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Islamic Family Law Reform in Indonesia: An Analysis of KH. Ahmad Azhar Basyir's Legal Interpretation Regarding the Irrelevance of *Zihar*

Ibnu Akbar Maliki[1]* and Digdo Aji Mukti[2]
[1]Institut Agama Islam Negeri Curup, Bengkulu, Indonesia
[2]Institut Agama Islam Darul 'Amal, Lampung, Indonesia

*Correspoding auhtor: ibnuakbarr1999@gmail.com

Abstract

Introduction: *zihar* is a tradition of the pre-Islamic Arab that has been reformulated by Islam and subsequently regulated in the Qur'an. However, not all countries incorporate *zihar* into their marriage laws; Indonesia is one such example. According to KH. Ahmad Basyir, this lack of regulation arises from the irrelevance of *zihar* to the customs and social conditions of the Indonesian community. **Objective:** This article aims to examine the reformulation of Islamic family law in Indonesia by exploring KH. Ahmad Basyir's method of *istinbath* concerning the relevance of *zihar*. **Methods:** This research is classified as normative legal research employing a conceptual approach. The primary data for this study comprises three works by KH. Ahmad Basyir that elucidate his method of *istinbath*: 'Reflections on Islamic Issues Surrounding Philosophy, Law, Politics and Economics (1993)', 'Ijtihad in the Spotlight (1998)', and 'Islamic Marriage Law (1999)'. Secondary data includes journal articles, books, theses, and dissertations that discuss the contributions of KH. Ahmad Basyir. Data collection was conducted using the documentation method, and analysis was performed employing the Verstehen analysis method. **Results:** The findings of this study indicate the moral underpinning of *zihar*, which emphasises respect for wives, asserting that they must not be demeaned by their husbands, thereby representing an improvement over Arab cultural practice. This historical perspective illustrates that the application of *zihar* law is both local and temporal in nature, rendering it inapplicable across all social contexts. The moral underpinning, also referred to as the *'illat*, should not be applied in Indonesia, which does not recognise the custom of *zihar*, in accordance with the principle *'al-hukmu yaduuru ma'a al-'illati wujudan wa 'adaman'*. **Conclusion:** Consequently, the provisions of *zihar* are deemed irrelevant in Indonesia, according to the views of KH. Ahmad Azhar Basyir.

Keywords: Ahmad Azhar Bayir, Istinbath, Reformulation of Islamic Family Law, *Zihar*.

Abstrak

Zihar merupakan tradisi bangsa Arab Jahiliyyah yang telah direformulasi oleh Islam dan diatur dalam al-Qur'an. Meskipun demikian, tidak semua negara mengatur *zihar* dalam undang-undang perkawinannya, salah satunya Indonesia. Menurut KH. Ahmad Basyir, hal tersebut disebabkan oleh ketidakrelevanan *zihar* dengan adat dan kondisi sosial masyarakat. Artikel ini bertujuan untuk mengkaji reformulasi hukum keluarga Islam di Indonesia dengan mengeksplorasi metode istinbath KH. Ahmad Basyir mengenai relevansi *zihar*. Penelitian ini termasuk dalam jenis penelitian yuridis normatif dengan pendekatan konseptual. Data primer dalam penelitian ini berupa tiga buku karya KH. Ahmad Basyir yang memuat metode istinbathnya, yaitu: "Refleksi atas Persoalan KeIslaman Seputar Filsafat, Hukum, Politik dan Ekonomi (1993)", "Ijtihad dalam Sorotan (1998)", serta "Hukum Perkawinan Islam (1999)". Sedangkan data sekundernya terdiri dari artikel jurnal, buku, skripsi, dan tesis yang membahas tentang karya KH. Ahmad Basyir. Data dikumpulkan dengan metode dokumentasi dan dianalisis menggunakan metode analisis Verstehen. Temuan dari penelitian ini menunjukkan adanya idea moral dari *zihar*, yaitu penghormatan terhadap istri yang sama sekali tidak boleh direndahkan oleh suami sebagai perbaikan dari kultur bangsa Arab. Aspek historisitas ini memperlihatkan bahwa pemberlakuan hukum *zihar* bersifat lokal temporal yang tidak dapat diterapkan di semua kondisi sosial masyarakat. Idea moral yang juga disebut sebagai 'illat tersebut tidak boleh diterapkan di Indonesia yang tidak mengenal adat *zihar* sesuai dengan kaidah "Al-hukmu Yaduuru Ma'a Al-''illati Wujudan wa 'Adaman". Oleh karena itu, ketentuan *zihar* tidak relevan di Indonesia sesuai dengan pendapat KH Ahmad Azhar Basyir.

Kata Kunci: Ahmad Azhar Bayir, Istinbath, Reformulasi Hukum Keluarga Islam, *Zihar*.

Introduction

Historically, Islamic law has been present in the Indonesian archipelago since the era of the kingdoms (Akbar et al., 2024). As a living law, Islamic law has naturally adapted to the norms and traditions of local communities (Wimra & Huda, 2023). It is not surprising that various contemporary fields of fiqh have emerged in the context of Indonesian fiqh, including environmental fiqh (Robi'ah et al., 2025), social fiqh (Janah & Ami'in, 2023), pluralism fiqh (Muallif, 2024), women's fiqh (Adnan et al., 2024), among others. This spirit of renewal has sustained Islamic law as a vital source of benefit within society (Siswanto, 2023). Various religious institutions in Indonesia have also contributed through the issuance of fatwas, notably Nahdlatul Ulama (Setiawan & Maliki, 2020) and Muhammadiyah (Falah et al., 2024).

Family law *(ahwal syakhsiyyah)* is not new within the dynamics of fiqh development in Indonesia. The history of the formation and renewal of Islamic family law in the archipelago has undergone various phases of evaluation and evolution, transitioning from the application of the inculturation model to a reduction to the acculturation model (Nasir et al., 2022). This movement of renewal is inextricably linked to the emergence of Muslim reformist thinkers, both from abroad and within the country. Notable figures from abroad include Rifa'ah al-Tahtawi, Muhammad 'Abduh, Qasim Amin, and Fazlur Rahman. Conversely, domestic reformist Muslim figures encompass Mukti Ali, Harun Nasution, Nurcholis Madjid, Munawir Syadzali, and Khoiruddin Nasution (Damanik, 2025). The substantive reform of Islamic family law aims to elevate the status of women and children, which has become a salient agenda in both minority and majority Muslim countries (Sezgin, 2023).

Zihar is a custom of the Jahiliyyah Arabs that served as a means of divorcing a wife by equating her with the husband's *mahram* (Simanjuntak & Adly, 2024). This custom has become one of the issues of partial family law reform through cultural reconstruction (Othman, 2023). Historically, the tradition of *zihar* was practised in Arabia prior to the advent of Islam. In the Jahiliyyah Arab tradition, *zihar* was interpreted as words of reproach and insult directed at a wife when her husband no longer loved her. Following the arrival of Islam, *zihar* became an act deemed sinful in the eyes of Allah SWT (Aravik et al., 2023). This illustrates a significant reconstruction effort undertaken by Islam against the norms of the *zihar* tradition. One of the objectives of this effort was to elevate the status of women, thereby preventing arbitrary treatment by men (Ma'mun & Maliki, 2023).

