



DISPARITIES IN THE REASONING OF THE *ZIHAR* PANEL OF JUDGES REGARDING GROUNDS FOR DIVORCE: A COMPARATIVE STUDY OF DECISIONS BY THE RELIGIOUS COURTS IN INDONESIA

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Abstract

Zihar is an Islamic legal concept that has consequences in the form of an obligation to perform expiation, but has not been regulated in Indonesian positive law as a reason for divorce. In religious court practice, zihar appears in a number of cases and creates disparities in the reasoning of the Panel of Judges. This study aims to analyze the position of zihar as a reason for divorce, as well as examine its implications for the legal disparity of the Panel of Judges in deciding divorce cases. This study uses a normative-empirical approach through document studies and interviews with the Panel of Judges, and is analyzed using the interactive model of Miles and Huberman. The results show that the Decisions of the Malang Regency Religious Court Number 1603/Pdt.G/2009, the Mataram Religious Court Number 563/Pdt.G/2018, and the Pematang Siantar Religious Court Number 116/Pdt.G/2019 are guided by Article 19 letter f of the 1975 Government Regulation and Article 116 letter f of the Compilation of Islamic Law, but differ in their legal interpretations. The Malang Regency Religious Court interpreted it grammatically, not qualifying zihar as a legal fact, while the Mataram and Pematang Siantar Religious Courts interpreted it more extensively, making it a reason for disputes. Zihar cannot be the primary reason for divorce, but it can be a reason for divorce if it results in ongoing disputes.

Keywords: *Zihar, Divorce, Disparity in Decisions.*

A. Introduction

Marriage is not just a social contract, but a sacred bond between two people that has high value in the sight of Allah *subhanahu wa ta'ala*, and completes half of the religion for Muslims (Falih & Meidina, 2023). Marriage aims to form a family that is peaceful, loving and compassionate, but in reality not all families can make this happen (Fathurrahman, 2023). Data from the Central Statistics Agency (BPS) shows that the number of divorce cases in Indonesia has reached quite high levels, namely 448,126 cases in 2022, 408,347 cases in 2023, and 399,921 cases in 2024 ((BPS), 2025). Despite the high divorce rate, *zihar* is a very rare reason for divorce. Divorce cases in Indonesia are dominated by various other reasons, such as disputes,

arguments, domestic violence, and even less common reasons like the practice of *zihar* (Wahid, 2020).

The grounds for divorce are stipulated in Indonesian positive law, however, there is another cause that can lead to the dissolution of a marriage but is not yet regulated in positive law, namely *zihar*, which is discussed only in classical texts. *Zihar* is an Arabic term مأخوذ من الظهر derived from the word “zhahri,” which literally means “back” (Munandar & Djuned, 2018). In terms of terminology, *zihar* is an expression from a husband to his wife أَنْتِ عَلَيَّ كَظْهَرِ أُمِّي which means "For me, you are like my mother's back" (Aminah, 2021). The purpose of this statement is to prevent marital relations (Rohmatun et al., 2023). Because having intercourse with one's wife after *zihar* is considered like having intercourse with one's mother who is a mahram to the husband, and this act is forbidden.

During the pre-Islamic period in Arabia, *zihar* was considered a form of divorce (Aminah, 2021). However, in Islamic law, *zihar* is not divorce, but rather a forbidden act that requires expiation, such as freeing a slave because it is considered an insult to the wife. In a comparative study of schools of thought, the four Sunni schools of thought agree on the haraam of *zihar* and the obligation to pay kafarat before a husband has sexual intercourse with his wife (Harfiati et al., 2026). In social practice in Indonesia, the understanding of *zihar* is still varied, some understand it as respect for one's wife, while others do not understand its substance properly (Husnul & Jurbaidah, 2024). This phenomenon constitutes one of the reasons why *zihar* is rarely invoked as a ground for divorce in Religious Courts (Nawwaf, 2023).

In Islamic law, the legal provisions concerning *zihar* are explicitly set forth in the Quran, Surah Al-Mujadalah, verses 2 through 4. Such an act is forbidden; the perpetrator will face worldly legal consequences, including a prohibition on the husband having sexual relations with his wife until he pays the expiation, as well as spiritual consequences, as the act is considered a sin (Ulama, 2003). However, under Indonesian positive law, *zihar* has not yet been explicitly regulated (Romadhon, 2025). Article 39 paragraph (2) on the 1974 Marriage Law, Chapter X Section 3 Article 208 of the Civil Code, and the Compilation of Islamic Law stipulate that among the grounds for divorce are adultery, abuse, serious injury, and other reasons that prevent a husband and wife from living in harmony; they do not mention *zihar*. In Islamic legal scholarship on the dissolution of marriage, *zihar* is considered an act that leads to the dissolution of marriage, in addition to divorce *talak* and *khuluk*, even though it is not explicitly regulated in Indonesian positive law (Rozikin et al., JAS: Volume 8 Nomor 1, 2026

2024). Therefore, if a case related to *zihar* arises, the Panel of Judges exercises *ijtihad* based on the provisions of Islamic law to fill the existing legal vacuum (*rechtvacuum*) (Nawwaf, 2023).

