative content analysis with the following stages: (1) data reduction through selection of texts relevant to the issue of *jad ma‘al ikhwah*; (2) data categorization based on main themes, such as normative basis, *ijtihad* method, and legal implications; and (3) comparative interpretation to identify the differences and similarities between the approaches of Ibn ‘Abbās and Zaid ibn Thābit (Miles, Huberman, & Saldaña, 2014).

### 3. RESULT AND ANALYSIS

#### **Conceptualization of Jad Ma'al Ikhwah in Faraidh Science**

In the structure of Islamic inheritance, jad (paternal grandfather) and ikhwah (siblings of the testator) occupy equally significant positions because both have the potential to be categorized as 'aṣabah heirs. Grandfathers are seen as having close vertical lineage, acting as a substitute for the father in his absence, while siblings represent horizontal closeness, also possessing strong biological and social ties to the testator. This similarity in status makes the relationship between jad and ikhwah not simple, but rather problematic in the practice of faraidh, as both have the potential to receive the remainder of the estate after the distribution of the fixed share (furūd) (Ibn Qudāmah, n.d.; Al-Kāsānī, 1997).

Normative tensions arise when the general principle of inheritance, al-aqrab yuhjabu al-ab'ad, that closer relatives preclude more distant relatives, confronts the concept of substitution of lineage. Logically, the grandfather, as a direct descendant, should preclude siblings. However, the concept of lineage substitution is not explicitly stated in the Qur'anic text, so its application relies heavily on ijtihad. This situation has given rise to debate: whether a grandfather can truly be equated with a father, or whether he has a different status that does not necessarily negate the inheritance rights of siblings (Ibn Rushd, 2004; Al-Zuhailī, 2007).

The textual limitations of the Qur'an in explaining the inheritance relationship between the father and the brother opened up ample room for ijtihad for the Companions. The verses on inheritance, particularly Surah al-Nisa' [4]: 11 and 176, only explicitly regulate the positions of fathers, children, and siblings under certain circumstances, without directly explaining the grandfather's position when he is with siblings. It is in this context that the concept of 'aṣabah becomes the main basis of legal debate, because it places jad and ikhwah in the category of heirs whose distribution depends on rational construction and considerations of justice. This difference in understanding 'aṣabah is what later gave rise to methodological variations in the ijtihad of the Companions and formed the foundation of differences in schools of thought in the case of jad ma'al ikhwah (Al-Sarakhsī, n.d.; Rahman, 1982).

#### **Ibn 'Abbās's Ijtihad Methodology in the Case of the Ikhwah Marriage**

Ibn 'Abbās's ijtihad methodology in the case of the ikhwah marriage relies on the use of qiyās nasab, a kinship analogy that positions the grandfather as a full substitute for the father in the Islamic inheritance structure. Within this framework, the grandfather is understood as a direct extension of the father's position upon his death, so that all legal consequences inherent in the father, including the function of barrier (ḥijāb), are automatically transferred to the grandfather. This approach emphasizes the continuity of vertical lineage as the primary basis for determining inheritance rights, while also emphasizing that closeness of lineage is the most determinant measure in the distribution of inheritance (Ibn Qudāmah, n.d.; Al-Kāsānī, 1997).

Through this approach, Ibn 'Abbās placed great emphasis on legal certainty and the consistency of family hierarchy within the faraidh system. By completely equating the grandfather with the father, the inheritance structure becomes simpler and easier to

implement, as it avoids the possibility of overlapping rights between the vertical and horizontal lines. This approach also reflects the formalistic orientation of *ijtihād*, where clarity of rules and stability of family structures are prioritized to prevent disputes and uncertainty in inheritance distribution. From this perspective, uniformity in the application of the law is seen as more important than flexibility, which could potentially lead to variations in the distribution (Ibn Rushd, 2004).

The normative implication of Ibn ‘Abbās’s methodology is the complete barring of the inheritance rights of siblings while the grandfather is still alive, as the grandfather is considered to have completely replaced the father’s position. Logically, this approach has the strength of consistency in *qiyās* and the firmness of legal principles. However, critically, it also demonstrates the limitations of legal flexibility due to its inadequate consideration of the interests of the family and distributive justice, particularly in social contexts where siblings have strong economic and emotional ties to the testator. Therefore, although Ibn ‘Abbās’s methodology offers legal certainty, it also opens up room for criticism regarding its ability to address the complexity of family relations in inheritance practices (Al-Zuhailī, 2007; Rahman, 1982).

