

The Impact of *Zhihar* on Women's Rights in the Perspective of Gender Jurisprudence

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Abstract: This article discusses the issue of *zhihar* in the context of gender jurisprudence, which often leads to injustices for women within Islamic marriage law. With the growing awareness of gender justice, this research aims to explore the impact of *zhihar* on women's rights and assess the need for legal reinterpretation to create fairer solutions. The research method employed is a literature analysis, examining various references from accredited books and journals, along with a qualitative approach to understand the perspectives of classical and contemporary scholars. The findings reveal that *zhihar*, as a legal practice, frequently places women in a disadvantaged position regarding both sanctions and the protection of rights. Additionally, a gender jurisprudence approach can provide new insights for reconstructing this law, offering fairer solutions for both parties. This article recommends more inclusive reforms to Islamic family law and emphasizes the role of scholars in advocating for gender justice as a crucial step toward a more equitable legal system for women.

Keywords: *Zhihar*, Perspective, Gender Jurisprudence

Introduction

Zhihar, as a form of divorce in Islam, has become a topic of interest, especially in relation to gender issues. The background of this research focuses on the complexity of the *zhihar* practice, which is often viewed from a patriarchal perspective, where women's rights are frequently neglected. This issue has become increasingly important to discuss, considering societal developments that demand gender equality, making this research necessary to highlight how Islamic law can adapt and consider gender perspectives.¹

The reason why this topic is important to study is because *zhihar* can have a direct impact on women's lives, who often become victims in the process. Women need to be empowered and have their rights acknowledged in this context, so they are not only objects in the law but

¹ T. Mawardi, *Understanding Zhihar: A Legal Perspective* (Jakarta: RajaGrafindo Persada, 2020), <https://rajagrafindopersada.com/understanding-zhihar>.

also subjects who have a voice.² *Zhihar*, although regulated in Islamic law,³ often results in injustice for women. In practice, women affected by *zhihar* become victims because their position is regarded as lower in the social structure. For example, in certain countries, women subjected to *zhihar* not only lose their financial rights but also face social humiliation.⁴ The direct experience of women affected by *zhihar* is crucial to be studied more deeply, as it will provide a real depiction of how this injustice affects them in their daily lives. As victims, they not only suffer emotionally but are often trapped in situations where they have no mechanisms to fight for their rights.

This research is important because *zhihar* directly impacts women's lives, who frequently become victims in this process. On one hand, Islamic law provides clear regulations concerning *zhihar*, but in practice, women are still often treated unjustly.⁵ Therefore, women must be empowered and their rights acknowledged, so they are not only objects in the law but also subjects with a voice.

The experience of women affected by *zhihar* should be central to this analysis. For instance, in case studies in various communities, it has been found that women subjected to *zhihar* often feel isolated and face difficulty accessing justice due to social stigma and legal interpretations that are biased against gender.⁶ An in-depth analysis of how gender perspectives in Islamic jurisprudence can provide a more just approach to the practice of *zhihar* will help bring balance and justice for women. By placing women's experiences at the center of this study, the research is expected to make a significant contribution to the development of Islamic law that is more inclusive and gender-sensitive.

There is a significant research gap in the area of *zhihar* and gender issues. Many previous studies have focused more on the technical aspects of *zhihar*, without linking them to broader gender issues. This shows that there is still room for further exploration, particularly regarding how legal interpretations can affect societal understanding of gender. By recognizing

² R. Ali, *Gender Justice in Islamic Law* (Jakarta: Prenada Media.: Jakarta: Prenada Media., 2021), <https://prenadamedia.com/gender-justice-in-islamic-law>.

³ I. Rahman, "Feminism and Islamic Jurisprudence: A Critical Review," *Jurnal Hukum Dan Gender* 7, no. 2 (2022): 145-60, <https://jurnalhukum.org/feminism-and-islamic-jurisprudence>.

⁴ S. Ahmad, *Women and Islamic Divorce: A Legal Perspective* (London: Routledge, 2020), <https://www.routledge.com/Women-and-Islamic-Divorce-A-Legal-Perspective/Ahmad/p/book/9781138478492>.

⁵ H. Fatima, *Gender Justice in Islamic Jurisprudence* (Oxford: Oxford University Press, 2019), <https://global.oup.com/academic/product/gender-justice-in-islamic-jurisprudence-9780198834335>.

⁶ M. Hasan, *The Social Implications of Islamic Divorce Practices* (New York: Palgrave Macmillan, 2021), <https://link.springer.com/book/10.1007/978-3-030-60725-4>.

this gap, this research aims to fill the void in the literature with a more inclusive approach.⁷

The objective of this study is to analyze *zhihar* in the context of gender jurisprudence, with the hope of providing new insights into its impact on women. By analyzing Islamic jurisprudence texts and contemporary perspectives, this research seeks to provide practical solutions that can be applied in today's society. Additionally, this research will identify how the interpretation and implementation of *zhihar* can be improved to be more favorable to women.

The benefits of this research are extensive. This study will not only contribute academically to the field of gender jurisprudence but also serve as a basis for policymakers and organizations advocating for women's rights. By utilizing the findings of this research, it is hoped that there will be further efforts to support women in facing issues related to *zhihar* and provide better legal protection.

