

Zhihâr Contextualization in Indonesia: An Anthro-Linguistic Study

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Abstract: *Zhihâr Contextualization in Indonesia: An Anthro-Linguistic Study.* The law of *zhihâr* (equating wife to her mother) is closely related to Arabic culture, where the Qur'an was revealed. In Indonesia, *zhihâr* law cannot be enforced because of social norms differences. This article examines the contextualization of *zhihâr* in Indonesia. The aim is to examine the meaning of *zhihâr* in the Qur'an which is then applied in the context of Indonesian culture. Specifically, the contextualization includes the use of language in the *zhihâr* which is then linked to the existing cultural context. This research is purely a literature study using qualitative methods. The approach used is the sociology of language, or more specifically it can be called the anthro-linguistic approach. The results of the study show that respect is deeply embedded in family life in Indonesia. This means that the husband may equate his wife with his mother-in-law, but not forbid himself against his wife, only to praise and respect her. From the perspective of the sociology of language, this compliment is a reflection of cultural values that have long lived in Indonesian society. The *mufassirs* (the commentators of al-Qur'an) stated that this action is not *zhihâr* because the *lafadz zhihâr* requires the intention to forbid husband and wife relations. Therefore, it is necessary to conduct an in-depth study dealing with the axiological value of the law of *zhihâr* in the Qur'an which is linked to socio-cultural aspects.

Keywords: *zhihâr*, social, culture, Indonesia, Arab

Abstrak: *Kontekstualisasi Zhihâr di Indonesia: Kajian Antropo-Linguistik.* Hukum *zhihâr* (menyamakan istri dengan ibunya) berkaitan erat dengan budaya Arab, tempat diturunkannya Alquran. Di Indonesia hukum *zhihâr* tidak dapat diberlakukan secara mutlak karena terdapat norma-norma sosial yang berbeda. Artikel ini mengkaji tentang kontekstualisasi *zhihâr* di Indonesia. Tujuannya ialah untuk mengkaji makna *zhihâr* dalam Alquran yang kemudian diterapkan dalam konteks budaya Indonesia. Secara spesifik kontekstualisasi tersebut meliputi penggunaan bahasa dalam *zhihâr* yang kemudian dikaitkan dengan konteks budaya yang ada. Penelitian ini murni merupakan studi kepustakaan dengan menggunakan metode kualitatif. Pendekatan yang digunakan ialah sosiologi bahasa, atau secara lebih spesifik dapat disebut pendekatan antro-linguistik. Hasil penelitian menunjukkan bahwa sikap menghargai sangat melekat dalam kehidupan keluarga di Indonesia. Hal ini mengakibatkan suami mungkin saja akan mempersamakan istrinya dengan ibu mertuanya. Namun bukan untuk mengharamkan dirinya terhadap istrinya, tetapi untuk memuji dan menghargainya. Dalam perspektif sosiologi bahasa, kalimat pujian tersebut merupakan cerminan dari nilai budaya yang sudah lama hidup di masyarakat Indonesia. Para *mufassir* menyatakan tindakan tersebut bukan termasuk *zhihâr*, karena *lafadz zhihâr* mengharuskan adanya niat mengharamkan hubungan suami istri. Oleh sebab itu, perlu dilakukan kajian mendalam tentang nilai aksiologis hukum *zhihâr* dalam Alquran yang dikaitkan pada aspek sosial-budaya.

Kata kunci: *zhihâr*, sosial, budaya, Indonesia, Arab

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Introduction

The history of the revelation of the Qur'an contextually intersects with the cultural background of the Arab nation. This can be seen from the many verses that speak in the social context and traditions of the Arab nation itself. In fact, in several verses, there is a dialogue that makes Arab society the initial target of the teachings of the Qur'an. In this process, the inculturation of the Qur'an occurs to reconstruct the traditions of the local community, namely the Arabs.

