

**THE VERSTEK DECISIONS ON DIVORCE IN LANGSA
MUSLIM FAMILY COURT: A GENDER PERSPECTIVE**

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By :

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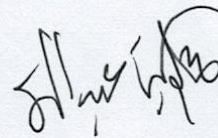
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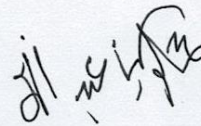
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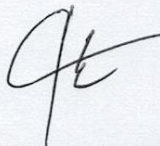


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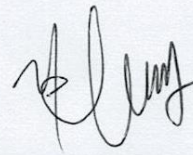
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ABSTRACT

The absence of the defendant as a husband in a case of divorce will inevitably cause problems in the case examination at trial. During the trial the defendant was not present and did not even order his representative to attend, so the lawsuit could be decided *Verstek*. In this paper the author examined in terms of a gender perspective. The researcher found that the *Verstek* decision can be categorized as an effort to protect women. Furthermore, to found out the analysis of decisions in Langsa Muslim Family Court. The researcher used qualitative method and type of field research. The data collection instrument was from the field including documents such as decisions, which contained three decisions. This study also examined the interview process which is conducted by asking questions to three judges regarding the knowledge and experience of the judges in order to obtain legal objectivity which is supported by reviewing laws and literature study. The results of this study showed that women's rights have been fulfilled based on the results of judges' decisions based on correct legal considerations.

Keyword: Decisions, Verstek, Gender Perspective

Ketidakhadiran tergugat sebagai suami dalam kasus perceraian niscaya akan menimbulkan masalah dalam pemeriksaan perkara di persidangan. Dalam persidangan terdakwa tidak hadir bahkan tidak memerintahkan wakilnya untuk hadir, sehingga gugatan *Verstek* dapat diputuskan. Dalam tulisan ini penulis meneliti dari segi perspektif gender. Peneliti menemukan bahwa keputusan *Verstek* dapat dikategorikan sebagai upaya untuk melindungi perempuan. Selanjutnya untuk mengetahui analisis putusan di Pengadilan Keluarga Muslim Langsa. Peneliti menggunakan metode kualitatif dan jenis penelitian lapangan. Instrumen pengumpulan data berasal dari lapangan termasuk dokumen berupa keputusan yang berisi tiga putusan. Studi ini juga mengkaji proses wawancara yang dilakukan dengan mengajukan pertanyaan kepada tiga hakim mengenai pengetahuan dan pengalaman hakim untuk mendapatkan objektivitas hukum yang didukung oleh kajian hukum dan studi pustaka. Hasil penelitian ini menunjukkan bahwa hak-hak perempuan telah terpenuhi berdasarkan hasil putusan hakim yang berlandaskan pertimbangan hukum yang benar.

Kata Kunci: Putusan, Verstek, Perspektif Gender

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Finally, it is obviously that this thesis is not perfect yet either in content or grammar, etc. So that the suggestion or critical from the reader for the better of this thesis is hoped. I hope this thesis can be useful to all of people.

Langsa, March 21st 2021

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CHAPTER I

INTRODUCTION

A. Background

Basically, marriage is one of worship that will carry out by every human being. The aim of marriage is forming a generation that would continue one's lineage. Marriage is a strong covenant to obey Allah's command and carry out worship. In fact, marriage is indicated for the husband and wife. But sometimes marriage cannot be maintained and will be end to divorce. Although, there is not verse in the Al-quran that instructs or prohibits to execute the divorce, it is an action that is hated by Allah and Prophet Muhammad.¹

Islam encourages the realization of happiness and eternal marriage and prevents divorce. It can be concluded that in principle Islam does not provide opportunities for divorce except for emergency matters. There are at least four possibilities that can be occurred in household life that can lead to divorce, there are: 1. The occurrence of *nusyuz* from the wife's side 2. The husband's *nusyuz* to the wife 3. The occurrence of *syiqaq* 4. One of them commits adultery. Divorce that be present in the middle of the household cannot be denied that is not easy matter for both parties. In Islam, it is allowed if both are serious about getting legal assistance to reconcile. If this effort has been carried out but the household