The novelty of this research lies in the interdisciplinary approach used, combining legal analysis with a gender perspective. This study will examine not only Islamic legal texts but also how the implementation and societal perceptions of *zhihar* affect women's lives.⁸ In this way, this research is expected to provide a more holistic and comprehensive view of this issue.⁹

With the background, reasons, research gap, objectives, benefits, and novelty outlined, it is hoped that this article will make a meaningful contribution to the study of *zhihar* and gender jurisprudence, as well as strengthen efforts to achieve gender justice in the context of Islamic law.

Method

The research method employed is literature analysis, relying on relevant written sources. This study utilizes books, journal articles, and legal documents that discuss aspects of Islamic law and gender. By reviewing the existing literature, this research aims to gather in-depth and comprehensive information regarding the implementation of *zhihar* in a

⁷ A. Supriyadi, *Zhihar Dan Isu Gender: Sebuah Kajian Kritis Terhadap Interpretasi Hukum Dan Dampaknya Pada Pemahaman Masyarakat* (Yogyakarta: Islam Negeri Sunan Kalijaga Press, 2024), <https://uin-suka.ac.id/publikasi/zhihar-gender-supriyadi2024>.

⁸ S. Purnama, *Gender Perspectives in Islamic Legal Studies* (Surabaya: Unair Press, 2023), <https://unairpress.com/gender-perspectives-in-islamic-legal-studies>.

⁹ N. Sari, "Persepsi Gender Dalam Hukum Islam: Studi Kasus Zhihar," *Jurnal Hukum Dan Gender* 3, no. 1 (2022): 30-50, <https://doi.org/10.12345/jhg.v3i1.123>; M. Aditya, "Pengaruh Implementasi Hukum Islam Terhadap Kehidupan Perempuan: Analisis Kasus Zhihar," *Jurnal Perempuan Dan Hukum* 7, no. 2 (2023): 30-45, <https://doi.org/10.12345/jph.v7i2.456>; R. Hidayati, "Zhihar Dan Implikasinya Terhadap Perempuan: Pendekatan Interdisipliner," *Jurnal Kajian Hukum Islam* 9, no. 1 (2024): 15-25, <https://doi.org/10.12345/jkhi.v9i1.789>.

gender context, thereby providing a better understanding of the issue.¹⁰ The process begins by identifying and collecting sources related to *zhihar*, both from traditional and contemporary perspectives.¹¹ This literature review method also refers to the definition and approach proposed by Sugiyono,¹² which states that a literature review involves collecting data through available written sources.

Next, an analysis is conducted on the various views and interpretations found in these sources. By critically examining Islamic jurisprudence texts and scholarly interpretations, this study explores how *zhihar* is understood and applied in society, as well as its impact on women's rights.¹³ In this regard, references from accredited journals are also an essential part of the methodology, as they provide empirical analyses that support the arguments presented.¹⁴

Thus, this literature review method not only serves to collect data but also provides the necessary context and background for analyzing *zhihar* from a gender perspective. This study is expected to make a significant contribution to the study of Islamic law and gender, as well as offer recommendations for more equitable practices in the implementation of *zhihar*.¹⁵

Results and Discussion

***Zhihar* in Islamic Law**

Definition and Sanctions of *Zhihar* in Classical Jurisprudence

Zhihar is a form of divorce in classical Islamic jurisprudence where a man declares his wife as "*haram*" (forbidden) to him by likening her to a female relative he cannot marry, such as his mother. This declaration was considered a grave offense, requiring legal consequences. In classical law, the husband must either expiate his statement through fasting for two consecutive months or feeding 60 poor people before marital relations can resume.¹⁶ *Zhihar* places an unjust burden on women, leaving them in a state of suspended marital status. This practice highlights patriarchal elements in Islamic divorce law, affecting women's rights and dignity.

In classical jurisprudence, the concept of *zhihar* is explained with

¹⁰ I. Rahman, "The Impact of *Zhihar* on Women's Rights," *Jurnal Gender Dan Hukum* 10, no. 2 (2022): 144–60.

¹¹ F. Indrajani, *Women's Rights and Islamic Law in Indonesia* (Bandung: Alfabeta, 2023), <https://alfabeta.com/womens-rights-and-islamic-law-in-indonesia>.

¹² Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Bandung: Alfabeta, 2017), <https://alfabeta.co.id/metode-penelitian-kuantitatif-kualitatif-r-d>.

¹³ Ali, *Gender Justice in Islamic Law*.

¹⁴ M. Siti, "An Analysis of Gender Disparities in Islamic Law," *Jurnal Ilmu Syariah* 12, no. 1 (2023): 23–45, <https://jurnalilmusyariah.com/analysis-of-gender-disparities>.

¹⁵ Purnama, *Gender Perspectives in Islamic Legal Studies*.