Judicial practice shows that *zihar* has been a factor considered by the panel of judges in deciding divorce cases, as stated in the Decision of the Malang Religious Court No. 1603/Pdt.G/2009, the Mataram Religious Court No. 563/Pdt.G/2018, and the Pematang Siantar Religious Court Decision No. 116/Pdt.G/2019. However, there are disparities in how the Panel of Judges assesses the status of *zihar*, which are summarized in the following table:

Table 1. Comparison of Disparities in Rulings

No.	Judgment	Case Analysis		Form of Disparity
		The position of <i>zihar</i> in the matter	Considerations of the Panel of Judges	
1	Malang Regency Religious Court No. 1603/Pdt.G/2009	<i>Zihar</i> appears in the grounds for the lawsuit.	It was not discussed further by the Panel of Judges.	<i>Zihar</i> was not the basis for the legal reasoning.
2	Mataram Religious Court No. 563/Pdt.G/2018	<i>Zihar</i> was mentioned in witness testimony during the trial.	The Panel of Judges recognized <i>zihar</i> as the primary cause of the dispute.	<i>Zihar</i> served as a supporting reason for granting the divorce petition.
3	Pematang Siantar Religious Court No. 116/Pdt.G/2019	<i>Zihar</i> was explained in greater detail in the case.	<i>Zihar</i> is discussed implicitly from the perspective of evidence, falling under unproven objections.	<i>Zihar</i> is placed within the realm of evidence, not legal considerations.

The table above illustrates the disparity in how panels of judges assess and apply the concept of *zihar* as grounds for divorce, which is the focus of this study.

Scholarly studies on *zihar* have been examined from various perspectives, including theological, legal, and normative ones. Research conducted by Siti Aminah (2021) discusses the interpretation of the verses on *zihar* through Hassan Hanafi's historical hermeneutical approach, which emphasizes their moral and social meanings (Aminah, 2021). In their research, Junaedi and Wasman (2024) examine not only *zihar* but also *ila'* and *li'an*. They explain that *zihar* is a forbidden act with social and legal consequences. *Zihar* does not dissolve the marriage bond, but it requires an expiation to purify it (Mahbub Junaedi & Wasman, 2024). Amir Nawwaf (2023) examined the views of the panel of judges in resolving cases related to *zihar* at the Sumenep 1A Religious Court. He found that the panel of judges exercised *ijtihad* to fill gaps in positive law (Nawwaf, 2023). Meanwhile, a study by Mumammad Husnul and Jurbaidah (2024) examines the Indonesian public's limited understanding of *zihar*, which has led to this practice rarely being invoked in religious courts (Husnul & Jurbaidah, 2024). In a broader context, the grounds for divorce based on continuous discord, as stipulated in Article 19(f) of Government Regulation No. 9 of 1975 and Article 116(f) of the Compilation of Islamic Law, allow the panel of judges room for interpretation to include various factors leading to divorce that are not listed in the law, including religious factors (Agha et al., 2026). The same pattern was observed in cases where bisexuality was cited as grounds for divorce, in which the panel of judges applied the principle of *sadd adz-dzariah* as the basis for adjudicating cases not yet addressed in positive law (Fitri et al., 2023). Similarly, differences in religious practice have been cited as grounds for divorce and granted by the court, even though such provisions are not explicitly stipulated in the law (Lutfia et al., 2025). Based on the above discussion, the researcher concludes that there remains a gap between Islamic legal norms and actual practices in the Religious Courts.

Although *zihar* has been studied from various perspectives, previous research has tended to be normative or limited to the analysis of rulings from a single court. (Nawwaf, 2023) examined only one religious court, whereas (Mahbub Junaedi & Wasman, 2024) did not examine disparities in the deliberations of the panel of judges across different courts. Studies on grounds for divorce not covered by positive law are limited to bisexuality and differences in religious approach, while a comparative study of *zihar* in various courts has not yet been conducted. No studies have specifically compared judicial rulings on *zihar* as grounds for divorce, so the role of *zihar* in such cases still needs to be examined. This study is important because, although the entire panel of judges in religious courts has reached a

consensus based on the textual provisions of Islamic law that *zihar* can dissolve a marriage, in practice, there are differing views in court rulings regarding *zihar* as grounds for divorce. On the other hand, disparities in legal reasoning can affect substantive justice for the parties and reflect the panel of judges' understanding of *zihar* within the context of Islamic family law (Munawaroh, 2025). This study contributes to filling the gap in comparative research on *zihar* rulings in religious courts and opens the door for future researchers to examine the importance of updating positive law to explicitly regulate the status of *zihar*, thereby ensuring legal certainty and substantive justice.

The novelty of this study lies in its use of a comparative approach to examine three religious court rulings from different regions regarding *zihar* as grounds for divorce. This differs from previous studies, which focused on normative-theological analyses (Aminah, 2021)(Harfiati et al., 2026) substantive fiqh (Mahbub Junaedi & Wasman, 2024), sociological (Husnul & Jurbaidah, 2024), or studies conducted in a single court, such as that by Nawwaf (Nawwaf, 2023). This study specifically analyzes the disparities in the reasoning of the panel of judges across three different rulings. Studies have been conducted on grounds for divorce not covered by positive law, such as cases involving bisexuality or differences in religious methodology; however, no research has yet examined *zihar* in a comparative manner across various court rulings. Therefore, this study is the first to specifically analyze the disparity in the panel of judges' interpretations of *zihar* based on rulings from three different courts, thereby contributing to the development of Islamic legal studies in Indonesia.

To examine this issue in greater depth, the researcher formulated the following research question: how did the practice of *zihar* emerge and become a grounds for divorce in the Religious Courts of Malang, Mataram, and Pematang Siantar?, how do disparities in the Panel of Judges legal reasoning arise in assessing *zihar* statments or acts as grounds for divorce? how did the panel of judges rule on the issue of *zihar* as grounds for divorce in those three decisions?