When viewed as a cultural product, various concepts pertaining to *zihar* necessitate further examination. This is particularly true regarding the relevance of its application in certain communities whose customs and cultures differ from those of Arabia. Discourse on the relevance of *zihar* law in Indonesia has become a topic of discussion among academics and mufassir. As articulated by Hasyim (2024), the phrase employed in the concept of *zihar* in some contexts may merely serve as an expression of praise for one's wife. Furthermore, Siradjudin (2022) and Putri (2024) have posited that likening one's wife to one's biological mother cannot universally be categorised as an act of *zihar* if it is intended to praise and respect her, thereby maintaining familial harmony. This conclusion reinforces Quraish Shihab's perspective that in cases where the meaning of statements is ambiguous, the applicability of *zihar* depends on the speaker's intention (Oktafia, 2022).

Indications of the irrelevance of *zihar* in Indonesia can also be discerned in the written regulations within the Compilation of Islamic Law (*Kompilasi Hukum Islam*/*KHI*), which serves as a critical guideline for the implementation of Islamic law in Indonesia, where regulations do not classify *zihar* as a form of divorce. Conversely, in the fiqh construction compiled by Middle Eastern scholars, *zihar* is recognised as a form of divorce initiated by the husband against his wife, as the culture of *zihar* is acknowledged within Middle Eastern societies, which are predominantly Arab cultures (Junaedi & Wasman, 2024). This opinion is supported by one of Indonesia's reformers of Islamic law, KH Ahmad Azhar Basyir, who contended that the custom of *zihar* is not recognised in Indonesia and, therefore, does not warrant inclusion in Indonesian marriage law (Rijal, 2023).

KH Ahmad Azhar Basyir is a prominent ulama and intellectual in Indonesia, having played a significant role in the Muhammadiyah organisation. He is also recognised as an ulama and intellectual from Muhammadiyah during the New Order and Reform eras (Rizal & Ramadhan, 2025). Throughout his lifetime, KH Ahmad Azhar Basyir produced numerous written works addressing Islamic legal philosophy and reflections on contemporary issues in Indonesia. Among his many intellectual contributions, his most significant works pertain to philosophy and *ijtihad*. KH Ahmad Azhar Basyir strongly emphasised philosophical thinking in the study of religion. He equated philosophical thinking with *tajdid* and *ijtihad* (Yusdani et al., 2025). This methodological approach constitutes the fundamental basis for KH Ahmad Azhar Basyir's reinterpretation of Islamic law, including the reconstruction of the *zihar* tradition.

In his book entitled *"Refleksi atas Persoalan KeIslaman Seputar Filsafat, Hukum, Politik dan Ekonomi"* (Reflections on Islamic Issues Surrounding Philosophy, Law, Politics and Economics), KH Ahmad Azhar Basyir asserts that the *nash* law and the social reality in which the *nash* was revealed are always interconnected, whether pertaining to verses from the Qur'an or the Sunnah, as this cannot be denied (Khasanah et al., 2024). Several legal texts delineate the context in which the text was revealed, including the verse concerning *zihar*, which was revealed within the framework of reforming the customs of the Jahiliyyah Arabs who employed *zihar* to oppress their wives.

Consequently, it can be inferred that if a legal product is closely tied to social reality, such as *zihar*, which is not practised universally across different societies, then the legal provision cannot be applied universally, even when mentioned in the Qur'an and Sunnah (Rijal, 2023). In the context of *zihar* in Indonesia, several studies can be categorised into two groups. The first group comprises studies examining *zihar* normatively within Islamic law and classical fiqh texts. Notable researchers in this area include Simanjuntak (2024), Mukti (2024), and Oktafia (2022). These studies conclude that the concept and contextualisation of *zihar* must be linked to the cultural values within the *asbabun nuzul* of Surat al-Mujadilah verses 2-3. The second group consists of studies addressing *zihar* within a social context, conducted by Rijal (2023), Husnul (2024), Siradjudin (2022), and Mulyana (2025). This research concludes that the application of *zihar* law must take into account the social and cultural realities of the local community. Based on the aforementioned literature review, it is evident that empirical and normative studies on *zihar* are only partial and focus on a singular social issue. To date, there has been no

comprehensive research on *zihar* that relates to the movement for the reform of Islamic family law in Indonesia.

Methodologically, the most pertinent study to this research is that of Wahid (2023). This study adopts a normative approach, aiming to analyse the verses on *zihar* using Nasarudin Umar's thematic interpretation, situating them within the discourse on the renewal of Islamic family law in Indonesia with a focus on gender equality. However, distinctions exist between that study and the present one, which will explore the renewal of Islamic family law through KH Ahmad Azhar Basyir's interpretation of the relevance of *zihar* in Indonesia. Thus, this study will integrate the existing concept of *zihar* and its actualisation within the realm of Islamic family law in Indonesia as posited by KH Ahmad Azhar Basyir. The research question is: How does KH Ahmad Azhar Basyir reform Islamic law through his interpretation of the relevance of *zihar* in Indonesia?

Methods

This research is classified as normative legal research of a descriptive qualitative nature, employing a conceptual approach. The data sources for this study consist of two types: primary and secondary data sources. The primary data sources include the complete works of KH Ahmad Azhar Basyir, particularly those that contain his legal conclusions, namely: *'Refleksi atas Persoalan KeIslaman Seputar Filsafat, Hukum, Politik dan Ekonomi'* (Reflections on Islamic Issues Surrounding Philosophy, Law, Politics, and Economics) (1993), *'Ijtihad dalam Sorotan'* (Ijtihad in the Spotlight) (1998), and *'Hukum Perkawinan Islam'* (Islamic Marriage Law) (1999). Secondary data is derived from research related to figures associated with KH Ahmad Azhar Basyir and his publications.

Furthermore, the researcher employs the Verstehen analysis method. Generally, the Verstehen method can be interpreted as an approach that facilitates the understanding of the meanings underlying social and historical events. In this approach, the primary instrument utilised is hermeneutics, which serves as a tool for comprehending the actors, relationships, and the entirety of human history. In this context, this analytical method is applied to examine the symbolic dimensions of the figure, with the objective of understanding the concepts and thoughts of KH Ahmad Azhar Basyir. Its application involves a detailed examination of the expressions of the figure, specifically focusing on the style of legal reasoning employed by KH Ahmad Azhar Basyir. Subsequently, this analysis is conducted within the broader framework of Fazlur Rahman's hermeneutic 'Double Movement', enabling a dialectical comparison of *zihar* with the thoughts of KH Ahmad Azhar Basyir, thereby establishing the irrelevance of *zihar* in Indonesia.

Biography of KH Ahmad Azhar Basyir

KH Ahmad Azhar Basyir was born in Yogyakarta on 21 November 1928. He was raised in a family environment that upheld strong Islamic values in Kauman. KH Ahmad Azhar Basyir was the eldest son of Kyai Haji Muhammad Basyir Mahfudz and Nyai Haji Siti Djilalah Binti Haji Saleh, and of Nyai Siti Khamdiyah Binti Haji Muhammad Noer. Nyai Hajjah Siti Djilalah had four children in total, with KH Ahmad Azhar Basyir being the eldest, followed by Junanah, Saadah, and Fauzan. From Nyai

Khamdiyah, there were two children: Ahmad Mujahid Basyir and Mas'ud Fauzi Basyir (www.muhammadiyah.or.id).