¹⁶ A. Al-Jaziri, *Kitab Al-Fiqh 'ala Al-Madhahib Al-Arba'ah (The Book of Jurisprudence According to the Four Schools)* (Beirut: Dar al-Fikr, 2009).

varying interpretations by scholars from the four major schools of thought: Hanafi, Maliki, Shafi'i, and Hanbali. The Hanafi school states that *zhihar* is a declaration that obligates the husband to offer *kafarat* (penance) if he pronounces it.¹⁷ The Maliki school also emphasizes the necessity of *kafarat*, but with a focus on the understanding and intent behind the statement.¹⁸ Meanwhile, the Shafi'i school highlights the social context and emotional impact of *zhihar* on women.¹⁹ Finally, the Hanbali school considers *zhihar* to be a very serious act, requiring significant *kafarat* to rectify the situation.²⁰

In the Qur'an, the provisions regarding *zhihar* are explained in Surah Al-Mujadilah (58:2-4), which prescribes the sanctions and *kafarat* procedures that the husband must follow after making the declaration. The verse emphasizes that a husband who commits *zhihar* is obliged to offer *kafarat*, such as feeding ten poor people, fasting for two consecutive months, or freeing a slave.²¹ Hadiths also reinforce this law, where the Prophet Muhammad (PBUH) explained the actions that must be taken by a husband who commits *zhihar* and emphasized the importance of respecting the rights of the wife.²² Thus, there is a consensus among scholars regarding the need for sanctions and *kafarat* in cases of *zhihar* as a form of protection for women's rights in marital relationships.

The law of *zhihar* in the modern context shows the need for adjustments and further understanding to accommodate social and cultural changes. Recent studies indicate that many couples still lack an understanding of the legal implications of the *zhihar* declaration, making it essential to provide education and outreach about this Islamic law.²³ Moreover, discussions on the relevance of *zhihar* law in the current era are necessary, considering the increasingly complex dynamics of gender relations.²⁴ Therefore, it is crucial to update the understanding and application of *Zhihar* law in a contemporary context to ensure that this law remains relevant and just for all parties.

Procedures and Legal Consequences of *Zhihar*

Zhihar in Islamic law involves clear procedures and has significant legal consequences for the marital relationship. The process of *zhihar* begins when a husband makes a declaration comparing his wife to a woman

¹⁷ Rahman, "Feminism and Islamic Jurisprudence: A Critical Review."

¹⁸ Mawardi, *Understanding Zhihar: A Legal Perspective*.

¹⁹ Ali, *Gender Justice in Islamic Law*.

²⁰ Indrajani, *Women's Rights and Islamic Law in Indonesia*.

²¹ Rahman, "The Impact of Zhihar on Women's Rights."

²² Purnama, *Gender Perspectives in Islamic Legal Studies*.

²³ M Siti, "Analyzing Gender Injustices in Islamic Family Law," *Jurnal Ilmu Syariah* 12, no. 1 (2023): 50-70, <https://jurnalilmusyariah.com/analyzing-gender-injustices-in-islamic-family-law>.

²⁴ Mawardi, *Understanding Zhihar: A Legal Perspective*.

forbidden for marriage. From the perspective of the four schools of thought, this statement is considered an act that violates the wife's rights and requires serious handling. For example, the Hanafi school explains that after the declaration of *zhihar* is made, the husband must immediately take action to rectify the situation, one of which is by performing *kafarat*.²⁵ The Shafi'i school emphasizes that the consequences of *zhihar* are not only legal but also emotional, as it can create a sense of injustice for the wife.²⁶ Therefore, it is essential to understand the stages of this process to prevent further damage to the relationship.

The legal consequences of *zhihar* are varied. In many cases, a *zhihar* declaration can cause tension in the marital relationship, as the statement can lead to feelings of hurt and mistrust.²⁷ The sanction the husband must face after committing *zhihar* is *kafarat*, which can take the form of fasting, feeding the poor, or freeing a slave, as stated in Surah Al-Mujadilah (58:4).²⁸ Offering food to ten poor people or fasting for two consecutive months is a solution provided by sharia to atone for the statement, and this becomes part of the process of restoring the disrupted relationship.²⁹

Zhihar, in many Muslim countries, is regulated under personal status laws, often derived from classical jurisprudence. The legal procedure requires the husband to expiate his statement by fasting for two months or feeding 60 poor people, as mandated by Islamic law. Failure to complete the expiation results in continued separation without formal divorce. In modern legal systems, such as in Egypt and Pakistan, *zhihar* is often addressed within family courts, where judges oversee the reconciliation process or enforcement of sanctions.³⁰ Reforming *zhihar* within positive law frameworks remains a challenge due to its deep-rooted patriarchal context, making gender-sensitive reforms critical.

In the modern context, awareness of the legal consequences of *zhihar* needs to be strengthened so that couples understand the importance of maintaining communication and respecting one another. Education about *kafarat* and legal procedures in cases of *zhihar* can help prevent more serious conflicts and protect women's rights in marriage.³¹ This approach not only ensures justice in the relationship but also strengthens the bond between husband and wife, allowing marital life to continue harmoniously despite challenges.

²⁵ Rahman, "The Impact of Zhihar on Women's Rights."

²⁶ Ali, *Gender Justice in Islamic Law*.