¹ Abdul Aziz Muhammad Azzam and Abdul Wahhab Sayyed Hawwas, *Fiqh Munakahat*, trans. Abdul Majid Khon, (Jakarta: AMZAH, 2015), p.36.

situation can no longer be maintained, then Islam allows both parties to a divorce.²

Divorce cases in this country are under both Indonesian law, and Islamic law, and formally is entered into the compilation of Islamic law. Meanwhile, civil divorce law means the abolition of a marriage by a judge or one of the parties in a marriage. Therefore, the proceedings that support it requires a complete solution without causing long legal consequences in the future.³

In Islamic law, the wife who wants to divorces can claim namely *khulu'* or commonly known as divorce. Likewise, the husband's wishes called *thalaq*. Both are regulated in Chapter IV, Second part, second paragraph, Article 66 Regarding legal Divorce and in third paragraph of Article 73 UU. RI. No. 3 of 2006 and it can because of court decision.⁴ The filing of a case submitted to the court by either the husband or wife indicates that the divorce is carried out without distinguishing the legal rights of each citizen. The principle, both parties in a case should facilitate the proceeding of the case by obeying the rule of law and being attendance the day of the trial. In the end, justice can be enforced, and the desired thing that can be achieved in accordance with the applicable law.

According to Islam, a wife who asks for a divorce from her husband or is called *khulu'* is one of *nusyuz* actions. But in *khulu'* the wife must pay to her

² Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, (Jakarta: Kencana, 2006), p.197.

³*Ibid.*,p. 199.

⁴Mahkamah Agung RI, *Undang-Undang Republik Indonesia No. 3 Tahun 2006* (Jakarta:2006).

husband, it does not like normally cases on divorce in court. A wife is not entitled to receive a living after divorce, and other rights because it is considered to have been willing to give up all of her right. But, the problem is what if the divorce filed by the wife is because the husband neglected her or even committed violence. Supreme Court Jurisprudence No. 137K/AG/2007 and decision 276K/AG/2010 provide reforms in giving women's right. In this decision, even though the wife files a divorce, after that, the wife has to undergo an 'iddah period which for benefit of the husband as well.⁵

The Islamic court as a law enforcement agency is required to be thorough in its implementation. The judge must know human rights objectively. The divorce problems can only be carried out in a religious court. In the process, both the plaintiff and the defendant must be present after received a summons from the court. If one of both parties are not officially present, the court will handle to resolve it. The judge in the divorce trial in that position acts as the part who will reconcile of both parties in a case to decides cases according to the rules. It is required to hear statements from both parties (Article 121 HIR/124 RBg).⁶ When both parties to dispute are summoned in front of a court, the receive equal treatment, so that decisions are made based on proper legal rules.⁷ However, often the absence of the one of the parties requires the judge to

⁵Supreme Court Jurisprudence No. 137K/AG/2007 and decision 276K/AG/2010.

⁶ K. Wantjik Saleh, *Hukum Acara Perdata*, (Jakarta: Ghalia Indonesia, 1977) p. 29-30.

⁷ M. Yahya harahap, *Kedudukan dan Kewenangan Acara Peradilan Agama UU. No. 7 th. 1989*, (Jakarta: Sinar Grafika, 2005), p. 215

produces a separate decision by the court. According to this case the decision problem is called *Verstek decision*.⁸

Verstek decision is an emergency plan needed by a wife when disputes at household that occur continuously result in misery for both husband and wife. When the fostered household is not in accordance with the purpose of the marriage, it is better if it is terminated by divorce. When the wife filed a divorce suit in a hearing the husband was not attended, the judges would decide the verdict of Verstek. This will be more profitable for the wife because the Verstek decision is a solution when the wife without news by her husband and is not supported her right.⁹

In cases in Langsa Muslim Family court, the defendant was generally not attended, so the judges decided in Verstek. Absences are often unreasonable. This is a very detrimental to the woman who have to bear the cost of the cases. Usually, This decision passed without the defendant as long as it does not violate statutory regulations. If it cannot be forced to live together and it will result to greater losses an ordinary judges will approve the divorce.¹⁰

Based on the description above, the author will conduct research on the Verstek decision that occurred in Langsa Muslim Family court. This must be done in accordance with the principle of legal awareness of woman who are guaranteed the same right according to the laws in Indonesia. The research is also

⁸ R. Supono, *Hukum Acara Perdata Pengadilan Negeri*, (Jakarta: Parda Paramita, 1980), p. 33.