From this familial background, KH Ahmad Azhar Basyir inherited a robust lineage of religious scholarship and knowledge. From a young age, he was educated within a religious family and social environment. Due to his close affiliation with Muhammadiyah, KH Ahmad Azhar Basyir became actively involved in the Muhammadiyah youth movement while still in school. He commenced his formal education at the Muhammadiyah Elementary School in Suronatan, Yogyakarta. Following the completion of primary school in 1940, he continued his education at the Salafiyyah Madrasah while also studying at the Salafiyyah Termas Pondok in Pacitan, East Java. After one year, he transferred to Madrasah al-Fallah Kauman, where he completed his secondary education in 1994. Subsequently, KH Ahmad Azhar Basyir pursued higher education at the Muhammadiyah Yogyakarta Mubalighin III (Tabligh School), completing it in two years (Husna, 2023).

During the revolutionary era, the young KH Ahmad Azhar Basyir joined the TNI Hizbullah Battalion 36 in Yogyakarta. Following Indonesia's independence, he resumed his education at the Yogyakarta Higher Madrasah in 1949. After graduating in 1952, he continued his higher education at the State Islamic Institute of Yogyakarta, obtaining his bachelor's degree in 1956. The subsequent year, after taking an examination, he was assigned to study in Baghdad, Iraq, but did not complete his studies there due to his relocation to Darul Ulum University in Egypt, where he obtained his master's degree in 1968. In his thesis, KH Ahmad Azhar Basyir wrote about the inheritance system entitled *"Nizam Al-Mirats fi Indonesia, Bainal 'Urf wa-al-syari'ah al-Islamiyah"* (The Inheritance System in Indonesia, Between Customary Law and Islamic Law) (Afandi, 2023).

Throughout his life, KH Ahmad Azhar Basyir articulated his knowledge through various works on Islamic legal philosophy and contemporary issues in Indonesia. Most of his contributions were presented in the form of books on specific topics and papers for seminars on various occasions. During his tenure at Muhammadiyah and within the community, KH Ahmad Azhar Basyir was recognised as an individual well-versed in Islam. In addition to being acknowledged as an expert in Islamic law, he was also celebrated for his profound understanding of philosophy. Furthermore, KH Ahmad Azhar Basyir exhibited a high level of social awareness. His critical thinking enabled him to effectively address the issues of his time. As a practitioner of Islamic law, he consistently conveyed his thoughts in a respectful and judicious manner. This was particularly evident when he concluded a scientific discussion and received criticism of his ideas. KH Ahmad Azhar Basyir accepted such feedback calmly and graciously, often approaching his critics to express his gratitude (Amalia, 2022).

The thoughts and ideas of KH Ahmad Azhar Basyir are widely disseminated and engaged with by the public across various fields of study, including philosophy, economics, ethics, education, and more. Despite the diverse disciplines he explored, his work is consistently framed within the context of Islamic studies. Many of his contributions have been published including in table. 1.

Table 1. KH Ahmad Azhar Basyir Works

No	Book Title	Publisher	Year
1	*Ijtihad dalam Sorotan*	Bandung : Mizan	**1989**
	Hukum Adat Bagi Umat Islam	Yogyakarta : FH UII	**1990**
2	*Hukum Perkawinan Islam Disertai Perbandingan Dengan Undang-Undang Perkawinan No 1 Tahun 1974*	Yogyakarta : Fakultas Hukum UII	**1990**
3	*Pokok-Pokok Persoalan Filsafat Hukum Islam*	Yogyakarta : FH-UII	**1992**
4	*Refleksi Ats Persoalan Keislaman : Seputar Filsafat, Hukum, Politik Dan Ekonomi*	Bandung : Mizan	**1993**
5	*Garis-garis Besar Ekonomi Islam*	Yogyakarta : UII Pres	**1995**
6	*Hukum Perkawinan Islam*	Yogyakarta : UII Pres	**1999**
7	*Asas Hukum Muamalat dan Hukum Perdata Islam*	Yogyakarta : UII Pres	**2000**
8	*Hukum Waris Islam*	Yogyakarta : UII Pres	**2001**
9	*Ikhtisar Fikih Jinayat Hukum Pidana Islam*	Yogyakarta : UII Pres	**2001**
10	*Citra Manusia Muslim*	Yogyakarta : UII Pres	**2002**
11	***Falsafah Ibadah dalam Islam***	**Yogyakarta : UII Pres**	**2003**

The works of KH Ahmad Azhar Basyir are frequently referenced in the resolution of fiqh issues, owing to his expertise in classical texts. KH Ahmad Azhar Basyir employs a rationalistic approach to his scholarship. The outcomes of his intellectual endeavours are characterised by objectivity, methodical precision, and realism. Among his various contributions, his work in ijtihad and philosophy merits particular recognition, as he consistently underscores the significance of philosophical inquiry in the study of religious matters. For KH Ahmad Azhar Basyir, philosophical thinking in the examination of religious issues is tantamount to *ijtihad* and *tajdid*. Consequently, his societal perception is that of a scholar and intellectual (Umam, 2024). Based on the aforementioned works of KH Ahmad Azhar Basyir, the author will present his thoughts (works) which can be categorised as follows:

1. The field of philosophy in his book 'Reflections on Islamic Issues: On Philosophy, Law, Politics, Economics, and Key Issues in Islamic Legal Philosophy'.

   This book is a compilation of papers authored by KH Ahmad Azhar Basyir, which were presented in various academic discussion forums. The book is broadly divided into four principal sections. The first and second sections concentrate on the thoughts of notable figures in Islamic philosophy, from which we can extract the characteristics and features of Islamic philosophy and its associated figures. The third and fourth sections delve into the study of Islamic law, as articulated by KH Ahmad Azhar Basyir in his

writings on the subject. Regarding the principal issues of Islamic philosophy, the book offers a concise overview of matters pertaining to philosophy and Islamic law in general.

In his discourse on philosophy, KH Ahmad Azhar Basyir cites several scholars, including D.C. Mulder, from whom it can be inferred that philosophy constitutes systematic and in-depth contemplation of an object. Overall, KH Ahmad Azhar Basyir's reflections on philosophy underscore the necessity for a philosophical examination of Islamic law. He defines Islamic legal philosophy as rational, systematic, critical, and radical in its approach to various aspects of Islamic teachings. Finally, in the fifth subchapter, KH Ahmad Azhar Basyir also conducts an in-depth analysis of muammalat and politics, particularly the implementation of zakat, infaq, and shodaqoh as instruments for economic empowerment of the community (Khasanah et al., 2024).

2. Thoughts on Islamic Law in His Book Ijtihad in the Spotlight

In his examination of Islamic law, KH Ahmad Azhar Basyir underscores the significance of *tajdid* in addressing contemporary issues. He delineates three dimensions of *tajdid*. The first is the dimension of faith, which must be absolute and rooted in the Qur'an and Hadith. However, throughout history, faith has experienced developments that have resulted in differing opinions, leading to extreme interpretations and the emergence of groups that overly simplify understanding. Consequently, tajdid is necessary within this dimension. The second dimension involves *ibadah mahdah* or pure worship. Similar to the dimension of faith, *ibadah mahdah* must also be anchored in the Qur'an and Hadith, as this dimension has also undergone developments resulting in varying interpretations. The third dimension pertains to muamalat, where there is a need for a developmental approach to thinking that aligns with societal changes, given that the Qur'an and Hadith provide only general principles in this area. *Tajdid* in this context signifies dynamisation.