### **Zaid ibn Thābit’s Ijtihād Methodology: The Ta’līl and Benefit Approach**

Unlike Ibn ‘Abbās’s *qiyās nasab* approach, Zaid ibn Thābit’s *ijtihād* methodology in the case of *jad ma’al ikhwah* is based on the *ta’līl al-aḥkām* approach, namely, legal rationalization through tracing the legal causes (*‘illah*) behind the determination of inheritance provisions. Zaid does not simply equate grandfathers with fathers structurally, but rather assesses the social function and legal consequences of the existence of grandfathers and siblings contextually. With this approach, the grandfather’s position does not automatically negate the rights of siblings, but is assessed based on considerations of justice and the balance of rights within the testator’s family structure (Ibn Rushd, 2004; Al-Sarakhsī, n.d.).

This *ta’līl* approach has given rise to several flexible inheritance distribution models, namely *muqāsamah* (joint division between grandfather and siblings), *tsuluts al-bāqī* (grandfather receives one-third of the remaining assets after the fixed share), and *suds* (grandfather receives one-sixth of the assets under certain conditions). These variations in models demonstrate that Zaid ibn Thābit did not prioritize a single formula, but rather tailored inheritance distribution to the existing heir configuration. The primary orientation of this approach is distributive justice and the protection of social rights, especially for siblings who are often economically and socially dependent on the testator (Al-Kāsānī, 1997; Al-Zuhailī, 2007).

Critically, the primary strength of Zaid ibn Thābit’s methodology lies in its adaptability to the complexity of family relations and variations in inheritance structures. This approach is considered more capable of accommodating the principle of *maṣlaḥah* without deviating from the normative framework of *faraidh*, thus providing a broader scope for justice than a more rigid approach. This is the main reason why Zaid’s view is more widely accepted by the majority of Islamic jurisprudence schools, particularly the Hanafi, Maliki, and Shafi’i schools, as it is considered capable of maintaining a balance between legal certainty and substantive justice. However, this flexibility also carries the potential for complexity in practical application, which requires a deeper understanding of Islamic jurisprudence to avoid confusion in inheritance practices (Rahman, 1982; Kamali, 2008).

### **Comparative Analysis: Ibn ‘Abbās vs. Zayd ibn Thābit**

The differing views between Ibn ‘Abbās and Zayd ibn Thābit in the case of the marriage of brothers reflect two fundamentally different paradigms of *ijtihād*: the formalistic and the substantive approaches. Ibn ‘Abbās represents the formalistic paradigm, which emphasizes the certainty of legal structures through *qiyās nasab* (religious lineage), completely equating grandfathers with fathers as the basis for decision-making. In contrast, Zayd ibn Thābit developed a substantive paradigm oriented toward legal objectives (*maqāṣid*) and public interest (*maslahah*) through an analysis of *‘illah* (the divine law), thus allowing for flexibility in inheritance distribution. These differences in paradigms demonstrate that the *ijtihād* of the Companions was not homogeneous, but rather reflected a diversity of methodological approaches in understanding and actualizing Islamic inheritance norms (Ibn Rushd, 2004; Al-Zuhailī, 2007).

The impact of these methodological differences is clearly visible in the legal construction of *faraidh* (law) that has developed within Islamic jurisprudence. Ibn ‘Abbās's approach produces a simpler and more structurally consistent inheritance model, but tends to close off the space for social justice negotiations by completely denying the inheritance rights of siblings. In contrast, Zaid's approach produces a more complex *faraidh* construction, but is also more adaptable to variations in the testator's family structure. In the practice of inheritance distribution, this difference has implications for significant variation in outcomes, particularly in the context of societies that value horizontal relations between siblings. Thus, this methodological difference is not merely a technical one, but directly impacts the face of distributive justice in Islamic inheritance law (Al-Kāsānī, 1997; Rahman, 1982).

In a critical synthesis, these two approaches are not entirely dichotomous but can be understood as two complementary spectra of *ijtihād*. Ibn ‘Abbās's formalistic approach offered legal certainty and ease of implementation, while Zayd ibn Thābit's substantive approach provided room for justice and adaptability to diverse social contexts. The persistence of these differences across schools of thought and eras demonstrates that Islamic law, from its inception, was built on a dialectic between normative certainty and practical benefit. Therefore, the persistence of these differences is not a weakness of the *faraidh* system, but rather reflects the vitality and flexibility of Islamic law in responding to ever-changing social dynamics (Kamali, 2008; Al-Qarāfī, 2001).