In the realm of Islamic family law, *zhibâr* is a tradition that is reconstructed in stages and based on the monotheistic values contained in the Qur'an. From a historical perspective, *zhibâr* is related to the Arab Jahiliyah tradition in the form of a husband's attitude when he is no longer interested in his wife. This is partly because the wife is getting older and is no longer physically attractive, causing her husband to remove her from household life. The act of getting rid of it is to equate a wife with a biological mother because she looks like an elderly person. Such a characteristic in Islamic legal terminology is called *zhibâr*, which is an act that hurts the wife.¹

During the Arab Jahiliyah era, if the husband was angry at his wife and said "To me, you are like the back of my mother", then the wife became forbidden to have intercourse even though divorce did not occur. The marital relationship remains as it should be, but the two are not allowed to have intercourse with each other. This tradition was a form of discriminatory action against women at that time.² The implication of *zhibâr* practice in this concept has restricted women's rights to earn a living. Her marital status which is still hanging—whether divorced or not—has also taken away the freedom of women to find a new partner.

¹ Kemenag RI, *Al-Qur'an dan Tafsirnya Jilid X* (Jakarta: PT. Sinerji Pustaka Indonesia, 2017), p. 5.

² Arif Munandar and Muslim Djuned, "Zihar dalam Tafsir Fi Zhilal al-Qur'an dan Tafsir al-Mishbah," *Tafse: Journal of Qur'anic Studies*, 3.1 (2018): 18. See also Yeni Novitasari, Revanda Yuniandi, Sabilla Wirdatul Jannah, "Ila dan Zhihar Perspektif Tafsir Ayat Gender", *Ma'al: Jurnal Laboratorium Syariah dan Hukum*, 2.3 (2021): 296-321.

The revelation of Surat al-Mujadilah [58]: 1-3 becomes a new chapter for the reconstruction of the *zhihâr* tradition which is more humane and based on monotheism. Islamic law emphasizes that *zhihâr* is no longer punishable by divorce, but a disgraceful act that obliges the husband to pay expiation when he wants to reconnect with his wife. Therefore, Allah SWT forbids the *zhihâr* tradition.

Although Islamic law has changed the concept in the *zhihâr* tradition, this does not mean that *zhihâr* can be applied universally to Muslims. Because the enactment of the *zhihâr* law is closely related to Arab culture, of course, its relevance is still questionable with other cultures in the world; More specifically with Indonesian culture, when compared to Arabic culture, both have differences in the morphological processes of language.³ That is, sentences that are considered *zhihâr* according to Arabic culture are not necessarily considered *zhihâr* in Indonesian culture.

There is some literature and previous research that examines the concept of *zhihâr*, both in classical fiqh literature as written by Eka Suriansyah,⁴ Gio Mahpi,⁵ Sonia Dora,⁶ Siti Mar'atus Shoolihan and Fashihuddin Arafat,⁷ Hendri Kusmidi,⁸ and Arif Munandar,⁹ as well as in a social context, as also written by Zurifah Nurdin,¹⁰ Nukhbatul Fikar,¹¹

³ Miftahur Rohim, "Analisis Kontrasif Bahasa Indonesia dan Bahasa Arab Berdasarkan Kala, Jumlah, dan Persona" (Skripsi, Semarang, Universitas Negeri Semarang, 2013), p. 84.

⁴ Eka Suriansyah, "Rekonstruksi Konsep Zhihar (Perspektif Mazhab Sunni)" (Tesis, Yogyakarta, Universitas Islam Negeri Sunan Kalijaga, 2010), p. 100.

⁵ Gio Mahpi, "Kontekstualisasi Zhihâr dalam al-Qur'an (Studi Komparatif Kitab Tafsir Tafsir Ahkamul Qur'an al-Jassash & Rawai'ul Bayan al-Sabuni)" (Skripsi, Banten, Universitas Islam Negeri Sultan Maulana Hasanuddin, 2021), p. 79.

⁶ Sonia Dora, "Zhihar Perspektif Mufassir Indonesia" (Skripsi, Semarang, Universitas Islam Negeri Walisongo, 2014).