B. Method

This study was conducted using a descriptive qualitate method trough a normative-empirical approach, covering the period from 2025 to 2026. According to Soerjono Sukanto and Sri Mamudji as cited in (Ishaq, 2014) the normative

approach is a form of legal research that focuses on secondary sources, it involves collecting data from various legal sources, such as court rulings, journals, books, legal literature, and other legal documents. In this study, the approach involved analyzing and comparing the legal reasoning (*considerans*) in the decisions of the Religious Courts of Malang Regency, Mataram, and Pematang Siantar regarding *zihar* in divorce cases.

The empirical approach was conducted by analyzing field data obtained through interviews with judges in court (Wada et al., 2024). Interviews were conducted with two judges, one each from the Religious Courts of Mataram and Pematang Siantar, as well as an expert in Islamic family law. The interviews were conducted via zoom using a semi-structured interview format and were supported by audio recording equipment, a questionnaire, and field notes to ensure systematic and accurate data collection.

Data analysis was conducted using the Miles and Huberman interactive model, through the stages of data reduction, data presentation, and drawing conclusions (Sugiyono, 2013). In the data reduction stage, the researcher selected and simplified the results of the analysis of court decisions and interviews relevant to the research subject. The data presentation stage was carried out by systematically compiling the analysis of court decisions and interview results in the form of descriptive-comparative descriptions. The conclusion-drawing stage was carried out by integrating the results of empirical normative analysis to produce an accurate and more comprehensive study (Wiraguna, 2024). The criteria for informants in this study are presented in the following table:

Table 2. Criteria for Research Informants

No.	Informant	Informant Criteria
1.	Judge of the Mataram Religious Court (Muhlis, S.H.)	A judge with expertise and experience in handling divorce cases at the Mataram Religious Court.
2.	Judge of the Religious Court of Pematang Siantar (Ridwan Fariz Maulana, S.H., M.H.)	A judge who understands religious court practices and the rules of evidence in family law cases.
3.	Expert in Islamic Family Law (Dr. Muhammad Irsan, S.H., M.H., M.E.)	Possesses academic competence and expertise in the field of Islamic family law.

C. Results And Discussion

1. The Practice Of Zihar As Grounds For Divorce In The Religious Courts Of Malang, Mataram, And Pematang Siantar

Zihar is a rare occurrence in the practice of religious courts in Indonesia. Mr. Muhlis, S.H., a judge at the Mataram Religious Court, explained in an interview that this is because the public has come to understand the concept of *zihar* through various outreach programs and seminars they have attended. However, he also noted that it is possible that people actually engage in *zihar* but do not report it to the court, due to a lack of understanding regarding the practice and the legal implications of such statements (Muhlis, 2025).

This view is consistent with that of Dr. Muhammad Irsan, S.H., M.H., M.E., a consultant and expert in Islamic family law, who states that *zihar* cases rarely come before religious courts because most people do not yet understand the concept of *zihar*, as reflected in the low level of understanding regarding divorce in general, let alone *zihar*, which is relatively little known (Irsan, 2026). Thus, the public's limited understanding of the concept of *zihar* is one of the factors contributing to the rarity of *zihar* cases in the practice of religious courts in Indonesia.

a. The Practice Of Zihar In The Ruling Of The Malang Regency Religious Court

The practice of *zihar* in the Malang Regency Religious Court's ruling arose in the context of marital discord when the husband and wife were in conflict due to the *husband's* dishonesty and infidelity. The statement regarding *zihar* was mentioned in the statement of claim but was not explained in detail. In her complaint, the wife, as the plaintiff, argued that her husband had pronounced *zihar* against her, thereby raising doubts regarding the legal status of their marriage. The wife's doubts were supported by statements from three different sources that the husband intended to divorce her but did not follow through, and were further reinforced by a religious figure's statement that the divorce had taken effect (*Putusan Mahkamah Agung No. 1603/Pdt.G/2009/PA.Kab.Malang*, 2009).

Based on the above explanation, it can be concluded that the wife does not yet fully understand the meaning of *zihar* and its legal consequences. This is evident from the wife's understanding that her husband has divorced her through the utterance of *zihar*, and in Islamic law, *zihar* is not a divorce, but an act that leads to

divorce (Adrianto, 2024). Thus, the wife's belief that her husband has divorced her through the utterance of *zihar* indicates a misunderstanding of Islamic law, because *zihar* is not a form of divorce that automatically severs the marital bond; rather, it is a statement likening the wife's back to that of her mother, which is prohibited and requires expiation before the husband may resume relations with his wife.

b. The Practice Of Zihar In The Ruling Of The Mataram Religious Court

Unlike the ruling of the Mataram Religious Court, the practice of *zihar* in the Mataram Religious Court's ruling arose in a divorce case and was not mentioned in the grounds for the lawsuit filed by the husband as the plaintiff. *Zihar* emerged from the testimony of a witness who was the husband's father. In his testimony, the witness stated that the husband did not utter the *zihar* statement directly in front of his wife, but rather uttered it while confiding in him with the statement "the petitioner feels that the respondent is just like a sibling". The witness then interpreted this statement as an act of *zihar*, and the divorce was deemed to have occurred, albeit through *zihar*.