### **Theoretical Implications for the Development of Faraidh Science**

The *ijtihād* of the Prophet's companions, particularly in the case of the brotherhood's (*ikhwah*) decisions, made a fundamental contribution to the dynamics of Islamic legal development by demonstrating that the process of law formation does not stop at normative texts but continues to evolve through contextual reasoning. The methodological differences between Ibn ‘Abbās and Zayd ibn Thābit confirm that the *ijtihād* of the Companions served as an epistemological bridge between revelation and social reality, while also providing the initial foundation for the diversity of Islamic jurisprudence schools. Theoretically, this finding reinforces the view that Islamic law has an internal capacity to adapt without losing its normative legitimacy, as differences in

ijtihād arise from efforts to maintain the law's own objectives (Ibn Rushd, 2004; Kamali, 2008).

The flexibility of Islamic law is evident in the way the Companions responded to structural family issues not explicitly addressed in the Qur'an, including inheritance relations between grandparents and siblings. Zayd ibn Thābit's approach, which accommodates various models of inheritance distribution, demonstrates that the law of faraidh is not solely oriented toward mathematical certainty, but also toward social justice and the balance of rights between relatives. From a scientific perspective, this confirms that faraidh is not a static legal system, but rather a space for ijtihād that allows for the differentiation of legal solutions according to the social configuration of Muslim families (Al-Zuhailī, 2007; Rahman, 1982).

Within the framework of Islamic inheritance law reform, the relevance of the maqāṣid al-sharī'ah (the principles of property protection), justice (al-'adl), and family welfare serve as the normative basis for assessing and developing inheritance provisions contextually. The findings of this study indicate that Zayd ibn Thābit's substantive approach implicitly implemented the maqāṣid framework, although the terminology was not yet systematically formulated during the time of the Companions. Thus, the integration of maqāṣid al-sharī'ah into contemporary faraidh studies is not an innovation disconnected from the classical tradition, but rather a logical continuation of the practice of early Islamic ijtihād (Al-Shātibī, 2004; Kamali, 2008).

Overall, the position of *jad ma'al ikhwah* in contemporary Islamic family law discourse can be understood as a paradigmatic case that represents the tension between normative certainty and substantive justice. The theoretical significance of this research finding lies in the affirmation that the development of faraidh science needs to move beyond a textual-descriptive approach to a deeper methodological and philosophical analysis. By positioning *jad ma'al ikhwah* as the meeting point between the ijtihād of the companions, maqāṣid al-sharī'ah, and modern family dynamics, this study makes a conceptual contribution to strengthening Islamic family law as a responsive, relevant, and vibrant scientific discipline across time (Al-Qarāfī, 2001; Al-Zuhailī, 2007).

#### 4. CONCLUSION

This study confirms that the differences in views between Ibn 'Abbās and Zayd ibn Thābit in the case of the division of inheritance are not merely technical differences, but rather reflect two major paradigms in Islamic legal ijtihād: the formalistic paradigm and the substantive paradigm. The main findings of the study indicate that Ibn 'Abbās emphasized legal certainty through *qiyās nasab* (religious lineage), fully equating grandfathers with fathers, while Zayd ibn Thābit developed a *ta'līl* approach oriented toward distributive justice and public welfare. The significance of this finding is that faraidh law was not monolithic from its inception, but was built on a methodological dialectic that allowed for a diversity of legal solutions in accordance with the complexity of family relations and social contexts.

Theoretically, this study contributes to strengthening the understanding that the ijtihād of the Companions played a strategic role in the development of Islamic law, particularly in bridging the limitations of the normative text of the Qur'an with dynamic social realities. The methodological differences between Ibn 'Abbās and Zayd ibn Thābit

demonstrate that the principles of legal certainty and the principle of benefit are not mutually exclusive, but rather complementary orientations in the construction of faraidh law. Practically, these findings offer important implications for contemporary inheritance practices, particularly for religious court judges and Islamic legal policy makers, who should avoid being trapped in an overly rigid approach while also not ignoring the need for legal certainty in inheritance distribution.

However, this study has limitations because it focuses on normative studies and analysis of classical fiqh texts, thus not directly addressing inheritance practices in contemporary Muslim societies. Therefore, further research is needed to examine how these different ijtiḥad approaches are implemented in religious court rulings, positive law in Muslim countries, or social inheritance practices at the community level. Furthermore, future research could integrate the maqāṣid al-sharī'ah approach and socio-legal studies to broaden understanding of the relevance of faraidh flexibility in addressing the challenges of the modern family. Thus, the study of jad ma'al ikhwah does not only stop at classical discourse, but continues to live as part of the dynamics of Islamic law that is responsive and contextual.

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