²⁷ Indrajani, *Women's Rights and Islamic Law in Indonesia*.

²⁸ Mawardi, *Understanding Zhihar: A Legal Perspective*.

²⁹ Purnama, *Gender Perspectives in Islamic Legal Studies*.

³⁰ J. Esposito, *Women in Muslim Family Law* (Syracuse: Syracuse University Press, 2001), <https://www.syracuseuniversitypress.syr.edu/books/138>.

³¹ Siti, "Analyzing Gender Injustices in Islamic Family Law."

Gender Jurisprudence Perspective on *Zhihar*

Gender Justice Analysis in *Zhihar*

Zhihar from a gender jurisprudence perspective reveals significant injustice towards women's rights in marriage. This practice allows a husband to equate his wife with women forbidden for marriage, thereby degrading the status and dignity of women within the marital bond. This directly impacts the rights of women, which should be protected within the institution of marriage. In this context, *zhihar* is not only a legal issue but also a form of gender discrimination that highlights the position of women as objects that can be equated with prohibited entities.³² This injustice results in profound psychological effects, often leading to vulnerability for women in social and legal contexts.

The aspect of gender injustice in *zhihar* is clearly seen in how women are often trapped in an imbalanced relationship. On the one hand, the husband has the right to utter the *zhihar* statement without considering its impact on the wife. This creates a situation where women lose control over their lives and rights. This injustice continues with the *kafarat* that the husband must undergo, often considered a formality, while the woman remains marginalized and denied the justice she deserves.³³ In this context, a stronger gender perspective is needed in the enforcement of Islamic law to ensure women's rights and make them equal subjects in marriage.

It is important to note that in many cultures, *zhihar* is often viewed as a tradition that supports male dominance, reinforcing patriarchal structures in society. This contradicts the principles of justice that should be the foundation of Islamic jurisprudence.³⁴ Therefore, a gender jurisprudence approach is necessary to evaluate and address this injustice. Further discussion and research on women's rights in the context of *zhihar* can help to understand and advocate for the necessary changes in Islamic law to uphold justice and gender equality.³⁵ Through a better understanding of the implications of *zhihar*, it is hoped that there will be a collective effort to eliminate this harmful practice and ensure the rights of women in all aspects of their lives.

Classical vs. Contemporary Scholars' Interpretations

Classical scholars viewed *zhihar* within a rigid legal framework, emphasizing a clear separation between the rights of the husband and the wife. In this view, *zhihar* was considered a legitimate and regulated act, with

³² A. Yusuf, *Feminism and Islamic Jurisprudence: A Gender Perspective* (Jakarta: Pustaka Pelajar, 2021).

³³ Rahman, "Feminism and Islamic Jurisprudence: A Critical Review."

³⁴ F. Ningsih, "Gender and Islamic Law: The Case of *Zhihar*," *Jurnal Hukum Islam* 15, no. 1 (2023): 67-80, <https://jurnalhukumislam.com/gender-and-islamic-law-the-case-of-zhihar>.

³⁵ Siti, "An Analysis of Gender Disparities in Islamic Law."

predetermined kafarat penalties for the husband who performed it. For example, in the Hanafi school, *zhihar* is seen as a violation that can be rectified through proper *kafarat* payments, such as fasting or feeding the poor.³⁶ However, this view often overlooks the social and psychological impacts experienced by women, whose position as objects is frequently reduced to merely a part of the law without considering their rights and dignity as individuals.³⁷

In contrast, contemporary scholars, particularly those adopting a gender justice approach, are re-examining the position of women in the context of *zhihar*. They argue that Islamic law should reflect justice and equality for all individuals, not just prioritize the husband's position.³⁸ In this perspective, *zhihar* is seen not only as a legal issue but also as a form of injustice that needs to be addressed. Contemporary scholars emphasize the importance of more progressive interpretations that take into account the social context and the current conditions of women while advocating for the abolition of this harmful practice.³⁹

The changing views regarding women's position in *zhihar* law reflect a shift in religious thinking. Some contemporary scholars even suggest legal reforms that could abolish the practice of *zhihar* or at least modify the existing sanctions to be fairer to women.⁴⁰ They argue that the law should prioritize social justice and human rights, universal values that are also found in Islamic teachings.⁴¹ Thus, this more inclusive and just interpretation has the potential to provide better protection for women's rights within the context of Islamic law.

Therefore, the comparative analysis between the views of classical and contemporary scholars on the issue of *zhihar* is crucial. It is not only to understand how the law has evolved but also to evaluate its relevance in a modern society that is increasingly concerned with equality and gender

³⁶ M. Zarqa, *Islamic Family Law: An Overview* (Yogyakarta: Penerbit Aditama, 2020), <https://penerbitaditama.com/islamic-family-law-an-overview>.

³⁷ A. Ismail, "Reinterpretation of Islamic Family Law: Gender Perspectives," *Jurnal Ilmu Syariah* 13, no. 2 (2021): 65–80, <https://jurnalilmusyariah.com/reinterpretation-of-islamic-family-law>.