This statement indicates that the witness does not yet understand the meaning of *zihar*, as he interprets the statement likening the wife to a sister as a statement of divorce. This statement indicates that the witness does not yet understand the meaning of *zihar*, as he interprets the statement likening the wife to a sister as a statement of divorce. Therefore, this statement must be re-examined as outlined in the book *Bidayatul Mujtahid* by Ibn Rushd. This statement constitutes *zihar* if it likens the person to a sister who is a permanent mahram according to the opinion of Imam Malik, Imam Abu Hanifah holds that *zihar* occurs with any part of the body that is forbidden to look at, and a group of other scholars maintain that *zihar* does not occur unless the specific terms back and mother are used (Rusyd, n.d.-a). Based on these views, the statement likening the person to a sibling in the Mataram Religious Court's ruling constitutes *zihar* if the intent of the statement is to liken the person to a sister who falls under the category of a permanent mahram.

c. The Practice Of Zihar In The Ruling Of The Pematang Siantar Religious Court

In the ruling of the Pematang Siantar Religious Court, the utterance of *zihar* was more clearly evident in the case, it was mentioned by the wife, the plaintiff, and was one of the grounds for the divorce petition. The wife explained that her husband compared her to his mother by saying, "You're just like my mother." He made this

remark in anger during an argument, causing the wife to feel humiliated and leading to a deterioration in their marital relationship. The wife, as the plaintiff, cited *zihar* as the cause of the escalating conflict, which was one of the grounds for filing for divorce in religious court.

The wording of *zihar* in the ruling of the Pematang Siantar Religious Court is among the wordings disputed by the scholars. Imam Malik considers likening the wife to her mother without mentioning the word back to be *zihar*, whereas Imam Abu Hanifah and Imam Shafi'i attribute the statement to the husband's intention, if he intends *zihar*, it is considered *zihar*, and if he does not intend it, it is not considered *zihar*. This view is supported by Dr. Muhammad Irsan, S.H., M.H., M.E., who explains that likening one's wife to one's mother is not automatically considered *zihar*, as it can be interpreted as a comparison of character or virtue without the intention of making the wife unlawful to him (Irsan, 2026). The validity of the *zihar* statement in this case of likening the wife to the mother is consistent with the panel of judges' reliance on the scholars cited as references. Thus, the validity of the *zihar* statement in this ruling is greatly influenced by the school of thought and the panel of judges reliance on the legal sources cited as references.

d. Differences Among Schools Of Thought Regarding The Interpretation Of The Term Zihar

The differences in the wording of *zihar* in these three rulings indicate that the panel of judges' legal considerations regarding *zihar* are influenced by the understanding and perspectives of the fiqh school of thought that serves as a reference in assessing *zihar* practices in Indonesian Religious Courts. Although courts in Indonesia generally follow the Shafi'i school, in practice the Panel of Judges may apply other schools based on their conviction regarding the evidence deemed most compelling (*rajih*) (Umam, 2017).

The panels of judges at the Religious Courts of Mataram and Pematang Siantar follow the same school of thought in interpreting the term *zihar*, namely the school of Imam Malik (Rusyd, n.d.-b). The difference lies in the object to which the wife is likened: in the Mataram Religious Court ruling, she is likened to a sister, while in the Pematang Siantar Religious Court ruling, she is likened to a mother. Meanwhile, the Malang Religious Court ruling does not indicate a preference for a particular school of thought in assessing the term *zihar*, as the panel of judges did

not address the term in its deliberations. Thus, the differences in the schools of thought used as references influence how the Panel of Judges understands and assesses the practice of *zihar* in divorce cases.

e. The Status Of Zihar As Grounds For Divorce Under Indonesian Positive Law

Based on the above discussion, it can be concluded that there are disparities in the application of the practice of *zihar* in the rulings of the Religious Courts of Malang Regency, Mataram, and Pematang Siantar, particularly in terms of the wording and the context in which it appears. In the ruling of the Malang Regency Religious Court, the practice of *zihar* was only mentioned in the wife's statement of claim and was not specifically described in terms of the wording used, but it caused the wife to doubt the status of her marriage. Meanwhile, in the ruling of the Mataram Religious Court, the practice of *zihar* was included in the witness's testimony, and it was explained that the husband performed *zihar* by likening his wife to a sister. In the ruling of the Pematang Siantar Religious Court, the practice of *zihar* was included in the facts of the case. The wording was presented in greater detail and clarity, stating that the husband performed *zihar* against his wife by likening her to his mother through the phrase "you are like my mother."

However, *zihar* can only be accepted as grounds for divorce in Indonesian religious courts if it is raised as the basis for the lawsuit and deemed to meet legal requirements by the panel of judges, as there is currently no specific provision in Indonesian positive law governing this matter. As stipulated in SEMA No. 3 of 2023, which states:

A divorce case based on grounds of continuous disputes and quarrels may be granted if it is proven that the husband and wife have been engaged in continuous disputes and quarrels and there is no hope of living in harmony again within the marriage, provided that they have been living separately for at least 6 (six) months, unless it is established that the Defendant/Plaintiff has committed domestic violence (Mahkamah Agung RI, 2023).

Based on these provisions, it can be concluded that *zihar* cannot serve as the primary ground for divorce in Indonesian Religious Courts, a marriage may be dissolved only if accompanied by other grounds, such as domestic violence or continuous disputes and quarrels, accompanied by a separation of at least six months. The practice of *zihar* in the rulings of the Religious Courts of Malang
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Regency, Mataram, and Pematang Siantar is consistent with the provisions of the aforementioned Law because *zihar* in those rulings served as the basis for the continuous disputes.