⁷ Siti Mar'atus Shoolihan and Fashihuddin Arafat, "Analisis Hukum Islam Terhadap Hubungan Badan Suami Istri dalam Masa Kafarat Zhihar", *MIYAH: Jurnal Studi Islam*, 17.1 (2021): 79-92.

⁸ Hendri Kusmidi, "Konsep Zihar dan Implikasi Hukumnya dalam Perspektif Hukum Islam", *Mizani: Wacana Hukum, Ekonomi dan Keagamaan*, 3.2 (2016).

⁹ Arif Munandar and Muslim Djuned, "Zihar dalam Tafsir Fi Zhilal al-Qur'an dan Tafsir al-Mishbah."

¹⁰ Zurifah Nurdin, "Zihar dan Ila' dalam Kajian Sosiologis, Filosofis, Normatif, Yuridis, Psikologis, dan Ekonomis" (Institut Agama Islam Negeri Bengkulu, 2014).

¹¹ Nukhbatul Fikar, "Konsep Zhihar dan Penerapannya dalam Keluarga Islam Nusantara" (Tesis, Banten, Universitas Islam Negeri Sultan Maulana Hasanuddin, 2018), p. 101.

Dadang Jaya,¹² and Anis Widya Ningrum.¹³ Eka Suriansyah, in his research, revealed that efforts to make legal regulations regarding *zhibâr* in Indonesia, while at the same time realizing its moral ideals, require careful and in-depth study. This begins with constructing forms of male arbitrariness against women; either through words or deeds and then determines the sanctions so that the perpetrators become deterrents.¹⁴

Another researcher, Nukhbatul Fikar, concluded that the concept of *zhibâr* which was studied in fiqh books at Islamic boarding schools was only at the theoretical level. In reality, its implementation in Muslim household life in Indonesia has never been implemented. In fact, *zhibâr* is currently only a legal theory that is difficult to implement in Indonesia of language.¹⁵

Meanwhile, Gio Mahpi, in his research, emphasizes that the substance of *zhibâr* opens up the possibility that the concept needs to be studied in depth so that it is relevant to the context. The essence of *zhibâr* is not just a sentence or language spoken, but also accompanied by bad intentions to insult, humiliate and hurt the feelings of the wife. That's why Islam forbids this act.¹⁶

This article, in contrast to the results of the research and studies above, highlights the contextualization of *zhibâr* in Indonesian culture from a language perspective. The approach used is the sociology of language (sociolinguistics), especially anthropolinguistics which analyzes the *zhibâr* sentence as part of the culture. This is important in the reconstruction of the meaning and application of *zhibâr* in Indonesia, especially in the cultural context, especially in terms.

¹² Dadang Jaya, "Zhihar Sebagai Perbuatan Pidana (Sebuah Kajian Pustaka)," *Jurnal At-Tadbir: Media Hukum dan Pendidikan*, 30.1 (2020): 37-56.

¹³ Anis Widiya Ningrum, "Zhihar dalam al-Quran dan Kontekstualisasinya Pada Persoalan Komunikasi Suami Istri" (Skripsi, Surabaya, Universitas Islam Negeri Sunan Ampel, 2018).

¹⁴ Eka Suriansyah, "Rekonstruksi Konsep Zhihar (Perspektif Mazhab Sunni)", p. 100.

¹⁵ Nukhbatul Fikar, "Konsep Zhihar dan Penerapannya dalam Keluarga Islam Nusantara", p. 101.

¹⁶ Gio Mahpi, "Kontekstualisasi Zhihâr dalam al-Qur'an (Studi Komparatif Kitab Tafsir Tafsir Ahkamul Qur'an al-Jassash & Rawai'ul Bayan al-Sabuni)", p. 79.

Research Method

This article is the result of a literature review using qualitative methods. The approach used is the sociology of language, especially in the field of anthropo-linguistics. The sociology of language approach is used to examine the historical background of *zhihâr* from a social and cultural perspective. The data collection method used is a study of some commentary books to explore the axiological value of *zhihâr* law as a basis for contextualization of *zhihâr* from an anthropolinguistic perspective.