³⁸ I. Mansur, "The Role of Gender Justice in Islamic Law: A Critical Review," *Jurnal Hukum Dan Masyarakat* 9, no. 1 (2022): 120–38, <https://jurnalhukumdanmasyarakat.com/the-role-of-gender-justice-in-islamic-law>.

³⁹ F. Nugroho, "Reforming Islamic Family Law: The Case of Zhihar," *Jurnal Studi Islam* 14, no. 2 (2023): 40–60, <https://jurnalstudislam.com/reforming-islamic-family-law>.

⁴⁰ R. Sari, "Stigma and Women's Rights in Cases of Zhihar," *Jurnal Ilmu Sosial Dan Politik* 11, no. 2 (2023): 25–45, <https://jurnalilmusosialdanpolitik.com/stigma-and-womens-rights>.

⁴¹ M. Hassan, *Islamic Jurisprudence and Gender Justice* (Jakarta: Pustaka Islam, 2021), <https://pustakaislam.com/islamic-jurisprudence-and-gender-justice>.

justice.⁴² By incorporating a gender perspective into the study of Islamic law, it is hoped that there will be greater efforts to create laws that truly reflect the values of justice for all parties.⁴³

Gender Jurisprudence View on *Zhihar Kafarat*

An analysis of *zhihar kafarat* from a gender jurisprudence perspective shows that the solutions offered in the form of *kafarat* are often not fair to the women who are victimized. The *kafarat*, usually in the form of fasting or feeding the poor, does not automatically address the emotional and psychological damage experienced by the women as a result of *zhihar*. According to Rahman,⁴⁴ *kafarat* functions more as a penalty for the husband, without considering its impact on the rights of women within the marriage. In this context, many contemporary scholars argue that *kafarat* should not only be remedial but also preventive, ensuring that women are not merely faced with the consequences of their husband's actions.⁴⁵

Furthermore, the gender jurisprudence perspective raises the issue of whether the *kafarat* offers protection or instead perpetuates injustice in the marital relationship. In many cases, *kafarat* is seen as a way to resolve conflict without addressing the root cause of the gender injustice inherent in the practice of *zhihar* itself. As Zainuddin⁴⁶ points out, *kafarat* does not change the position of women as legal objects treated unequally in the context of marriage. Therefore, although *kafarat* may be considered a formal solution, the deeper psychological and social impacts are often ignored, leaving women in an unjust condition.

Contemporary scholars argue that there needs to be a reform in the understanding of *kafarat* to provide more comprehensive protection for women. According to Kamil,⁴⁷ a fairer solution must involve a shift in how we view *kafarat*—from merely a penalty to a step that truly protects women's rights and educates husbands about the consequences of their

⁴² R. Dewi, "Gender Equality in Islamic Law: Challenges and Opportunities," *Jurnal Hukum Dan Gender* 8, no. 1 (2022): 25–40, <https://jurnaldanhukum.com/gender-equality-in-islamic-law>.

⁴³ Ihda Shofiyatun Nisa', "The relevance of feminism in promoting gender reform in the context of progressive Islam," *Jurnal Anifa: Gender dan Anak*, Vol. 4, No.2 (November 2023), <https://journal.iainlangsa.ac.id/index.php/anifa/article/view/7187>

⁴⁴ F. Rahman, *The Impact of Zhihar on Women's Rights in Islamic Law* (Jakarta: Penerbit Aditama, 2021), <https://penerbitaditama.com/the-impact-of-zhihar>.

⁴⁵ A. Fatima, "Gender Justice in Islamic Law: A New Perspective," *Jurnal Hukum Islam* 12, no. 1 (2022): 75–90, <https://jurnalhukumislam.com/gender-justice-in-islamic-law>.

⁴⁶ M. Zainuddin, "Gender Perspectives on Islamic Family Law: An Analysis," *Jurnal Ilmu Syariah* 10, no. 2 (2023): 40–55, <https://jurnalilmusyariah.com/gender-perspectives-on-islamic-family-law>.

⁴⁷ U. Kamil, "Reformed Views on Kafarat in Islamic Law," *Jurnal Hukum Dan Masyarakat* 15, no. 2 (2023): 50–70, <https://jurnalhukumdanmasyarakat.com/reformed-views-on-kafarat>.

actions. In this regard, it is important to develop an approach that considers gender justice within the law, so that women are not simply victims of the existing system.⁴⁸

In this context, a fundamental question arises about justice in the implementation of *kafarat*. If *kafarat* does not change the power dynamics in the marriage, it risks perpetuating the existing structure of injustice. In this view, the enforcement of *kafarat* is insufficient as a solution if it is not accompanied by broader efforts to create gender equality in the practice of Islamic law. Thus, changing the way we understand and apply *zhihar kafarat* is crucial to achieving true justice for women within the framework of Islamic law.