2. Disparities In The Legal Considerations Of Thw Panel Of Judges Regarding Zihar In Divorce Practices In Indonesia.

The panels of judges at the Religious Courts of Malang Regency, Mataram, and Pematang Siantar share a common approach in adjudicating divorce cases involving *zihar*: they base their rulings on two legal foundations, Article 19 (f) of the 1975 Government Regulation and Article 116 (f) of the Compilation of Islamic Law while also citing other legal sources that vary from one ruling to another.

Although guided by the same two primary legal bases, the panels of judges at the Religious Courts of Malang Regency, Mataram, and Pematang Siantar differ in their interpretation of these two legal bases, which has led to differing assessments regarding the status of *zihar* as grounds for divorce. These differences in interpretation reflect variations in the panels' approaches to providing legal certainty and substantive justice. The differences in the interpretive approaches used by the three panels of judges in assessing *zihar* as grounds for divorce can be outlined within the following analytical framework.

Disparities In The Reasoning Of The Zihar Panel
Of Judges Regarding Grounds For Divorce:
A Comparative Study Of Decisions By The Religious Courts In Indonesia

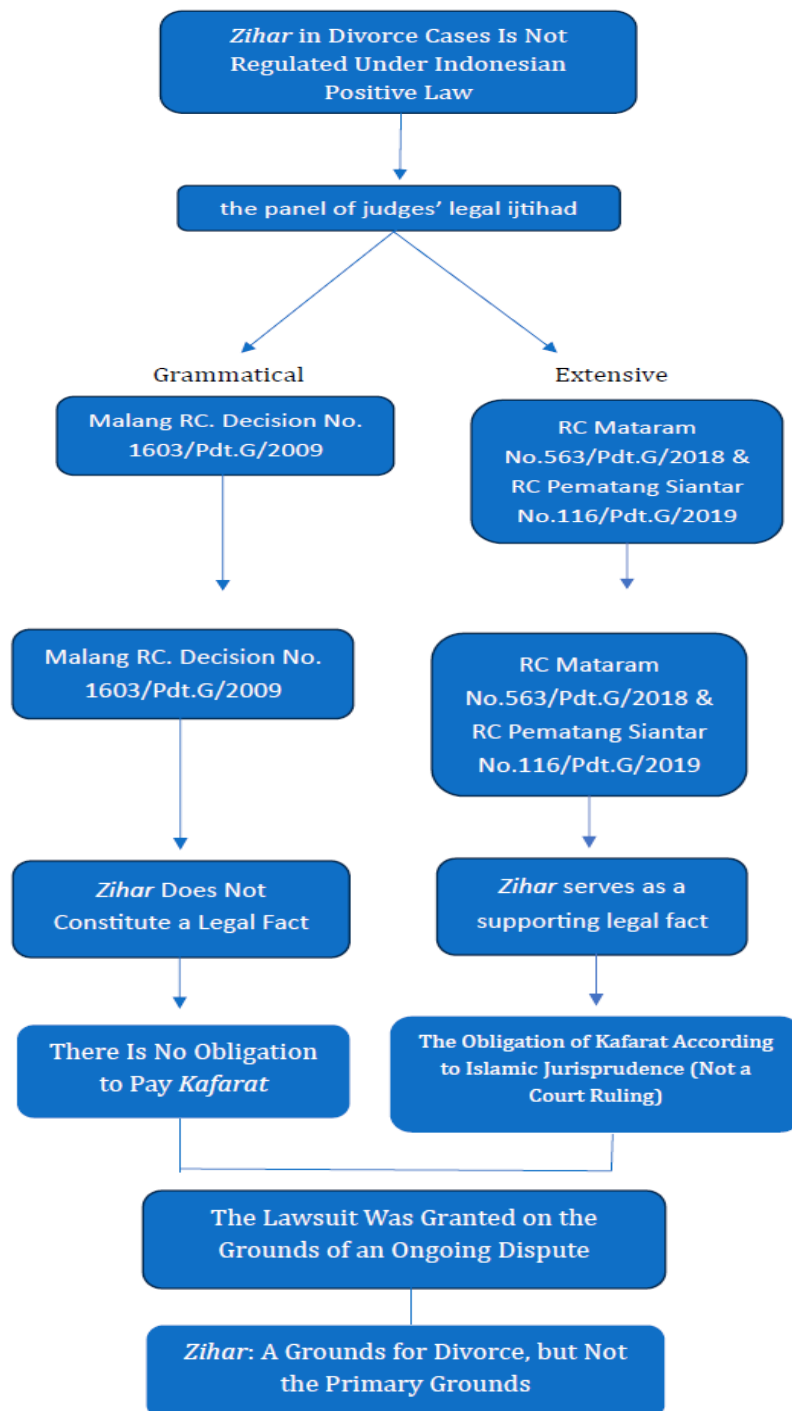


Figure 1. Framework for Analyzing Disparities in the Judicial Panel's Reasoning Regarding *Zihar*

Based on the framework outlined above, these differences in interpretation hinge on two main approaches, the grammatical and the extensive, each of which yields different legal consequences, as described below:

a. Grammatical Interpretation In The Decision Of The Malang Regency Religious Court

The Panel of Judges at the Malang Regency Religious Court interpreted Article 19 (f) of the 1975 Government Regulation and Article 116 (f) of the Compilation of Islamic Law grammatically. According to Bryan A. Gardner (as cited in Susanti, 2019), grammatical interpretation is an interpretation based solely on the words themselves (Susanti, 2019). This means that the Panel of Judges interpreted the text strictly in a linguistic or textual sense without considering its broader meaning. Consequently, the Panel of Judges interpreted the legal provisions based solely on the literal wording of the article without extending its meaning to other events beyond those explicitly mentioned.