The Historicity and Axiological Value of *Zhihâr's* Law

Etymologically, *zhihâr* comes from Arabic which is taken from the word *zhabri*, which means "back". Meanwhile, in terms of terminology, *zhihâr* is an act of likening a husband to a wife with a woman who is not lawful to have intercourse with. *Zhihâr* is a product of the Arab Jahiliyah tradition which is carried out with reprehensible words. Lafadz *zhihâr* does not belong to *bâ'in* (permanent) divorce.¹⁷

According to Ibn Qudamah, the special word "back" in *zhihâr* is because the back (*zahr*) is identical to the part of the body that is ridden so that later the wife is likened to it. This is because the Jews treat their wives as riding vehicles which makes them forbid husbands from intercourse with their wives from behind, for fear that their children will be born with disabilities. So, this *zhihâr* tradition has been influenced by Jewish beliefs. Furthermore, in Islam, the word *zhihâr* is interpreted not only for the back but for all parts of the body.¹⁸ As Imam Shafi'i emphasized that part of *zhihâr* covers all female limbs including the head, hands, skin, and so on. This argument is based on the prohibition of the mother which covers all parts of her body. So if someone equates one of the members of the wife's body with a woman who is forbidden to marry, then the provisions regarding *zhihâr* apply to him.¹⁹

¹⁷ Abdul Ghofar EM, *Fikih Keluarga* (Jakarta: Pustaka al-Kautsar, 2011), p. 379.

¹⁸ Nurdin, "Zihar dan Ila' dalam Kajian Sosiologis, Filosofis, Normatif, Yuridis, Psikologis, dan Ekonomis," p. 1.

¹⁹ Iffah Muzammil, *Fiqh Munakahat* (Tangerang: Tira Smart, 2019), p. 176.

Zhihar was a form of injustice during the Jahiliyah era as well as being a tool for the husband's power over his wife. According to their custom, the wife is considered a weak person and can be treated arbitrarily, including divorcing whenever she wants. At that time *zhihar* became a habit of Arab society and was used as a mode for divorcing his wife. If a husband is angry or doesn't like his wife, he simply says "to me you are like my mother's back" and then immediately there is a divorce between the two. So, according to the traditions of the Jahiliyah Arabs, *zhihar* is synonymous with divorce because as a result of the words of *zhihar* the wife is no longer allowed sexual intercourse. At the time of the Prophet, the *zhihar* case was recorded as being carried out by Aus bin Shamit who told his wife Khaulah bint Tsa'labah, "For me, you are like my mother's back". After the sentence was uttered, the relationship between him and his wife was severed and Khaulah was no longer able to freely leave the house, she became like a wife who had been kicked out. Khaulah then complained to the Prophet, but the Prophet did not decide because there was no revelation from Allah SWT regarding this matter. However, in another story, it is stated that the Messenger of Allah replied "You have been forbidden to have intercourse with Him". Then Khaulah said that her husband had not dropped the talaq (divorce), so Khaulah urged the Prophet to make a decision. Then came down Surah al-Mujadilah [58]: 2-3 as follows:²⁰

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِمَّن نَسَاهُمْ مَا هُنَّ أُمَّهَاتُهُمْ إِنْ أَمَّهُتُهُمْ إِلَّا الَّتِي
 وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوءٌ غَفُورٌ ﴿٢﴾
 وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ
 قَبْلِ أَنْ يَتَمَاسًا ذَلِكَمْ تَوْعَظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ﴿٣﴾

"Those among you who cheat on their wives, (consider their wives as their mothers, even though) their wives are not their mothers. their mothers are nothing but women who gave birth to them. and Verily they utter a word of evil and lies. and Verily Allah is Most Forgiving,

²⁰ Abdur Rahman, *Perkawinan dalam Syariat Islam* (Jakarta: Rineka Cipta, 2015), p. 103.