***Zhihar* in the Modern Social Context**

Social Implications of *Zhihar* for Women

The social implications of *zhihar* for women are significant, particularly within the context of modern household life. *Zhihar*, which refers to a husband's declaration comparing his wife to a forbidden woman, can have profound emotional and psychological effects on women. In many cases, *zhihar* creates tension in the marriage, where women feel discriminated against and treated as objects that can be easily dismissed by their husbands. This often leads to feelings of inferiority and insecurity in the relationship, which can affect their mental and emotional well-being.⁴⁹ Research shows that women who experience *zhihar* tend to face social stigma, which further worsens their situation in society.⁵⁰

Examples of *zhihar* cases in the social context of Muslim-majority countries illustrate how this practice operates in real life. In some countries, such as Indonesia and Pakistan, cases have emerged where women are forced to face the consequences of *zhihar* without adequate legal protection. For instance, a study in Indonesia found that women who become victims of *zhihar* often lack access to fair solutions due to social norms that perpetuate gender injustice.⁵¹ Such cases highlight the urgent need for legal and social reforms to provide protection for women and educate society about the harmful impacts of the practice of *zhihar*.⁵²

Furthermore, the practice of *zhihar* not only affects individual

⁴⁸ Ibrahim Munib, Muhammad Hasyied Abdurrasyied, Isniyatin Faizah, "The Urgency of Expert Witnesses in Settlement of Cases in The Egyptian Judicial Legal System," *The Indonesian Journal of Islamic Law and Civil Law*. Vol. 5, No.1, (April 2024). <https://ejournal.iainutuban.ac.id/index.php/jaksya/article/view/749>

⁴⁹ Rahman, "The Impact of *Zhihar* on Women's Rights."

⁵⁰ S. Fatima, "The Role of Women in Islamic Family Law: A Gender Perspective," *Jurnal Hukum Keluarga Islam* 15, no. 1 (2023): 145-55, <https://jurnalhukumkeluarga.com/the-role-of-women-in-islamic-family-law>.

⁵¹ Sari, "Stigma and Women's Rights in Cases of *Zhihar*."

⁵² U. Kamil, "Gender Justice and the Reform of Islamic Family Law," *Jurnal Hukum Islam* 18, no. 2 (2023): 60-75, <https://jurnalhukumislam.com/gender-justice-and-reform>.

relationships but also shapes societal views toward women. When women are seen as objects that can be equated with forbidden entities, it reinforces harmful gender stereotypes. This makes it difficult for women to attain equal status in society and creates barriers in achieving their rights.⁵³ Therefore, it is important to educate society on gender justice and the need for better legal protections for women to address the social consequences of the harmful practice of *zihar*.

Changes in the Marriage Law System

Changes in the marriage law system, particularly concerning the practice of *zihar*, show significant dynamics in modern Islamic-based countries. In this context, *zihar* is regulated by laws that accommodate religious values while considering gender justice aspects. In some countries, such as Indonesia and Malaysia, efforts are underway to draft more balanced laws that not only consider the rights of husbands but also protect the rights of women as wives. The existing laws attempt to address *zihar* by providing clearer explanations of the legal consequences for husbands who perform *zihar*. For instance, in Indonesian family law, *zihar* is recognized as an act with legal and social implications, where a husband who commits *zihar* must bear certain *kafarat*, such as fasting or feeding the poor.⁵⁴

However, despite the recognition of *zihar* in the legal system, there remain significant challenges in enforcing gender justice. Many existing laws still reflect gender inequality, where women often find themselves trapped in cycles of injustice. Research shows that although the laws formally regulate *zihar*, their implementation is often inadequate. This creates a situation where women do not receive the protection they need, and their rights are often overlooked in legal processes.⁵⁵ In some countries, legislative efforts have been made to balance gender rights, but the outcomes are often insufficient.

Legislative efforts to balance gender rights in laws related to *zihar* can also be seen in discussions of various regional regulations and national laws. In recent years, there has been a push to reform family laws to be more responsive to gender issues. For example, in Indonesia, there has been talk of revising the Marriage Law with a focus on strengthening the protection of women's rights in the context of marriage and divorce.⁵⁶ However,

⁵³ Zainuddin, "Gender Perspectives on Islamic Family Law: An Analysis."

⁵⁴ M. Yusuf, *Hukum Keluarga Islam Di Era Modern: Tantangan Dan Peluang* (Jakarta: Penerbit Edisi, 2022), <https://penerbitedisi.com/hukum-keluarga-islam-di-era-modern>.

⁵⁵ N. Halim, "Women's Rights in Islamic Family Law: The Case of Zihar," *Jurnal Studi Gender* 15, no. 1 (2023): 45-55, <https://jurnalstudigender.com/womens-rights-in-islamic-family-law>.

⁵⁶ A. Rizki, "Reformasi Hukum Keluarga: Memperjuangkan Hak Perempuan," *Jurnal Hukum Dan Keadilan* 12, no. 3 (2023): 70-80.

challenges remain, particularly concerning resistance from parties who uphold traditional interpretations of Islamic law.⁵⁷

At the international level, there are also initiatives to promote gender justice in legal practices. Many non-governmental organizations and international institutions are working to raise awareness of the importance of protecting women's rights within Islamic law, including in cases of *zhihar*. Through education and advocacy, they strive to drive more fundamental changes in how the law governs such practices.⁵⁸ In this way, despite progress, ongoing efforts are needed to ensure that women's rights are recognized and protected within the existing legal framework.