Ahmad Azhar Basyir posits that *tajdid* and *ijtihad* are two inseparable elements in determining legal rulings for evolving issues. *Ijtihad* represents the maximal employment of rational thought to derive legal rulings, and those who engage in ijtihad must fulfil certain criteria, including being a devout Muslim with firm faith, proper worship, and noble character. Within Muhammadiyah, *ijtihad* can be applied to events or cases not explicitly addressed in the primary sources of Islamic teachings, namely the Qur'an and Hadith, as well as to cases referenced in these sources. The second form of *ijtihad* involves reinterpreting the Qur'an and Hadith in accordance with current social conditions. The utilisation of rational thought may encompass formulating methodologies, identifying supplementary sources that support the reinterpretation of a text and its context, or any other endeavours consistent with *ijtihad* that do not deviate from the primary sources, namely the Qur'an and Sunnah.

As the aim is to establish legal rulings, the individual performing ijtihad must be a true Muslim, possess strong faith, including in their worship, and exhibit commendable moral character. Furthermore, the

principal instrument in conducting *ijtihad* is the application of reason, which must satisfy the criteria of sound reasoning. Additionally, since *ijtihad* involves the examination of the Qur'an and Sunnah, one must possess a comprehensive understanding of the language employed in the arguments when performing *istinbath*. It is also crucial to have an in-depth understanding of the Qur'an and Sunnah regarding the issue under consideration, as the essence of Sharia and its objectives must be well comprehended, given that it aims to promote the welfare of human life (Istifada, 2023).

The Vision of Reforming Islamic Law in Indonesia: An Analysis by KH Ahmad Azhar Basyir

Islamic law is regarded as a divine blessing from Allah SWT, designed with a universal vision intended for all of creation. As time progresses, humanity experiences advancements in its capabilities, which enhances its realisation of the role of caliphs on earth. Islam is perceived as a perfect religion that encapsulates the universal blessings of Allah SWT, addressing the aspects of social transactions *(muammalah)*, belief systems *(aqidah)*, morality *(akhlak)*, and muammalah in society. In the realm of creed and monotheism, the principles have been articulated in detail and are considered conclusive. Similarly, in the domain of rituals and worship, the practices have been thoroughly delineated. In the sphere of ethics, the principles are clearly and unequivocally defined. However, in the social domain, particularly concerning societal matters, only certain aspects have been elaborated upon in detail, especially in relation to Family Law and specific elements of Criminal Law. In this context, the guidelines provided remain general in nature, allowing for their actualisation to be adapted to the evolving needs of society. Consequently, in order to address the ongoing issues that arise, *ijtihad* is required (Umam, 2024).

The laws governing worship are classified as not open to rational interpretation *('ghayru ma'qul al-ma'na')*, which cannot be altered and must be implemented as prescribed. This contrasts with the area of *muamalah*, which is divided into two categories: not open to rational interpretation *(ghayru ma'qul al-ma'na)* and open to rational interpretation *(ma'qul al-ma'na)*. For instance, the provisions regarding the waiting period for a wife who has been divorced by her husband fall under the category of *ghayru ma'qul al-ma'na*. Furthermore, the distribution of inheritance shares for heirs, designated as those entitled to fixed shares of inheritance *(dzawil furudh)*, also falls within this category. Conversely, the Qur'anic provisions regarding the testimony of a debt agreement, which stipulates a ratio of 2:1 for male and female witnesses, can be categorised as *ma'qul al-ma'na* and is subject to modification.

The rationale for this distinction is not a change in the numerical aspect, but rather the veracity of the testimony process, which is the primary objective. This is consistent with the presence of female judges in religious courts, which appears to contradict the hadith of the Prophet Muhammad stating that a community will never prosper if it entrusts its affairs to women (Maliki et al., 2023). This provision can also be modified and included within the category of *ma'qul al-ma'na*. The arguments of *ma'qul al-ma'na* can be adapted according to societal needs using the *ta'lil al-ahkam* approach as a legal consideration (Amalia, 2022). This does not imply

that *ijtihad* based on legal rationale *(ta'lil al-ahkam)* and legal objectives *(maqasid Syari'ah)* alters the *nash* (Hasyim et al., 2024). The text of the *nash* remains unchanged; rather, the legal provisions are not applied due to the absence of an *illat nash*. Consequently, the social realities that arise may no longer align with the legal objectives of the *nash*, whether those concerned are explicitly stated or inferred from other *nash* (Yusdani et al., 2025).

Islamic legal products can be identified through their principal sources, namely the Qur'an and Sunnah, along with the independent legal reasoning of the Islamic jurists *(ijtihad of the fuqaha')*. In its actualisation, the law of text can be examined in terms of its binding nature, assessing whether it is absolute or not, the degree to which it distinguishes between implied arguments and the spirit of the Sharia encapsulated in those arguments, and the extent to which certain aspects must be maintained in accordance with the text of the *nash* while allowing for potential modifications in response to the realities of society at a given time. In this regard, the act of *ijtihad* is not problematic, as it does not carry the same binding authority as the *nash* (Khan, 2024). Legal changes through *ijtihad* are indeed necessary due to the evolution of societal issues, which have become increasingly complex (Qasim et al., 2023).

The development of ijtihad has given rise to numerous issues, including fundamental questions regarding the purpose of sharia, the essence of sharia, the dichotomy between textual and contextual, permanent and temporary values, definitive *(qhat'iy)* and speculative *(zhanniy)* arguments, as well as the distinction between surface and depth, core and shell, and the emergence of divine legal reasoning *(ilahiyah ijtihad)*, among others. Central to these discussions is the challenge of adapting Islamic law to the socio-cultural context of the Indonesian nation, which significantly differs from that of the Arab society during the time of the revelation of the Qur'an and Sunnah.

In relation to national legal development, as a nation with the largest Muslim population, there exists a continuous opportunity for Islamic legal concepts to be integrated into legislation, ensuring adherence to Islamic law (Sezgin, 2023). An example of such a legal product is the draft Law on Religious Court Procedures, which serves as the primary guideline for Religious Court judges in conducting proceedings and has been compiled into the Compilation of Islamic Law. The development of Islamic law within the legislative sphere, as part of national legal advancement, will persist due to constitutional legal imperatives (Welchman et al., 2023). Therefore, the pressing issue is how Islamic law is absorbed, understood, and perceived as a blessing by the majority of Indonesian Muslims (Othman, 2023).

The term ‘Actualisation of Islamic Law’ was developed by KH Ahmad Azhar Basyir to describe the renewal of Islamic law in Indonesia. This concept arises from KH Ahmad Azhar Basyir's concern that societal problems are becoming increasingly complex, necessitating the involvement of experts from various related fields for effective resolution. Hence, Islamic legal ijtihad must be undertaken collectively *(jama'iy)* rather than individually *(fardi)*. *Jama'iy ijtihad*, supported by state resources while maintaining the independence of the *mujtahids*, will be more effective and successful. Institutions with a global vision and insight are required to collaboratively address issues without undermining the potential for differences in

the implementation of joint *ijtihad* results, which should be tailored to specific contexts and times while remaining faithful to the spirit of sharia.

In this context, the interests of the wider community must take precedence, leading to the discontinuation of individual *ijtihad*, which often results in differences and confusion within the community. Specialisation in the field of *ijtihad* should be considered and prepared in response to the increasingly complex and evolving issues of Islamic law. The codification of Islamic law, such as the KHI, significantly aids in the dissemination of Islamic law and is crucial for the development of Indonesian national law, particularly given that Indonesia possesses the largest Muslim population globally. This aligns with the constitutional mandate enshrined in the first principle, which asserts that 'The Supreme Being is One,' and that the state is obligated to uphold the religion of its citizens (Khasanah et al., 2024).