Most Forgiving. People who cheat on their wives, then they want to take back what they said, so (it is obligatory for them) to free a slave before the two husbands and wives mix. This is what you have been taught, and Allah is Aware of what you do." (Q.S al-Mujaadilah: 2-3).

With the revelation of the verse, the law of *zhihâr* is no longer considered divorce, but an act of grave sin. If the husband wants to withdraw his oath (wants to have intercourse with his wife), then he must pay expiation as described in the verse.

Islamic Shari'a comes with improvements and educates people to lead to goodness. In Islam, the concept of *zhihâr* is defined as an act of sin, not as an act of talaq, and has two legal consequences, namely the consequences of worldly and ukhrawi laws. On the worldly aspect, *zhihâr* prevents a husband from having intercourse with his wife except after he has paid expiation. The expiation itself is meant to educate husbands not to repeat those bad words. Meanwhile, for the legal consequences of the hereafter, the person who commits *zhihâr* gets a sin so he must repent to cleanse it.²¹

Furthermore, the revelation of the verses of the Qur'an about *zhihâr* is evidence that Islam highly values human dignity. One of the universal principles of Islamic law, as reflected in the application of *zhihâr* law, is the principle of equality or egalitarianism (*al-musâwah*). Humans are noble creatures. This glory is not because of race, skin color, or gender, but because of the good deeds done by humans themselves. This is explained in the Quran surah al-Hujurât [49]: 13,²²

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ
لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾

"O mankind, We have created you from a male and a female and made you nations and tribes so that you may know each other. Indeed, the most honorable among you in the sight of Allah is the most pious among you. Indeed, Allah is All-knowing, All-Knowing (Q.S al-Hujurât: 13).

²¹ Dora, "Zhihar Perspektif Mufassir Indonesia," p. 17.

²² Rohidin, *Pengantar Hukum Islam: dari Semenanjung Arabia Hingga Indonesia* (Yogyakarta: Lintang Publishing, 2016), p. 26.

Humans have an equal position before Allah SWT and are entitled to equal treatment. Likewise in household affairs, husband and wife should treat each other properly and properly so that any bad actions such as *zhihâr* can be avoided. Islam is very anti-oppression including domestic violence, one of which is caused by gender domination. Islam sanctions *zhihâr* perpetrators to pay expiation, the aim is for husbands to be careful in what they say and do and not act arbitrarily towards their partners. In this way, a good relationship between husband and wife can be created which will then support the realization of a harmonious, peaceful, and prosperous family.

***Zhihâr* as Culture and Language Expression**

Sibarani, as quoted by Nuryani, revealed that language was born from a cultural process related to mindset. Language has a relationship with internal and external human mental processes. Internally, mental processes are related to the human ability to process language related to mindset. While externally, mental processes can be seen in the human ability to make culture an expression of language.²³ The same thing was expressed by Levi Strauss who said that language is a product of a culture. In other words, the language used by a particular community or society is a partial reflection of their culture.²⁴

The opinion of the experts above when connected with the existence of the practice of *zhihâr* in the Arab Jahiliyah tradition gains strong support. The geographical conditions of the Arabian peninsula which is dominated by deserts make it possible to influence the psychic conditions which ultimately produce a hard and rough character. Although it must also be admitted that the influence of geographical conditions on the psyche can also produce positive effects such as the growth of generosity, courage, and patriotism.²⁵

²³ Nuryani, Siti Isnaniah, and Ixsir Eliya, *Sosiolinguistik dalam Pengajaran Bahasa Berbasis Multikultural: Teori dan Praktik Penelitian* (Bogor: Penerbit IN MEDIA, 2021), p. 7.

²⁴ Heddy Shri Purta Ahimsa, *Strukturalisme Levi Strauss: Mitos dan Karya Sastra* (Yogyakarta: Galang Press, 2015), p. 68.

²⁵ Wildana Wargadinata, "Tradisi Arab di Masa Nabi (dalam Perspektif Teori Change and Continuity)," *Jurnal El-Harakah*, 5.2 (2003): 51.