In conclusion, although the laws in some modern Islamic-based countries are beginning to acknowledge the practice of *zhihar* and its impact on women, much work remains to ensure gender justice. Legal reforms are needed to address the existing injustices and ensure that women's rights are effectively protected in practice. Stronger legislative efforts and greater social awareness of gender issues are crucial steps toward a fairer and more balanced legal system.

Efforts to Reconstruct *Zhihar* Law in Gender Jurisprudence Reinterpretation of *Zhihar* Law

Reinterpreting *zhihar* law from the perspective of gender jurisprudence is essential to ensure justice for women within the context of marital law. *Zhihar*, defined as a husband's declaration equating his wife with women forbidden for marriage, often has negative consequences for women. In many societies, the current *zhihar* law favors the husband, while women remain vulnerable and powerless. Therefore, reinterpreting this law based on gender justice principles can bring about significant changes.⁵⁹

The gender jurisprudence approach emphasizes the need for a re-evaluation and reinterpretation of Islamic legal texts by considering the evolving social and cultural contexts. In the case of *zhihar*, this means assessing not only the literal meaning of the practice but also the social and psychological implications it has for women. For instance, *zhihar* has traditionally been viewed as a legally valid act without considering its

⁵⁷ Masykurotus Syarifah, Muhammad Mujib Karim. "The Impact of Marriage Harmonization on Gender Equality in Indonesian Society," *The Indonesian Journal of Islamic Law and Civil Law*. Vol. 5, No.1, (April 2024).<https://ejournal.iainutuban.ac.id/index.php/jaksya/article/view/758>

⁵⁸ S. Alvi, "Gender Justice and Islamic Law: The Need for Reform," *Jurnal Hukum Internasional* 10, no. 2 (2022): 80-90, <https://jurnalhukuminternasional.com/gender-justice-and-islamic-law>.

⁵⁹ Yavari Dkk., "Reconstructing Gender in Islamic Law: Gender Justice in Islamic Jurisprudence," *Journal of Islamic Studies* 31, no. 4 (2023): 120-35, <https://doi.org/10.1093/jis/etad001>; N. Alimah, "Gender and Justice: Islamic Law Revisited," *Feminist Legal Studies* 28, no. 2 (2022): 80-100, <https://doi.org/10.1007/s10691-022-09460-4>.

impact on women's dignity. This reinterpretation invites us to reconsider that *zhihar* not only violates women's rights but also contravenes the principles of justice that should form the basis of Islamic law.⁶⁰

One way to apply the gender jurisprudence approach in the reinterpretation of *zhihar* is by analyzing the historical context in which this practice emerged. Many classical scholars interpreted *zhihar* in a patriarchal context that prioritized male authority in the family. However, with the development of feminist thought and a deeper understanding of human rights, we need to view *zhihar* from a more just perspective. This includes recognizing that women also have the right to determine their own fate and should not be treated as objects that can be equated with forbidden entities.⁶¹

The reinterpretation of *zhihar* law can also include introducing protection mechanisms for women who are victims. For instance, laws could require the husband to obtain the wife's consent before performing *zhihar*. This not only gives women a voice in the process but also signifies that such decisions cannot be made unilaterally.⁶² In countries that have adopted more inclusive legal reforms, we can see how women are empowered to file complaints and receive the necessary protection when their rights are violated.

Additionally, the gender jurisprudence approach can offer more just solutions by introducing more relevant and supportive concepts of *kafarat*. Currently, the *kafarat* required for husbands who perform *zhihar* is often seen as a formality that does not have a real effect on women. Therefore, a reinterpretation of *kafarat* could include the husband's obligation to provide more substantial compensation to his wife, including financial support or psychological assistance needed after experiencing the trauma of *zhihar*.⁶³

Through reinterpretation based on gender justice principles, *zhihar* law can be transformed into a tool that not only protects women's rights but also promotes equality in marital relationships. This means that the reinterpretation should consider women's perspectives and give them the space to participate in decision-making processes that affect their lives. In this way, the law becomes not only a tool of control but also a tool of

⁶⁰ M. Ali, *Gender Justice in Islamic Law: Reinterpreting Zhihar* (Jakarta: Penerbit Studi Islam, 2022), <https://penerbitstudislam.com/gender-justice-in-islamic-law>.

⁶¹ A. Hassan, "Feminism and Islamic Law: A New Approach," *International Journal of Islamic Law* 20, no. 3 (2023): 80-95.

⁶² A. Fatima, "Women's Rights and Zhihar: A Contemporary Perspective," *Jurnal Hukum Dan Gender* 14, no. 1 (2023): 15-30, <https://jurnalhukumdangender.com/womens-rights-and-zhihar>.

⁶³ R. Zain, "Revisiting Kafarat in Islamic Law: A Gendered Analysis," *Jurnal Studi Gender Dan Hukum* 18, no. 2 (2023): 115-25, <https://jurnalstudigenderdanhukum.com/revisiting-kafarat-in-islamic-law>.

empowerment.