⁹ Erfaniah Zuhriah, *Peradilan Agama di Indonesia*, (Malang: UIN-Malang Press, 2008), p. 275

¹⁰ The Observation of Researcher in Langsa Muslim Family Court, 08 November 2021.

reviewed based on the judge's consideration in providing legal certainty to the fulfillment of woman as citizens.

The researchers are interested in raising this title also because the theme of verstek is a rare thing to be discussed at shariah faculty. Even my classmates did not know about this decision. Based on this reason, it gave inspiration to the researcher to conducted research under the title, **“Verstek Decisions on Divorce in Langsa Muslim Family Court: A Gender Perspective”**.

B. Identification of the Problem

Followings are the formulation of the problem in this study:

1. How are the legal considerations used by the judges to decide Verstek cases?
2. How is the legal protection of women's right due to the Verstek decision on divorce in Langsa Muslim family court?

C. Purpose of Research

The purpose of this study is to find out the judges's considerations on theVerstek decision in Langsa Muslim Family court and to know the factors of Verstekdecision in Langsa Muslim Family court with analyzing the effect on the fulfillment of women's right.

D. Significance of the Research

The benefit of this research is to be contribution of through in the literature of legal science related to Verstek decisions on a divorce cases which is useful for further researchers and can add insight to practisioners, society and authors.

E. Scope of Research

In this research, the researcher only focus on the discussion of Verstek decisions in the cases of divorce. Which will be analyzed from a gender perspective to determine whether woman's right are protected or not.

F. Explanation of the Term

1. Law consideration

Law consideration is one of the most important aspects in determining the realization of the value of the judge's decision which contains justice and contains legal certainty, besides that it also contains benefits for the parties concerted. So that the law consideration must be addressed carefully and well by the judge. If the judge is not careful, the decision coming from the judge will be canceled by the Supreme Court.¹¹

2. A Court Decision

A court decision is a process of the case examination which includes the process of filing a lawsuit, the defendant's answer, the plaintiff's replication, the defendant's duplication, the evidence and conclusions put

¹¹ Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama*, (Yogyakarta: Pustaka Pelajar), p.140.

forward both by the defendant are completed and the end the case has nothing to say, so the judge will decide a decision on case.¹²

3. Verstek Decision

Verstek decision stated that the defendant did not attend, even though it according to procedural law had to come. It can only be stated if the defendant is not present on the first trial day. It is the judge's authority to examine and decide cases.¹³

4. Divorce lawsuit

Divorce lawsuit is a bond that is broken as a result of an application submitted by the wife to the religious court.¹⁴

G. Previous Research

To strengthen the writing in this thesis, it is necessary for the author to conduct a study of the results of previous studies that have discussed or are related to the theme has written in this thesis. Based on the foregoing, there have been written results regarding the Verstek verdict on sue divorce and an analysis of judicial decisions. Some literature that the author found includes:

First, Faizal Antali in his thesis entitled *Putusan Verstek dalam Perkara Cerai Gugat di Pengadilan Agama Kelas IB Watampone (Analisis Putusan Perkara No. 229/P.dt.G/2013/PA.WTP)*. In this thesis the author has discussed the Verstek decision in the watampone class 1B religious court where he has

¹² M. Yahya Harahap, *Hukum Acara Perdata*, (Jakarta: Sinar Grafika, 2008), p.797.

¹³ R. Soepomo, *Hukum Acara Perdata Pengadilan Negeri*, (Jakarta: Pradnya Paraditha, 1980), p.33.