The social life of the Jahiliyah Arab nation, with its clan system, placed men in a dominant position, both as the head of the family and as the head of the tribe. As the head of the family, they will have a dominant role over their wife and children; whereas as tribal or tribal leaders they have the power not only over their families but also over other women who are in their sphere of power. They accept the presence of women in two different ways. The first way assumes that women are a source of disgrace, therefore it is not surprising that they bury their daughters alive as a form of burying disgrace. The second way is to let girls live but is treated unfairly and inhumanely.²⁶ To end this tradition, Islam stipulates the practice of *zhihâr* as an unlawful act, so that a husband who commits this act may not have intercourse with his wife before he pays expiation.

When observed from a historical perspective, the emergence of the provisions of *zhihâr* in Islam originated from the events experienced by Khaulah. It is said that one day, Khaulah stood up for prayer and was seen by her husband. He stood up straight, then bowed solemnly and bowed down gently. Seeing Khaulah's movements, her husband's desire was aroused and after greeting him, he immediately kissed her recklessly. Khaulah refused so her husband was upset and sad. Anger took control of his soul, without a second thought it forbade Khaulah from him. Her husband said, "You are (unlawful) to me like (unlawful) my mother's back."²⁷ Based on these events, it can be implicitly known that basically what is forbidden in *zhihâr* is not only the act of likening a wife to a woman who is forbidden to have intercourse with, but also the abusive behavior of husbands towards wives that are not following Islamic values.

In the case of *zhihâr*, *lafadz*, or the language spoken by a husband towards his wife as an expression of his anger can be viewed from the side of the firmness of meaning. As explained by Shaykh Imad Zaki al-Barudi, there are two types of *zhihâr* pronunciations, namely clear pronunciations

²⁶ R. Magdalena, "Kedudukan Perempuan dalam Perjalanan Sejarah (Studi Tentang Kedudukan Perempuan dalam Masyarakat Islam)," *Harkat An-Nisa: Jurnal Studi Gender dan Anak*, 11.1 (2017): 21.

²⁷ M. Ahmad Jadul Mawla, *Kisah-Kisah al-Qur'an*, trans. Abdurahman Assegaf (Jakarta: Zaman, 2009), p. 665.

(*sharîh*) and figurative pronunciations (*kinâyah*). *Zhîhâr* is pronounced in clear sentences such as: "You are for me like my mother's back, or you are in my view like my mother's back". This sentence essentially contains a clear meaning (*sharîh*), namely equating the wife's limbs with those of her mother. So sentences like this are considered legally *zhîhâr*. As for the sentence *zhîhâr* which is uttered in a figurative form like someone saying: "You, to me, are like a mother or similar to my mother", then this sentence does not directly equate a wife's limbs with a mother or a woman who is forbidden to have sex with. However, because this sentence implicitly also has the same meaning as resemblance, either in part or as a whole, the majority of scholars believe that sentences like this are the same as *zhîhâr* and the legal consequences also apply.²⁸

Substantially, the meaning of the various *zhîhâr* expressions and sentences is to forbid oneself from having intercourse with one's wife, either temporarily or permanently, because the object being compared is the biological mother, whose sexual intercourse is clear. This sentence does not cause legal consequences if it is not done with a specific intention. But if this sentence is said with the intention to humiliate his wife, then the law of *zhîhâr* applies.

***Zhîhâr* Contextualization in Indonesian Culture: Anthropolinguistic Analysis**

When compared with Arab society, Indonesian has different cultural tendency. This has to do with the geographical position of Indonesia which is located between two oceans, the Pacific Ocean and the Indonesian Ocean, and two continents, the Asian continent, and the Australian continent. The arrival of foreign nations who spread culture, including religion, supported the formation of a heterogeneous structure of Indonesian society, which can be seen from the number of existing races, ethnicities, cultures, and religions or beliefs. and friendly with Arabs. who tend to be loud and rude.²⁹

²⁸ Syaikh Imad Zaki al-Barudi, *Tafsir Wanita*, trans. Samson Rahman (Jakarta: Pustaka al-Kautsar, 2013), p. 506.