Legal Ruling by KH. Ahmad Azhar Basyir on the Irrelevance of *Zihar*

Regarding *zihar*, KH Ahmad Azhar Basyir elucidates in his book entitled 'Reflections on Islamic Issues Surrounding Philosophy, Law, Politics and Economics,' particularly in the section on Islam and Social Reality, that *zihar* does not need to be incorporated into the domain of family law in Indonesia. KH Ahmad Azhar Basyir asserts that if a legal basis is closely intertwined with existing realities, then the application of that law is not universal, regardless of its mention in the Qur'an and Sunnah.

Conversely, if a law is experienced by all human beings, then that law is universally binding. One example is waiting period *(iddah)*, which must be observed by a widow upon divorce from her husband, the prohibition against marriage for women who are currently married, the obligation of a husband to provide for his wife, the prohibition on consuming usury for Muslims, and so forth (Maki & Maliki, 2021). *Nash's* that apply universally, meaning those that are practised by all human beings globally, do not need to be linked to a socio-cultural context because the benefits they encompass are not confined to a single location but are universal and aligned with human nature (Husna, 2023).

Additionally, there are several texts whose legal basis *(illat hukum)* is questioned, which is closely related to the social reality within which the text was revealed, serving as a determinant of whether the text is applicable locally, temporally, or universally. For instance, concerning the limits of the parts of the body that must be covered by women *(aurat)*, it has been elucidated that the *aurat* for women includes the palms of the hands and the face. Some argue that the illat of the law of the *nash* derives from the Arabs' overwhelming sexual desire for women, which renders them unable to control themselves when encountering a woman's body exposed, except for the face and palms. Numerous interpretations arise regarding the application of the *nash* in relation to social reality; some contend that its application is local and temporal, while others assert that all men possess desires and will be aroused when they see a woman's body beyond her palms and face, thus positing that the nash is universal (Khalik et al., 2023).

In relation to the application of *zihar*, KH Ahmad Azhar Basyir categorises it as local and temporal because, when contextualised within social reality, *zihar* is an Arab cultural practice that existed even prior to the advent of Islam, and not all individuals adhered to this custom (Anisa, 2024). Referring back to the the

legislative history of *Zihar (tarikh at-tasyri' zihar)*, it is a custom that is exclusively found in Arab countries, implying that other countries do not recognise the practice of *zihar*, as it is closely connected to the social reality of the Arab populace, who are significantly influenced by patrilineal and patriarchal culture, which characterised the Arab culture of Jahilliyah, adversely affecting women (Midhin & Salih, 2023).

For him, the custom of *zihar* equates a wife's back with that of her mother, rendering the wife forbidden to be touched. Following *zihar*, the husband who engages in this practice is deemed sinful, as he has made his wife unlawful to be touched, akin to the prohibition against a man touching his mother, as articulated in the Quran, Surah Al-Mujadalah, verses 3 and 4:

وَٱلَّذِينَ يُظَٰهِرُونَ مِن نِّسَآئِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُواْ فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ أَن يَتَمَآسَّا ۚ ذَٰلِكُمْ تُوعَظُونَ بِهِۦ ۚ وَٱللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ. فَمَن لَّمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَن يَتَمَآسَّا ۖ فَمَن لَّمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا ۚ ذَٰلِكَ لِتُؤْمِنُواْ بِٱللَّهِ وَرَسُولِهِۦ ۚ وَتِلْكَ حُدُودُ ٱللَّهِ ۗ وَلِلْكَٰفِرِينَ عَذَابٌ أَلِيمٌ.

> Those who divorce their wives in this manner, then ˹wish to˺ retract what they said, must free a slave before they touch each other. This ˹penalty˺ is meant to deter you. And Allah is All-Aware of what you do. But if the husband cannot afford this, let him then fast two consecutive months before the couple touch each other. But if he is unable ˹to fast˺, then let him feed sixty poor people. This is to re-affirm your faith in Allah and His Messenger. These are the limits set by Allah. And the disbelievers will suffer a painful punishment.

By analogy, a wife who has been subjected to *zhihar* by her husband is afforded the opportunity to wait for forty days, as is the case with the *ila'* oath, whereby the husband swears not to engage in sexual relations with his wife. If, after forty days, the husband decides to divorce his wife, then the divorce is final *(ba`in kubra)*. Conversely, if the decision is made to continue the marriage, the husband must pay *kaffarat* in the form of freeing a slave before resuming sexual relations with his wife. If freeing a slave is not feasible, it is substituted by fasting for two consecutive months, or if that is also impossible, by feeding sixty poor individuals. In this context, the verse on *zihar* aims to reform the pre-Islamic Arab custom of mistreating wives. However, does the verse on *zihar* pertain to the Indonesian context, which does not recognise the custom of *zihar*? According to Azhar Basyir, the custom of *zihar* is not known in Indonesia; therefore, *zihar* does not need to be incorporated into any provisions of marriage law in Indonesia (Siradjudin & Maliki, 2022).

KH Ahmad Azhar Basyir classifies the custom of *zihar* as nash *ma'qul al-ma'na*, which signifies that it is subject to modification. *Ta'lil al-Ahkam* is considered when determining whether a *nash* remains valid. If, in the application of *illat*, the law does not exist at a given time or when relating *illat* to the application of a law, it is possible that the legal provision cannot be implemented due to the non-fulfilment of *illat* (D. A. Mukti, 2022). Consequently, if the nash does not explicitly mention the *illat* of the law, *istinbath* is performed. This practice was exemplified by Caliph Umar bin Khattab, who abolished the provision of zakat to muallaf.

During the time of the Prophet Muhammad SAW, there were three categories of *muallaf* who were recipients of zakat. The first category included those who had recently converted to Islam to soften their hearts and ensure their steadfastness in the faith. The second category comprised individuals who were close to Islam but had not yet embraced it, with the hope that they would receive guidance. The third category consisted of those who were hostile to Islam, and they were granted zakat to mitigate their animosity. During the era of Umar bin Khattab, the search for the illat of the law in the third category revealed that, during the time of the Prophet, Islam was in a nascent state and relatively weak. However, by the time of Umar, Islam had gained considerable strength, thus eliminating the necessity to soften the hearts of its adversaries. As a result, Umar bin Khattab abolished the provision of zakat to the third category of those who are hostile towards Islam *(muallaf)* because the illat of the law was no longer applicable (D. A. Mukti, 2022).

The determination of the illat of the law is of paramount importance. KH Ahmad Azhar Basyir, in his book 'Ijtihad in the Spotlight', asserts that in legal provisions, if the *sharih illat* is not specified in a *nash*, it can be discerned through interpretation of the *nash (istinbath)*, as exemplified by Umar bin Khattab. In the process of *istinbath* regarding the law of *zihar*, KH Ahmad Azhar Basyir does not specifically mention it and only provides his opinion. Therefore, in this instance, the author endeavours to generalise by examining the pattern of istinbath employed by KH Ahmad Azhar Basyir, specifically the utilisation of *Ta'lil al-Ahkam*. In this regard, in applying *Ta'lil al-Ahkam* to ascertain the *illat* of a *nash*, KH Ahmad Azhar Basyir notes that the method of *al-sabru wa al-taqsim* may be employed.