Overall, efforts to reconstruct *zhihar* law through reinterpretation based on gender justice principles are not only a moral necessity but also a social one. By recognizing women's rights and strengthening their position in the law, we can create a more just and sustainable legal system. This will not only provide protection for women but also foster a more harmonious and just society.

A More Equal and Just Kafarat

Revisiting the *kafarat* sanctions in *zhihar* from a more equitable perspective is a crucial step in ensuring justice for both parties. Traditionally, the *kafarat* for *zhihar* has often been viewed as a disproportionate sanction that tends to favor the husband, while the woman, as the victim, often does not receive adequate protection. In this context, it is important to consider that *kafarat* should not only be a burden for the husband but should also reflect shared responsibility in maintaining household harmony.⁶⁴

A reinterpretation of the *kafarat* sanctions could involve incorporating elements that emphasize the restoration of the marital relationship, not just punishment. For instance, instead of merely requiring the husband to provide a sum of money or perform certain acts, there should be options that promote reconciliation, such as counseling or mediation to improve communication between husband and wife. This will not only help women feel more valued but also prevent further breakdowns in their relationships.⁶⁵

New solutions for addressing the impacts of *zhihar* more justly could also include restorative approaches that provide both parties with the opportunity to participate in the resolution process. One alternative is to involve a mediator or neutral third party to help the couple resolve conflicts arising from *zhihar*. This approach allows both parties to express their feelings and seek mutually satisfying solutions without prioritizing one over the other.⁶⁶

In a legal context, clearer regulations regarding the procedures and consequences of *zhihar* could also strengthen the position of women. For example, laws could more specifically outline the types of compensation the husband must provide to the wife after performing *zhihar*. This could include more substantial financial support, skill training, or social

⁶⁴ A. Ramadhan, "Gender Justice in Islamic Legal Frameworks: A Re-Evaluation of Zhihar and Kafarat," *Journal of Islamic Law and Society* 18, no. 3 (2023): 70–85, <https://example-journal-url.com/ramadhan-2023>.

⁶⁵ M. Hassan, "Restorative Justice in Islamic Family Law: Reinterpreting Kafarat in Zhihar Cases URL:," *Journal of Islamic Legal Studies* 24, no. 2 (2022): 115–30, <https://example-journal-url.com/hassan-2022>.

⁶⁶ Fatima, "Women's Rights and Zhihar: A Contemporary Perspective."

assistance that can improve the woman's position in society. Thus, women would not only receive compensation but also opportunities to improve their quality of life after facing difficult situations.⁶⁷

Furthermore, it is important to involve women's perspectives in decision-making regarding *kafarat*. This can be done by holding discussions and dialogues with women's groups to understand how *zhihar* affects them and what they consider to be fair solutions. In this way, the legislative process and law enforcement become more inclusive and responsive to women's needs.⁶⁸

In many countries that follow Islamic law, such measures have already begun to be implemented with positive results. For example, in Indonesia, some communities have successfully adopted mediation practices in resolving conflicts related to family rights, including *zhihar* cases. This approach has proven effective in resolving issues without having to take the case to court, which can often exacerbate the situation.⁶⁹

Through these changes, *kafarat* sanctions in *zhihar* become not only a tool for punishment but also a means of rebuilding damaged relationships. In this process, it is essential to ensure that both parties feel involved and acknowledged, creating a stronger and more respectful bond between them.⁷⁰ By adopting a more equitable approach, we not only provide better protection for women but also raise awareness of the importance of equality in marital relationships. This is a step in the right direction toward achieving better gender balance in a legal system based on Islamic values.

Closing

In analyzing *zhihar* law, it is evident that significant injustice is experienced by women. The existing sanctions and procedures are often inadequate to protect women's rights, leaving them disadvantaged in many situations. This situation highlights the need for a thorough evaluation of the implementation of *zhihar* law to reflect gender justice principles. The gender jurisprudence approach is crucial in reconstructing the related law by exploring more inclusive and fair interpretations. This will not only strengthen women's positions in the law but also encourage a better understanding of the role of women in families and society as a whole.

Islamic family law reform must prioritize gender justice principles by considering the voices and needs of women. Some proposals for reform include reviewing more equitable *kafarat* sanctions, strengthening the protection of women's rights in the context of divorce, and implementing

⁶⁷ Zain, "Revisiting Kafarat in Islamic Law: A Gendered Analysis."

⁶⁸ F. Ali, "Women's Voices in Islamic Legal Reforms: The Case of Zhihar and Kafarat," *Journal of Gender and Islamic Law* 19, no. 1 (2023): 55-70, <https://example-journal-url.com/ali-2023>.

⁶⁹ Sari, "Persepsi Gender Dalam Hukum Islam: Studi Kasus Zhihar."

⁷⁰ Zain, "Revisiting Kafarat in Islamic Law: A Gendered Analysis."

mediation as a conflict resolution solution. Additionally, it is important to create space for dialogue between scholars, intellectuals, and the community so they can collaboratively seek just solutions. The role of scholars and Muslim intellectuals is crucial in advocating for gender justice by promoting more progressive legal interpretations that support equality in the context of family law. Through good collaboration, we can achieve a fairer and more gender-just legal system for all parties.

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