These two legal grounds stipulate that a couple may divorce if one party commits adultery, is an alcoholic, commits domestic violence, or if there are ongoing disputes, as well as other grounds. However, *zihar* is not explicitly mentioned in these provisions. In accordance with these legal provisions, the Panel of Judges at the Malang Regency Religious Court considered only the ongoing disputes and the inability to live in harmony again as grounds for granting the divorce. *Zihar* was merely regarded as part of the conflict narrative; it was neither interpreted nor included in the court's deliberations, despite being included in the statement of claim. This is evidenced by the Panel of Judges' statement in their reasoning: "that there have been continuous disputes and arguments between the Plaintiff and the Defendant, and there is no longer any hope for harmony within the household". (*Putusan Mahkamah Agung No. 1603/Pdt.G/2009/PA.Kab.Malang*, 2009). Based on the above discussion, it can be concluded that the practice of *zihar* in the Malang Regency Religious Court's ruling is not classified as a legal fact in its own right, but is merely considered a domestic dispute.

b. Extensive Interpretation In The Mataram Religious Court's Ruling

In contrast to the ruling of the Malang Regency Religious Court, the panel of judges at the Mataram Religious Court interpreted these two legal bases broadly. Algra (in Mertokusumo, 2019) explains that an extensive interpretation is one that

goes beyond the limits set by a grammatical interpretation (Mertokusumo, 2019), so that its meaning is broader and not limited to the literal meaning (Christianto, 2010). In its ruling, the Panel of Judges of the Mataram Religious Court explained that:

In their married life, the Petitioner and the Respondent frequently quarreled or argued because the Respondent was jealous, refused to listen to the Petitioner's advice, and failed to respect the Petitioner's parents (family), and most importantly, the Petitioner considered the Respondent to be his sibling (having pronounced *zihar* on the Respondent), causing the Petitioner and the Respondent to live apart from November 2017 until now (*Putusan Mahkamah Agung No.563/Pdt.G/2018/PA.Mtr*, 2018).

These considerations indicate that the Panel of Judges not only considered domestic disputes as grounds for divorce but also identified the practice of *zihar* as a primary factor leading to the couple's arguments and separation. The Panel of Judges interpreted that *zihar* can constitute grounds for divorce when accompanied by other grounds.

Nevertheless, *zihar* is not considered a primary, standalone ground for divorce, but rather serves as supporting evidence indicating the existence of ongoing discord. In this ruling, *zihar* like economic factors, can constitute grounds for divorce if it leads to ongoing discord (Rahayu, 2013). *Zihar* and financial issues are considered equally valid grounds for divorce if they lead to ongoing disputes, even though they are not explicitly provided for in Indonesian positive law.

c. Extensive Interpretation In The Decision Of The Pematang Siantar Religious Court

The Panel of Judges at the Pematang Siantar Religious Court also applied an expansive interpretation in adjudicating the divorce case involving *zihar*. In its reasoning, the Panel of Judges stated that "arguments and disputes arose between the Plaintiff and the Defendant for the reasons set forth in the facts of the case" (*Putusan Pengadilan Agama Pematang Siantar Nomor 116/Pdt.G/2019/PA.Pst*, 2019). This statement indicates that the Panel of Judges did not explicitly mention *zihar*, but implicitly inferred that a dispute and quarrel had occurred between the husband and wife, and that one of the causes was *zihar*, since *zihar* was included among the reasons for the dispute listed in the case details. Thus, *zihar* is understood

as part of a series of conflicts that became one of the causes of continuous discord and the inability to reconcile.

Unlike the ruling of the Malang Regency Religious Court, the panel of judges at the Pematang Siantar Religious Court indirectly included *zihar* in its legal considerations. Consequently, the practice of *zihar* in this ruling can be regarded as a legal fact that influenced the panel's assessment of marital discord.

d. Differences In The Assessment Of Legal Facts Regarding Zihar

The differing interpretations by the panels of judges at the Religious Courts of Malang Regency, Mataram, and Pematang Siantar were influenced by differences in the facts of the trial and the evidence submitted by the parties. In the Malang Regency Religious Court's decision, the term *zihar* was only mentioned in the complaint without further detail and was not supported by evidence or corroborating testimony. Consequently, *zihar* was not considered a legal fact in the panel of judges' interpretation because it was viewed as a narrative of conflict.

This conclusion is reinforced by the statement of Mr. Ridwan Fariz Maulana, S.H., M.H., a judge at the Pematang Siantar Religious Court, who stated that "In civil cases, the panel of judges relies on the facts presented in court and the evidence submitted by the parties when considering the plaintiff's claim, so that *zihar* can be interpreted as grounds for divorce if supported by sufficient testimony and evidence" (Maulana, 2026). This statement confirms that *zihar* was not grounds for divorce in the Malang Religious Court's ruling because there was no evidence to substantiate that the act had actually been committed.