¹⁴ Salim, *Pengantar Hukum Perdata Tertulis (BW)*, (Jakarta: Sinar Grafika, 2002), p. 80.

reviewed the laws and regulations related to *Verstek* decision. The focus of this research was also in the legal basis and analysis of the judge in deciding the case. This also examined through evidence in the divorce cases.¹⁵

Second, M. Fatah in his thesis entitled *Putusan Verstek Pengadilan Agama Kendal dalam Perkara Perceraian (Kaitannya dengan Asas Mempersulit Perceraian)*. In this thesis the author focused on divorce studies in general. In Article 19 of government regulation number 9 of 1957 concerning the implementation of law number 1 of 1974 concerning marriage states several things about the causes of divorce.¹⁶ The reasons for divorce applied in general to the whole regardless of religious differences. If one of the plaintiffs or defendants was not attendance at the trial, the judges cannot seek a peace process another negative side, is that the judges will only accepts evidence from the plaintiff or defendant so that is no balance in the evidence. The focus of research on this *Verstek* is the factor of the absence of the plaintiff or defendant so that it ends in *Verstek* decision. The regarding the judge's consideration in deciding *Verstek* in Kendal religious court. The author also links the principle of complicating divorce and associates divorce data with *Verstek* or non-*Verstek* decisions.

Third, Ahmad Fahimi in his thesis entitled *Putusan Verstek Terhadap Perceraian di Pengadilan Agama Yogyakarta*.¹⁷ In this thesis, the object of research is in several cases in the religious court in Yogyakarta. The author

¹⁵ Faizal Antali, "Putusan Verstek dalam Perkara Cerai Gugat di Pengadilan Agama Kelas IB Watampone (Analisis Putusan Perkara No. 229/P.dt.G/2013/PA.WTP)", Thesis (Makassar: UIN Alauddin, 2015).

¹⁶ M. Fatah, "Putusan Verstek Pengadilan Agama Kendal dalam Perkara Perceraian (Kaitannya dengan Asas Mempersulit Perceraian)", Thesis, (Semarang: UIN Walisongo, 2016).

¹⁷ Ahmad Fahimi, "Putusan Verstek Terhadap Perceraian di Pengadilan Agama Yogyakarta", Thesis, (Yogyakarta: UIN Sunan Kalijaga, 2017).

focused on the legal certainty obtained from the results of *Verstek* decision. the author also described the factors that occur in the verdict of religious court in Yogyakarta and analyzed the judge's considerations. As well as presented data from different decisions each years.

Fourth, Jamiliya Susantin on the journal entitled *Analisis Putusan Verstek dalam perkara Cerai Gugat Perspektif Mashlahah Mursalah*.¹⁸ With so many cases of divorce that were decided *Verstek*, it is not uncommon to create problems that are considered detrimental to the defendant. In some divorce cases that were decided by the defendant's *Verstek*, he never knew that the plaintiff had filed for divorce until the judge handed down the verdict. The verdict in the case for divorce is based on Articles 125 and 126 HIR, Article 149 and Article 150 Rbg. *Verstek* verdicts handed down with two summons. This is in accordance with the principle of *audietalteranpartem* in summons made to the defendant, because the purpose of the summons to the defendant is an element of fulfilling the defendant's rights to defend or give testimony in court. When the defendant is absent after the summons, the defendant is deemed unconcerned and disobedient so that the court can ruling the defendant's absence.

Fifth, Najibullah in his thesis entitled, *Putusan Verstek Berdasarkan Ketidakhadiran tergugat dengan Relaaas yang Disampaikan kepada Kepala Desa*.¹⁹ From this research the result is determine to the judge's judgment in

¹⁸ Jamiliya Susantin, "Analisis Putusan Verstek dalam Perkara Cerai Gugat Perspektif Mashlahah Mursalah", *Jurnal YUSTITIA*, Vol. 20 No. 2 Desember 2019.

¹⁹ Najibullah, "Putusan Verstek Berdasarkan Ketidakhadiran Tergugat dengan Relaaas yang Disampaikan kepada Kepala Desa", *Thesis*, (Malang, UIN Maulana Malik Ibrahim, 2018).

deciding *Verstek* and what if the defendant did not accept the verdict or the legal effort can be done by the defendant. This research took place in the Trenggalek Religion Court.

As the similarities the main topics are the *Verstek* decisions on divorce and for the differences factor in this study with the previous study fixed on the object of the discussion. The author focused on the law consideration by the judge of *Verstek* decision and the safeguarding of woman's rights after the divorce.