In method of determining *illat* in *ijtihad (Masalik al-'illat)*, *al-sabru wa al-taqsim* literally refers to the examination of the possible characteristics found in the *ashal*, followed by the sorting and assessment of those characteristics that are appropriate and inappropriate in relation to illat, so that the fitting characteristics become the *illat* (Umam, 2024). Thus, the author seeks to employ this method to classify the characteristics of the *ashal zihar* law, subsequently sorting those that are appropriate and inappropriate to determine the *illat* of the *zihar* law using the *al-Sabru wa al-taqsim* method, whose *ashal* law is found in QS Al-Mujadilah verse 2, which reads:

ٱلَّذِينَ يُظَٰهِرُونَ مِنكُم مِّن نِّسَآئِهِم مَّا هُنَّ أُمَّهَٰتِهِمۡۖ إِنۡ أُمَّهَٰتُهُمۡ إِلَّا ٱلَّٰٓـِٔي وَلَدۡنَهُمۡۚ وَإِنَّهُمۡ لَيَقُولُونَ مُنكَرٗا مِّنَ ٱلۡقَوۡلِ وَزُورٗاۚ وَإِنَّ ٱللَّهَ لَعَفُوٌّ غَفُورٞ

> Those of you who ⌜sinfully⌝ divorce their wives by comparing them to their mothers ⌜should know that⌝ their wives are in no way their mothers. None can be their mothers except those who gave birth to them. What they say is certainly detestable and false. Yet Allah is truly Ever-Pardoning, All-Forgiving.

First, KH Ahmad Azhar Basyir elucidates that, in accordance with the context of the verse, the reconstruction of the law of *zihar* primarily aims to rectify the custom among the Arab people who employed *zihar* as a means of degrading women. This social reality can be regarded as an *'illat*, as the historical process of the formation of *zihar* law is elucidated in the history of legislation *(tarikh at-tasyri)*. Following the advent of Islam, *zihar* law was transformed into a statement deemed

abhorrent and false. Second, the designation of the statement as abhorrent and false cannot be considered an *'illat* since not all abhorrent and false statements uttered by a husband constitute *zihar*. Third, the comparison made to the mother cannot serve as an *'illat*, as in the wording of *zihar*, the comparison is explicitly made to the mother: *'anti 'alayya kadzahri ummi*.' Although some scholars contend that equating the wife with a *mahram muabbad* constitutes an act of *zihar*, and some even classify *mahram muabbad* and *mu'aqqat* as analogous to *zihar*, it follows that, in the Indonesian context, the fulfilment of the *'illat* is not realised. This is due to the fact that the custom of *zihar* is not recognised in Indonesia; hence, the custom of *zihar* does not need to be incorporated into the existing Marriage Law in Indonesia. Furthermore, apart from the failure to achieve the *'illat* of the law, the legal purpose *(ruh syariat)* also cannot be realised when contextualised within Indonesia, as it is specifically intended for the custom of *zihar*, which is an Arab cultural practice.

This does not imply that alterations to the legal text itself are permissible. No change occurs; rather, the enforcement of the legal provision is suspended due to the fact that the legal basis of the text no longer exists and is inconsistent with the legal purpose of the text, whether pertaining to the text itself or to other texts (D. A. Mukti, 2022). Alyasa Abu Bakar posits that the *'illat* of the law serves to ascertain whether a legal provision continues to apply or requires modification, as the underlying *'illat* has also changed. This provision is articulated in a general rule: "The existence of the law revolves around the existence of its *'illat* (cause). Where there is a cause, there is law; where there is no cause, there is no law." This principle indicates that a legal provision exists due to the presence of a cause, and the law ceases to apply in the absence of that cause. Similarly, should the cause change, the law must also change (Umam, 2024).

Legal Analysis by KH Ahmad Azhar Basyir on the Irrelevance of *zihar* in Indonesia

In addition to KH Ahmad Basyir, several other scholars have articulated their perspectives on *zihar*. The prohibition of *zihar* has been examined by Sayyid Quthb, among others. In his commentary, *'Tafsir fi Zhilal al-Qur'an'*, he elucidates that Surat al-Mujadilah, verse 2, fundamentally addresses this issue. A wife is not a mother; therefore, she should not be prohibited in the same manner as a mother. A mother is defined as one who has given birth. It is impossible for a woman to occupy the status of a mother solely through an expression. Such an expression is abhorrent and contradicts reality; it is a false statement that is rejected by truth. All matters in life must be grounded in truth and reality in a clear and specific manner.

Each issue should not be conflated or confused. Similarly, Quraish Shihab has expressed a comparable view regarding the prohibition of *zihar*. Individuals who perform *zihar* against their wives—asserting that their wives are akin to their mothers in terms of being forbidden to be touched—have, in essence, committed an error and injustice (Ridwan et al., 2022). Through such declarations, their wives do not become their mothers and thus do not become forbidden to marry. Their actual mothers are the women who gave birth to them. Those who commit *zihar* have uttered wicked and objectionable words that are disfavoured by Allah and represent an undesirable cultural practice. Moreover, this act is fundamentally erroneous, a deviation from truth and common sense, as well as a significant lie. Regarding the prohibition, KH Ahmad Azhar Basyir concurs with the textual evidence. However, in

his literature and works, he only articulates his opinion on the irrelevance of *zihar* in Indonesia.

This stance contrasts with that of other scholars who do not address the applicability of *zihar* law in Indonesia, which is socio-culturally distinct from Arabia. Conversely, KH Ahmad Azhar Basyir does not delve deeply into the legal content of the Qur'anic verse. Consequently, his contributions primarily involve analysing and commenting on the opinions of other scholars. Thus, in this context, the author endeavours to analyse it using the Double Movement Theory, allowing for a scientific, accessible, and systematic reconstruction of KH Ahmad Azhar Basyir's thoughts in methodological terms.

Furthermore, the Qur'an, as the primary source in the formation of Islamic law, was revealed to the Prophet Muhammad (SAW) in response to various social phenomena at specific times within society. It was sometimes revealed in the form of *basyiran* and at other times in the form of *nadziran*. The *nadziran* form often served as a warning to a society that was not yet cognisant of the implications of Islamic law. At that time, many individuals exhibited deviant behaviours. Conversely, the *basyiran* form was revealed to a community that was already aware of the existence of God. Both forms were constructed in accordance with their language as well as their social and cultural contexts. Thus, many verses of the Qur'an reflect the characteristics of pre-Arab society at that time (Fahrizi & Zubir, 2022).

Fazlur Rahman likens the Qur'an to an iceberg floating in the ocean. Only ten per cent of the ice is visible on the surface, while the remaining ninety per cent is submerged. This ninety per cent is obscured by a lack of methodology and historical research. Therefore, revitalisation and the introduction of new methodologies are necessary to uncover the concealed aspects of the iceberg (Nugroho & Kiram, 2023).

The methodology must be capable of penetrating historical deposits to their very foundations. In reality, the Qur'an addresses the social situations and realities of the Arab people, as evidenced by the descriptions of religious and cultural institutions. Additionally, it is illustrated by religious narratives and myths that predominantly reflect Arab social conditions. For instance, the depiction of Paradise aligns with the desires and aspirations of Arabs accustomed to desert life. Fazlur Rahman perceives the Qur'an as emerging as a response rooted in socio-historical contexts. The Qur'an responds to queries arising in moral, religious, and social domains, both specific and concrete. At times, the Qur'an provides answers to particular issues, while at other times, it elucidates general laws (Zahra et al., 2024).