Conversely, in the Mataram Religious Court's ruling, the *zihar* was proven to have occurred based on witness testimony and a detailed explanation of the wording, thereby fulfilling the formal requirements and becoming a legal fact because it served as the primary basis for the dispute and influenced the panel of judges in interpreting the relevant legal provision. Meanwhile, in the Pematang Siantar Religious Court's ruling, *zihar* was described implicitly by stating "*that in the Defendant's oral response, the Defendant essentially contested some of the Plaintiff's claims but failed to submit evidence to support said objections; consequently, said objections lack legal standing and should therefore be dismissed*".

In that statement, *zihar* was considered implicitly because it was included in the rebuttal that had no legal standing, as it was rejected by the Panel of Judges in its deliberations due to a lack of evidence presented during the trial. *Zihar* became a legal fact because it was part of the Panel of Judges' legal deliberations.

e. Legal Implications Regarding The Obligation To Pay Kafarat

Differences in the interpretation and assessment of the legal facts regarding the *zihar* result in differing legal implications for the rights and obligations of the parties. In the Decision of the Malang Regency Religious Court, *zihar* was not considered a legal fact but merely a narrative of the conflict, and thus did not result in the Sharia legal consequence of kafarat. Conversely, in the Decisions of the Mataram and Pematang Siantar Religious Courts, the act of *zihar* was deemed to have met the elements of Islamic law because it was considered a legal fact that contributed to the occurrence of the domestic dispute.

Such an admission gives rise to an obligation to pay *kafarat* before the husband has sexual relations with his wife. However, the Panel of Judges did not include the obligation to pay kafarat in either the legal reasoning or the judgment because there is no Indonesian positive law that explicitly regulates *zihar* and its legal consequences. This creates a legal risk if the Panel of Judges orders the husband to pay *kafarat* without a clear petition or legal basis, as it could be viewed as exceeding the scope of the petition or as the Panel of Judges establishing a new legal norm (Maulana, 2026).

f. Disparities In Rulings And The Legal Consequences Of Zihar

Differences among panels of judges in interpreting the facts and legal grounds indicate that there is not yet a uniform legal framework for assessing *zihar* as grounds for divorce. This situation leads to disparities in rulings, but at the same time demonstrates the flexibility of the panels of judges in adapting the law to the dynamics of the marital relationship faced by the couple.

A study of the elements of *zihar* and its legal consequences for married couples requires further consideration. This is relevant given the husband's obligation to pay kafarat if the divorce petition is not granted and he wishes to have sexual relations with his wife. If the petition is granted, the husband is required to perform a new marriage contract and provide a new dowry if he wishes to reconcile with his wife. There is a disagreement among scholars regarding the husband's

obligation to pay *kafarat* after reconciliation. Imam Malik holds that the husband is obligated to pay *kafarat* if he pronounces divorce fewer than three times and then reconciles with her, whether during the iddah period or afterward. Imam Shafi'i holds that if the husband reconciles with his wife during the iddah period, he is obligated to pay *kafarat*, and if he reconciles outside the iddah period, he is not obligated. Imam Muhammad bin Al-Hasan holds that *zihar* may be revoked, allowing the husband to remarry his wife, whether after three divorces or a single divorce (Rusyd, n.d.-b). These differing opinions among scholars require the Panel of Judges to explain to the husband and wife the obligation of *zihar* expiation in accordance with the school of thought used as the basis for consideration in the divorce case.

3. How The Panel Of Judges Rules On Zihar Cases As Grounds For Divorce

Based on an analysis of three rulings, there are three main findings that reflect how the panel of judges adjudicates divorce cases involving *zihar*, namely:

a. Types Of Cases And Trial Procedures

The types of cases filed in the District Courts of Malang, Mataram, and Pematang Siantar differ from one another. The cases filed in the Religious Courts of Malang and Pematang Siantar are divorce by petition, whereas those in the Mataram Religious Court are categorized as divorce by repudiation. This distinction influences the panel of judges in adjudicating the cases, whereby the husband is obligated to provide *mut'ah* and *iddah* maintenance to the wife in cases of divorce by talak, whereas in cases of divorce by gugat, the panel of judges immediately issues a *ba'in sughro* divorce without any other obligations.

Based on the three decisions examined, the Panel of Judges adjudicated the divorce cases through adversarial proceedings, namely hearings attended by both parties, during which they could present evidence and rebuttals (Rusydi, 2020). No decision was rendered in absentia without the presence of one of the parties (Andreas & Ariawan, 2023). In the Decision of the Malang Regency Religious Court, the wife, as the defendant, was present at the hearing and confirmed the plaintiff's allegations regarding the marital dispute. In the Decision of the Mataram Religious Court, the husband and wife were both present at the hearing, and the wife, as the defendant, submitted a written response to the husband's complaint. Meanwhile, at the Pematang Siantar Religious Court, the husband, as the defendant, was present and denied having committed *zihar* against his wife. These findings indicate that the

Panel of Judges did not simply accept the claim of *zihar* but rather considered it based on legal evidence and the facts of the trial.

b. The Panel Of Judges' Considerations Based On The Evidence And Facts Presented At Trial

In deciding the case, the Panel of Judges first evaluated the documentary evidence and witness testimony to establish the legal facts, and then considered the case in light of applicable legal provisions. In the Decision of the Malang Regency Religious Court, the Panel of Judges evaluated documentary evidence in the form of an excerpt from the marriage certificate, as well as testimony from two witnesses neighbors and the wife's uncle. Both witnesses explained that the couple was in conflict over debts and had been living apart for three months. The practice of *zihar* appeared in the statement of claim, but did not appear in the witness statements or in the Panel of Judges' formulation of legal facts. Thus, *zihar* was not classified as a legal fact and its fiqh implications were not considered.