H. Theoretical Framework

1. Legal Certainty Theory

Judges in resolving civil cases in court have the duty to find the right law. It in discovering law are not sufficient with laws alone, so judges must explore legal values that in society to find legal certainty for them. Legal certainty proves that law does not aim to achieve justice or benefit, but only for certainty.²⁰ It is a guarantee regarding the law which contains justice. Norms which promote justice must indeed function as rules to be obeyed. According to Gustav Rdburch, legal certainty is a permanent part of the law. Based on this theory, it is value of justice and happiness.

2. Legality Principle

The principle of legality is contained in Article 58 Paragraph (1) which reads exactly the same as the provisions of Article 5 Paragraph (1) of Law No.

²⁰ Achmad Ali, *Mengungkap Tabir Hukum (Suatu kajian Filosofis dan Sosiologi)*, (Jakarta: Toko Gunung Agung, 2002), pp. 82-83.

14 of 1970 which reads: "the court shall judge according to the law without discriminating against people". This principle can be understood as affirming the equality of rights and degrees of everyone who litigates before a court session. The principle of legality includes human rights relating to the right of legal protection and the principle of equality in relation to equality before the law or the principle of equality.²¹

3. Principle of Equality²²

The meaning of equality is equal rights. If this principle is connected with the function of the judiciary, it means that every person has the same rights and position before a trial. Rights and positions are equal before the law. In connection with the principle of equality, in court practice there are three fundamental elements, namely:

- a. Equal rights or degrees in the trial process or *equal before the law*.
- b. Equal protection on the law.
- c. Get the right of treatment under the law or *equal justice under the law*.

I. Systematic of the Research

Research in this thesis will be showed in four chapters. As an effort to maintain the discussion integrity, the following systematic would be used.

First Chapter is the general introduction for this research that encompasses Background, Formulation of the Problem, Purpose and Benefit of the Study, Literature Review, Theoretical Framework, Research Methodology

²¹ Ropaun Rambe, *Hukum Acara Pedata*, (Jakarta: Sinar Grafika, 2002), p.71.

²²*Ibid.*,p.74.

and Systematic of the research.

Second Chapter is regarding literature review of *Verstek* decisions and divorce.

Third Chapter will describe the type of research, data sources, data analysis technique and stages of research.

Fourth Chapter will presentation of *Verstek* decisions on divorce lawsuits In Langsa Muslim Family court, law considerations, decisions factors, analysis of decisions and their correlation to woman's right.

Fifth Chapter is Closing that comprised of conclusion and suggestions.

CHAPTER II

BASE OF THEORY

A. Divorce

1. Definition of Divorce

Termination of marriage is a legal term used in the marriage law to describe divorce or the end of a marital relationship between a man and a woman who has lived as husband and wife.²³ The article which states that a marriage can be broken because of several reasons, in Article 38 of the Marriage it states that a marriage can break up due to the death of divorce an on court decisions.

In Indonesian legislation, there is a distinction between divorce based on the will of the husband and divorce against the will of the wife. This is because of the characteristics of Islamic law in divorce do, so that the settlement process different.²⁴

Before the enactment of Law Number 1 of 1974, there was discrimination between husband and wife in the right to file for divorce. The husband has the absolute right to pass divorce to his wife. At any time, the husband can pass divorce without any obligation to the wife.²⁵

Meanwhile, if the wife is going to file for divorce, she must file a lawsuit at the Court. By filing the lawsuit, the wife will lose her rights

²³Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, (Jakarta:Kencana, 2009), p.189.

²⁴ Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama*, (Jakarta: Pustaka Pelajar, 2003), p. 206.

²⁵ Dewan Perwakilan Rakyat Republik Indonesia, *Undang-Undang RI Nomor 1 Tahun 1974 tentang Perkawinan* , p. 36-37.

because filing a lawsuit is considered a *nusyuz* act so that the wife must be willing to lose her rights, just because the wife has filed a lawsuit at the Court.