Fazlur Rahman contends that interpreting the Qur'an necessitates a historical approach, beginning with an understanding of the history of the Prophet and his struggles, as well as the social conditions, institutions, and worldview of the Arabs, while addressing contemporary issues and relating them to the context in which the Qur'an was revealed. In response to this matter, Fazlur Rahman offers a methodology known as the Double Movement Theory of Hermeneutics, employing a socio-historical approach. Generally, the theory of double movement commences with the first movement, which situates the current situation within the context of the Qur'an's revelation, and the second movement, which contextualises it to the present day. The following section presents an interpretation of the double movement theory concerning the irrelevance of *zihar*:

1. First Movement

Transitioning from the contemporary context to the period in which the verses of the Qur'an were revealed necessitates an understanding of these statements through a historical lens, whereby the Qur'anic responses serve as definitive answers (Yusuf et al., 2024). Subsequently, the responses of the Qur'an can be generalised as assertions that embody moral objectives. When applying the 'Double Movement' theory to the concept of *zihar*, it is essential to first examine the *asbabun nuzul* (occasions of revelation) pertaining to the legislation of *zihar*. Fundamentally, when a husband pronounces *zihar* against his wife, he is obligated to pay the prescribed *kaffarat* (expiation), as the utterance of *zihar* is deemed *munkar* (unacceptable) and false. This is elucidated in the Qur'an, specifically in the words of Allah SWT in QS. al-Mujadilah/58: 1, which states as follows.

قَدْ سَمِعَ ٱللَّهُ قَوْلَ ٱلَّتِي تُجَٰدِلُكَ فِي زَوْجِهَا وَتَشْتَكِيٓ إِلَى ٱللَّهِ وَٱللَّهُ يَسْمَعُ تَحَاوُرَكُمَآ ۚ إِنَّ ٱللَّهَ سَمِيعٌۢ بَصِيرٌ

Indeed, Allah has heard the argument of the woman who pleaded with you ˹O Prophet˺ concerning her husband, and appealed to Allah. Allah has heard your exchange.1 Surely Allah is All-Hearing, All-Seeing.

The reason for the revelation of the above verse is the incident involving Khaulah bint Tsa'labah, who was subjected to *zihar* by her husband. At that time, after Khaulah had finished praying, her husband, Aus bin Shamit, requested her to serve him. However, Khaulah refused her husband's request, and he subsequently *zihar* her. Following the incident, Khaulah lodged a complaint with the Prophet, who stated, "I have not been commanded anything about your matter. In my opinion, you are forbidden to be touched by your husband." Khaulah did not accept this response and appealed to Allah SWT. After praying, the next three verses were revealed (Saputri, 2022).

Sayyid Quthb, in his commentary, elucidates that Imam Ahmad reported that Sa'ad bin Ibrahim and Ya'qub narrated from their father, from Muhammad bin Ishaq, from Muammar bin Abdullah bin Hanzahalah, from Yusuf bin Abdullah bin Salam, from Khaulah bint Tsa'labah, who remarked, "By Allah, Allah revealed the first verse of Surat al-Mujadilah concerning me and Aus bin Shamit. I described my husband as an old man with bad morals. One day he entered my room, but I refused him for certain reasons. Subsequently, he became angry with me and then *zihar* me by declaring, 'To me, you are like my mother's back.' After *zihar* his wife, he departed with his people to a meeting place. Upon his return, he desired me back, but I responded, 'No, by the One who controls me, do not desire me, for you have already spoken those words before Allah and His Messenger decided on our matter.' Nonetheless, he persisted, and I managed to overpower him" (Ahmad, 2025).

Following that incident, Khaulah visited her neighbour's house to borrow clothes and subsequently went to meet the Messenger of Allah. Upon meeting the Messenger, she recounted all the problems she had faced

regarding her husband's poor character. The Messenger of Allah then advised, "O Khaulah, your uncle's son is an old man, so fear Allah in dealing with him." Khaulah retorted, "By Allah, I will not leave until the Qur'an answers my question." At that moment, the Prophet suddenly fainted, as was often the case when he received revelation. Upon regaining consciousness, he proclaimed, "O Khaulah, verily Allah has revealed the Qur'an concerning you and your husband" (Suci, 2022).

In his interpretation, al-Qurtubi discusses two main issues in the above verse: First, the name of the woman who complained to Allah SWT, namely Khaulah Binti Tsa'labah, and her husband, Aus bin Ash-Shamit. The second issue pertains to the meaning of the word sami'a (hearing), which signifies idrāk al masmu'at, indicating that the object that can be heard has been reached. Allah SWT can hear all sounds perceptible to His creatures without the assistance of any tools. In the context of the above verse, this includes Khaulah's complaint, which, according to one narration by Aisha, was not heard by her husband at the time because he was inside the house (Saputri, 2022).

Al-Qurtubi asserts that, in essence, *zihar* likens the lawful back to the unlawful back; thus, the object of the *zihar* analogy applies to all women who are mahram to their husbands, whether due to blood relations, breastfeeding, marriage, or other reasons. In its application, *zihar* pertains to a wife, regardless of whether she has been consummated or not, from a husband who is permitted to divorce her. Al-Qurtubi elucidates that the ruling on *zihar* also applies to his female slave (Saputri, 2022).

Furthermore, the object of comparison, which is the entire body of the wife to the body parts of the husband's mahram, falls within the category of *zihar*. Al-Qurtubi argues that if the object of comparison is anything other than the back, it is still considered *zihar* because what is fundamentally being applied is the implied meaning, which is to compare something lawful with something unlawful. Regarding the subject, according to Al-Qurtubi, a muzahir or perpetrator of *zihar* is a mukallaf (mature and sane) man, and *zihar* is not valid if performed by a kafir dzimmi. This is because the phrase 'among you' is specifically addressed to Muslims. Similarly, a wife cannot *zihar* her husband, as the verse employs the term *mudzakkar* (masculine) (Ridwan et al., 2022).

The incident of Khaulah and her husband established the foundational construct for changing the law of *zihar*. The phrase *zihar* is articulated as 'anti 'alayya kadzahri ummi,' which translates to 'you are like my mother's back to me.' This does not imply equating the wife with the back of the mother, but rather, through pragmatic analysis—which examines the use of language in relation to its context—it suggests that the wife is akin to the mother in the eyes of the husband. The intended meaning of the language becomes clear when the context is understood. The limitation of pragmatic analysis lies in its application to the form and meaning of language concerning the speaker's intent, circumstances, and context (Ma'mun & Maliki, 2023).

In pragmatic analysis, the expression *zihar*, which signifies 'you are like my mother's back,' does not imply that the wife is equated with the

mother's back. However, when associated with the meaning of 'back,' it suggests that a woman becomes the possession of a man. The implication is that a woman who is married cannot act as she pleases towards her husband. Hence, 'my mother's back' conveys that the wife is equated with the husband's *mahram*, i.e., the mother, indicating that her rights as a wife are forfeited, including rights to maintenance and other entitlements.

The state of the husband when he *zihar* his wife is one of anger, as in Arab culture, the peak of a husband's anger towards his wife is expressed through the phrase 'anti 'alayya kadzahri ummi'. Thus, *zihar* serves as a husband's insult and curse towards his wife. From the perspective of tarikh at-tasyri', the practice of *zihar* is exclusive and primarily exists within Arab societies. Indeed, the culture of *zihar* does not manifest in other cultures or countries due to their differing traditions, cultural beliefs, and historical backgrounds (Wasman, 2023). In the Arab Jahiliyyah era, *zihar* was employed by husbands as a means to humiliate women, resulting in wives being divorced and left in a state of limbo, unable to exercise their rights as wives or remarry.