²⁹ Ali Syamsuddin, *Bahan Ajar Matakuliah Sistem Sosial Budaya Indonesia Jurusan Ilmu Komunikasi* (Bandung: Universitas Komputer Indonesia, 2010), p. 15.

Apart from that, physical differences in social interaction in Indonesia do not affect the appearance of superiority symptoms between one element of society over another. In this country, it is difficult to find certain groups that have special positions or are superior to other groups. They believe that all elements of society have equal rights and obligations from the economic, social, educational, and other sectors. In fact, in some cases, interfaith marriages are still permitted despite the controversy.³⁰

Furthermore, in contrast to the acceptance attitude of the Arab community towards Islam when this religion arrived in the region, in Indonesia the religion of Islam was able to enter without rejection and even managed to build a symbiosis of mutualism with the existing traditions in society. In this country, Islam and religion's Local culture go hand in hand and becomes two elements that support each other in creating a harmonious and tolerant society. The combination of Nusantara cultural values with Islam has contributed to the formation of family law norms in Indonesia.

From the perspective of fiqh, the law is a logical reflection of the circumstances in which it grows and develops. Every social element in society plays an important role in the formation of law, starting from the economic, cultural, and psychological aspects.³¹ Apart from that, the combination of religious texts and the existing social context has become the basis for efforts to reconstruct Islamic law that is responsive to a certain time and place.³²

One thing that is questioned is whether the *zhihâr* law as applicable in Arab nations can also be applied in Indonesia. In answering the question above, at least it can be seen from the arguments of the mufassirs in Indonesia regarding *zhihâr* from the perspective of the Quran. In the interpretation of the Quran version of the Ministry of Religion of the Republic of Indonesia, it is explained that *zhihâr* is a product of the

³⁰ Syamsuddin, p. 13.

³¹ Mubasirun and Sa'adi, "The Dynamics of Spirituality In The Old Age: The Perspective of Maqashid al-Shariah and Psychology," *AKADEMIKA: Jurnal Pemikiran Islam*, 26. 01 (2021): 93.

³² Siti Nurjanah and Iffatin Nur, "Gender Fiqh: The Mobilization of Genderresponsive Movements on Social Media," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 22.1 (2022): 2.

Jahiliyah Arab society, which even Islam itself has abolished it. Because of this, it is difficult to imagine that the *zhibâr* tradition that emerged in the era of Jahiliyah Arab would be born and develop in this archipelago, bearing in mind that historically behind the prohibition of *zhibâr* there were elements of jahiliyah Arab culture which were of course very different from the socio-cultural conditions. existing in the archipelago.

Zhibâr is a part of Islamic family law whose application must pay attention to the socio-cultural reality of the surrounding community. Therefore, in countries that are completely unfamiliar with the concept of zihar there is no obligation to regulate it in family law. This interpretation has been applied in Indonesia, where the marriage law does not recognize or regulate the matter of *zhibâr*. The laws and regulations referred to include Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. These two rules do not regulate *zhibâr* at all, either explicitly or implicitly. Although, as revealed by Dadang, the *zhibâr* problem can be categorized as a form of domestic violence (KDRT) in the sense of psychological violence so that it can be included in the text of criminal law.³³

Another aspect that also makes Indonesian cultural attitudes different from Arab cultural attitudes is the aspect of speech and the use of language in communication. In Indonesia, the pattern of communication in the family is characterized by high respect for others, especially for people who are respected or who are very dear. This attitude of respect and praise, according to Budi Andayani, plays an important role in the process of child development and maintenance of household harmony.³⁴

This culture of mutual respect between members of the household precludes the husband from uttering condescending sentences or those that could be classified as *zhibâr* statements. Because, even if a husband utters a sentence that physically equates his wife with his biological mother, that cannot necessarily be seen as a form of *zhibâr* statement, because it is permissible for the sentence to be intended to praise his wife. This is following what Shaykh stated. H. Abdul Halim Hasan, emphasized that

³³ Dadang Jaya, "Zihar Sebagai Perbuatan Pidana (Sebuah Kajian Pustaka)", p. 50.