In the ruling of the Mataram Religious Court, the act of *zihar* emerged from a witness's testimony stating that the husband likened his wife to a sister. The witness interpreted this act as *zihar*, and the Panel of Judges assessed it as one of the facts strengthening the dispute, as stated in the reasoning: "most importantly, the petitioner has regarded the respondent as his sibling (has committed *zihar*), causing the petitioner and the respondent to live apart" (*Putusan Mahkamah Agung No.563/Pdt.G/2018/PA.Mtr*, 2018). Nevertheless, the Panel of Judges did not analyze the clarity of the *zihar* wording or the accompanying obligation of *kafarat*.

In the Pematang Siantar ruling, the wife, as the plaintiff, alleged *zihar* in the statement of claim, and the husband contested the claim by stating "that the defendant never committed *zihar* against the plaintiff" (*Putusan Pengadilan Agama Pematang Siantar Nomor 116/Pdt.G/2019/PA.Pst*, 2019). However, the husband did not submit any evidence to support his denial, so the panel of judges dismissed the claim. Although the denial was rejected, the Panel of Judges still did not consider *zihar* as a standalone Islamic legal event resulting in a *kafarat* obligation in its deliberations.

c. *The Position Of Zihar In The Judicial Reasoning And Legal Basis Of The Decision*

Although there were differences in the depth of consideration regarding the practice of *zihar*, the Panel of Judges agreed that *zihar* was considered a supporting ground rather than the primary ground for divorce. The primary grounds for granting the petition in all three rulings were continuous disputes and an inability to reconcile, as stipulated in Article 19 (f) of the 1975 Government Regulation and Article 116 (f) of the Compilation of Islamic Law.

In the ruling of the Malang Regency Religious Court, *zihar* was not mentioned in the panel of judges' reasoning. The wife's petition as the plaintiff was granted based on evidence of ongoing discord, supported by witnesses and the husband's admission, and in reference to Islamic legal doctrine in the book of Fiqh al-Sunnah, Volume II, page 248, which essentially states that the Panel of Judges may grant a divorce if the petition is proven and reconciliation efforts fail. *Zihar* serves only as a series of events illustrating marital disharmony.

In the ruling of the Mataram Religious Court, *zihar* was taken into consideration by the panel of judges and was cited as the reason for the couple's separation. However, *zihar* was not treated as a standalone Islamic legal event that gives rise to an obligation to pay *kafarat*. The Panel of Judges identified *zihar* as a contributing factor to the marital dispute and relied on Article 19 (f) of the 1975 Government Regulation and Article 116 (f) of the Compilation of Islamic Law as the primary legal basis for granting the petition.

As for the ruling of the Pematang Siantar Religious Court, although the panel of judges rejected the husband's defense as the defendant regarding the practice of *zihar*, the wife's petition was granted on the grounds of ongoing disputes and living apart for eight months. The ruling was based on Article 19 (f) of the 1975 Government Regulation and Article 116 (f) of the Compilation of Islamic Law, and was reinforced by the fiqh principles of "*laa dharaara wa laa dhiraar*" and "*dar'ul mafaasid awlaa min jalbil mashalih*". Thus, *zihar* is not considered a standalone legal basis or the primary ground for divorce.

D. Conclusion

Based on the data above, it can be concluded that: a) public understanding of the elements of *zihar* remains low, so it rarely appears in Indonesian religious courts, b) the term *zihar* in the Malang Regency Religious Court's ruling arose from the wife's lawsuit, was not explained in detail, and the act was understood as a divorce, c) the term *zihar* in the Mataram Religious Court's ruling arose from a witness's testimony that the husband likened his wife to a sister, and the witness understood the act as a divorce, d) the term *zihar* in the Pematang Siantar Religious Court's ruling appeared in the wife's complaint regarding the case where the husband likened his wife to a mother, and the act was understood as *zihar*, e) Scholars differ in their opinions regarding *zihar* in the rulings of the Mataram and Pematang Siantar Religious Courts, and the Panel of Judges followed the school of Imam Malik by ruling that both acts constituted *zihar*, f) the entire Panel of Judges relied on Article 19 (f) of the 1975 Government Regulation and Article 116 (f) of the Compilation of Islamic Law in considering the case, but differed in their interpretation of those two articles, The Panel of Judges of the Malang Regency Religious Court interpreted the text grammatically because the term *zihar* was not explained in detail and there was no supporting evidence, so it did not constitute a legal fact and was not included in the grounds for the dispute; whereas the Panels of Judges in Mataram and Pematang Siantar interpreted the provisions extensively because the term *zihar* was explained in detail, thereby constituting a legal fact and serving as a factor causing domestic discord, g) all Panels of Judges relied on these two provisions in granting the divorce petition, with the primary grounds being continuous disputes and quarrels, h) in all three decisions, *zihar* was positioned only as a factor triggering domestic disharmony and did not give rise to separate legal consequences in the Panels' reasoning. This study is limited to an analysis of three religious court rulings, it does not examine the legal consequences of *zihar* following divorce, nor does it involve the parties to the case as sources of research data. Therefore, further research with a broader scope is needed, and the Supreme Court should consider developing official guidelines regarding the legal status and implications of *zihar* in order to achieve legal certainty within the religious court system.

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