Moreover, in his book 'History of the Arabs,' Philip K. Hitti describes the life of the Bedouins in the Arabian Peninsula, who lived under a robust organisational structure and kinship system. Each tent represents a family known as a hayy, and its members constitute a clan *(qawm)*. A clan of the same lineage will form a qabilah or tribe. The strength of kinship ties is illustrated by the fact that an individual not belonging to any tribe is deemed a stranger and an enemy, lacking dakhil (protection) and akin to someone without land in feudal England, rendering them entirely powerless. Their status parallels that of a fugitive, devoid of protection and safety (Hoque, 2024).

One can envision that when a wife is *zihar* by her husband, she automatically becomes estranged from her husband's clan and is unable to marry another man due to being tertalak. In addition to her precarious status, a wife who is *zihar* by her husband also lacks protection from any clan, rendering her entirely powerless. Following the advent of Islam, the law of *zihar* was reformed into a false and immoral statement, thereby prohibiting it, and mandating that the husband pay kaffarat when he *zihar* his wife (Nisa, 2022). Thus, the comparison between *zihar* before and after reconstruction is as follows:

Object	Pre-Islamic Arab Ignorance	Post-Islamic Arab Ignorance
Konteks	It is an act that aims to humiliate one's spouse.	Acts prohibited by Allah SWT are deemed to be malevolent and characterised by falsehood.
Implications for Spouses: A Focus on Husbands	Divorcing one's spouse without incurring any obligations.	It is impermissible to engage in sexual relations with one's spouse prior to the payment of the kaffarat (penalty) as

		prescribed by syara' (Islamic law).
Implications for Spouses: A Focus on Wife	Divorced and in a state of uncertainty due to the absence of legal recognition of her rights, she is unable to enter into another marriage.	Divorced yet experiencing a state of limbo due to the absence of legal recognition of her rights, she remains unable to enter into another marriage. Although she is prohibited from engaging in intimate relations with her husband, she continues to retain her entitlements as a wife. Furthermore, while not officially divorced, the wife is similarly restricted from being intimate with her husband.

The purpose of establishing the law of *zihar* or Hikmat at-Tasyri' is encompassed within the framework of maqasid waqaiyyah, which serves as a preventive measure against injustice. As elucidated in the preceding sub-discussion, *zihar* in pre-Islamic times functioned as a means to demean women. During the jahiliyyah era, if a husband no longer loved or desired his wife, yet she was prohibited from marrying another man, he would declare *zihar* against her; the words of *zihar* were perceived as an insult and a form of abuse towards women. Following the advent of Islam, the practice of *zihar* was deemed an act of oppression, and the husband was prohibited from engaging in marital relations with his wife until he had paid the specified kafarat (Putri, 2024).

Essentially, *zihar* was formerly a means of degrading women's status; however, with the reconstruction of the law by Islam, the act of *zihar* became prohibited for husbands. Should they contravene this prohibition, they would incur a penalty in the form of kaffarat. From the perspective of Maqasid al-Syariah, the aspects of *maslahah* (public interest) sought in the legislation of *zihar* can be identified as follows:

No	**Apsect of Maqashid**	***Zihar* in the Pre-Islamic Arabian Age of Ignorance**	***Zihar* Following the Advent of Islam**
1	*Protection of life (Hifdzun Nafs)*	*Zihar* during the Jahiliyyah period posed significant risks for women, as the act of *zihar* would result in the expulsion of the woman from her husband's tribe. This expulsion placed her in a	After the arrival of Islam, which introduced a vision of respect for women, the law of *zihar* was established as an act prohibited by Sharia law, thereby ensuring greater protection for

		precarious situation, devoid of protection for her honour or her life.	the rights and dignity of wives.
2	*Protection of Lineage (Hifdzun Nasl)*	During the Pre-Islamic Arab Ignorance (jahiliyyah) period, wives who were subjected to *zihar* were deprived of their rights as spouses, which indirectly led to the neglect of their children's welfare. Furthermore, this period was characterised by the culturally sanctioned practice of infanticide, particularly concerning female infants.	Following the advent of Islam, wives continued to be entitled to their rights, including the right to child support, and their status remained preserved even in cases where their husbands had declared them '*zihar*'.
3	*Protection of Wealth (Hifdzul Maal)*	During the Pre-Islamic Arab Ignorance (Jahiliyyah) period, women who were subjected to *zihar* did not receive their rights as wives, including the right to financial support and other entitlements.	After the advent of Islam, if a husband performs *zihar* towards his wife, he is obligated to pay kaffarat, which must be paid in full by the husband as a legal consequence of *zihar*.
4	*Protection of the intellect (Hifdzul Aql)*	During the Arab Jahiliyyah period, the practice of *zihar* rendered a wife's status ambiguous, resulting in significant psychological distress due to the associated humiliation and the lack of protection from external sources.	Following the arrival of Islam, legal provisions were established that placed the burden of responsibility entirely on the husband, as *zihar* was deemed an unjust practice. This determination was based on the understanding that *zihar* functioned as a mechanism for the degradation of women.

2. Second Movement

In the second movement, which corresponds to the era of the Qur'an's revelation, moral concepts were elucidated and subsequently contextualised within contemporary society. This necessitates that these ideal moral principles, which retain a general nature, must be interpreted within the context of modern-day Indonesian culture.

The moral underpinning of the legalisation of *zihar* was intended to reform the pre-Islamic Arab practice of employing *zihar* as a means of

degrading women and as a form of insult and abuse towards wives. In Indonesia, *zihar* is not addressed in the Compilation of Islamic Law, a set of fiqh rules that have been adapted to fit Indonesian cultural norms.

Several characteristics of Indonesian families have influenced the formulation of Marriage Law No. 1 of 1974, including the longstanding tradition of *'Tepo Sliro'*, which has fostered a high level of respect for spouses and subsequently shaped these regulations. Furthermore, the norm of mutual cooperation, a distinctive trait of the Indonesian populace, also significantly impacts the character and legislation of family law in Indonesia. This is exemplified by provisions regarding joint property, which are not recognised under traditional Islamic law. However, regulations concerning joint property are included in the Compilation of Islamic Law; although not explicitly stated, they exert considerable influence (Hasyim et al., 2024). Consequently, based on these considerations, the custom of *zihar* need not be incorporated into the stipulations of Indonesian Marriage Law, in alignment with the opinion of KH Ahmad Azhar Basyir, as its moral essence or the intended purpose of sharia is not realised.

Conclusion

The movement to reform Islamic Family Law in Indonesia, particularly regarding the irrelevance of *zihar* as articulated by KH Ahmad Azhar Basyir, suggests that *zihar* should not be incorporated into the provisions of Islamic Family Law in Indonesia. This assertion is grounded in the understanding that *zihar* is an Arab custom, unfamiliar in the Indonesian context, and applicable only in specific local and temporal circumstances. When analysing this assertion through the lens of *as-sabru wa al-taqsim 'illat* concerning the legalisation of *zihar* in relation to social reality, it becomes evident that the requisite conditions for its implementation are not met. Consequently, the custom of *zihar* cannot be operationalised within Indonesia.

Furthermore, employing the Double Movement theory for analysis reveals, in the first movement, the moral principle underpinning the custom of *zihar*, which advocates for the respect of wives, countering the devaluation of women prevalent in the Jahilliyah Arab culture. However, in the second movement, this moral intention fails to materialise, as Indonesia does not endorse customs or practices that equate a wife's body parts with the mahram body parts of her husband for the purpose of divorce. In accordance with the principle of '*Al-hukmu Yaduuru Ma'a Al-'iillati Wujudan wa 'Adaman'*, the *'illat* associated with the custom of *zihar* is not fulfilled.

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