³⁴ Budi Andayani, "Pentingnya Budaya Menghargai dalam Keluarga," *Buletin Psikologi*, 10.1 (2012): 7.

if a wife is likened to the glory of the body like "you are by my side like my mother's eyes" or "like my mother's spirit" if the intention is to respect, it cannot be classified as *zhihâr*. However, if it is accompanied by the intention of *zhihâr* then the rules regarding *zhihâr* apply to it.³⁵ This explanation is proof that to apply the law of *zhihâr* one must first look at the context and reality and whether there is an intention for it or not.

Buya Hamka, in interpreting *zhihâr* as in Surah al-Mujadilah, also emphasizes the linguistic aspects of the community. According to him, for Indonesian (Malay) people who are accustomed to calling their wife "sister", a term commonly used to call siblings, then this is not prohibited. However, if the intention is to liken something that arouses lust, then the act becomes unlawful. If you have already done it before knowing the law, then it is advisable to repent. As mentioned at the end of the verse "And indeed Allah is Most Forgiving, Forgiving".³⁶ Hamka also quoted a hadith narrated by Abû Dawud that the Messenger of Allah once heard a man calling his wife with the words, "Yes ukhti, O my sister." Then Rasulullah asked, "Are you her sister?" Even though it is already clear that it is forbidden to marry a sister. The Messenger of Allah asked this to show that he does not like his wife to be called a sister, even though by doing so the marriage is not void, it's just that the act violates good manners.³⁷

Furthermore, in the Indonesian context, resembling a wife and mother, both in physical form and in calling, is not necessarily considered *zhihâr*. Because for Indonesian people, this is a sentence or language that is used as an expression of respect or praise which is a reflection of Indonesian culture which is rooted in family life. Likewise, the nickname "mother" addressed to the wife, as practiced by Indonesian people, cannot be called *zhihâr*. Because what is meant by the husband is not to equate him with his biological mother in terms of it being forbidden to marry him, on the contrary, the term "mother" means the mother of the children

³⁵ al-Barudi, *Tafsir Wanita*, p. 506.

³⁶ Abdul Malik Karim Amrullah Datuk Indomo, *Tafsir al-Azhar* (Jakarta: Pustaka Panjimas, 1992), p. 13.

³⁷ Abdul Malik Karim Amrullah Datuk Indomo, *Tafsir al-Azhar*

or the prospective mother of the children. This also applies to sayings that equate wives with biological mothers as long as they do not involve matters related to sex.

One thing that needs to be emphasized is that in essence *zhibâr* depends on intention. If a husband says *zhibâr* to his wife intending to want to divorce or divorce his wife then *zhibâr* applies. On the other hand, if he has no intention of divorcing or divorcing his wife, only to praise his wife for her admiration for her mother, such as saying that her eyes or face are like her mother's, then those words cannot be said to be *zhibâr*.

Conclusion

Based on the description above, it can be concluded that *zhibâr* is an unlawful act according to Islamic law. However, to enforce *zhibâr* law in family law in Indonesia, it is obligatory to pay attention to aspects of language and traditions that have developed in family life. Because a sentence that resembles a wife with a biological mother cannot always be punished as an act of *zhibâr* if it is done to praise and respect and to maintain harmony in the family. The above conclusion reinforces the view of Quraish Shihab who states that in terms of utterances whose meaning is not very clear, whether or not *zhibâr* falls depends on the intention of the utterer. This means that not necessarily lafadz *zhibâr* as referred to in classical fiqh literature can have implications for the prohibition of sexual intercourse with a wife because to determine the law, certain aspects must be considered, especially those related to habits and socio-linguistics that live in society.

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