RI Law No. 1/1974 on Marriage in conjunction with RI Law No. 7/1989 on Religious Courts has changed this situation, and has given equal rights to husbands or wives to file for divorce. Both husband and wife can file for divorce through a court hearing. Divorce can only be done before a Court hearing and there must be reasons specified in the Law, namely the husbands can divorce their wives by applying for divorce to the Court at the residence of the Respondent (wife). While the wife can file a divorce suit at the Court at the residence of the Plaintiff (wife).²⁶

The rights of a husband and wife are so balanced that they reflect a noble sense of justice, however, one thing that is clear is the Qur'an law regarding the treatment of women in divorce is more humane and contains a soul of justice than what is written in other Bibles.²⁷

According to Subekti, the term divorce is the abolition of the marriage by a judge's decision or demand of one of the parties. Meanwhile, according to the compilation of Islamic law Article 114, the break up of marriage is caused by divorce by husband or divorce by wife.²⁸

According to UUPA number 7 of 1989 have changed a new rest, that called the term for divorce petition is called divorce by husband (*Thalak*)

²⁶ Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

²⁷Anwar Harjono, *Hukum Islam Keluasan dan Keadilannya* (Cet. II; Jakarta: Bulan Bintang, 1987), p. 234.

²⁸Subekti, *Pokok-pokok Hukum Perdata*, (Jakarta: PT. Intermasa, cet XXXI, 2003), p. 42.

and suing divorce called divorce lawsuit (*Khulu'*). With this term it is emphasized to break a marriage based on a religious court decision in accordance with Islamic law.

A divorce lawsuit is a marriage bond broken as a result of an application submitted by the wife to a religious court, which then the respondent (husband) agrees so that the court grants the request.²⁹ According to Ahrum Hoeruddin, added that divorce is broadly a lawsuit filed by the plaintiff (the wife's side) to the religious court so that the marriage relationship between her and her husband is decided by court in accordance with the applicable legal rules.³⁰

According to Article 116 the compilation of Islamic law states that divorce can occur for the following reasons:³¹

- a. One of the parties commits adultery or becomes a drunk, a gambler, and others who are difficult to cure.
- b. One party leaves the other party for two consecutive years without the permission of the other party and without valid reasons or for other reasons beyond its capabilities.
- c. Either party gets 5 years imprisonment or a harsher sentence after the marriage has taken place.

81 ²⁹ Zainuddin Ali, *Hukum Perdata Islam di Indonesia*, (Jakarta: Sinar Grafika, 2009), p.

³⁰Ahrum Bahroeddin, *Pengadilan Agama (Bahasan Tentang Pengertian, Pengajuan Perkara dan Kewenangan Pengadilan Agama Setelah Berlaku UU No. 7 Tahun 1989 Tentang Peradilan Agama)*, (Bandung: PT. Aditya Bakti, 1999), p.20.

³¹ Dewan Perwakilan Rakyat Republik Indonesia, *Undang-Undang RI Nomor 1 Tahun 1974 tentang Perkawinan*, p. 357.

- d. one of the parties gets a disability or illness resulting in not being able to carry out his obligations as husband or wife.
- e. Between the husband and wife where there are constant quarrels and fights and there is no hope of living in harmony again in the household.

As for the steps for the divorce procedure. Steps that must be taken by the Plaintiff (wife) or their attorney:

- a. Submit a lawsuit in writing or orally to the religious court / syar'iyah court (Article 118 HIR, 142 RBg jo Article 73 UU No.7 of 1989).³²
- b. The plaintiff is advised to ask the religious court / syar'iyah court about the procedure for making a lawsuit (Article 118 HIR, 142 RBg jo Article 58 UU No. 7 of 1989).³³
- c. The lawsuit can be changed as long as it does not change the *posita* and *petitum*. If the Defendant has answered the lawsuit it turns out there are changes, then the changes must be with the Defendant's approval.

The lawsuit was submitted to the religious court / *syar'iyah* court:

- a. The jurisdiction of which includes the residence of the Plaintiff (Article 73 paragraph (1) of UU No. 7 of 1989).
- b. If the Plaintiff leaves the mutually agreed residence without the Defendant's permission, then the lawsuit is submitted to the religious court / syar'iyah court whose jurisdiction includes the residence of

³² Undang-Undang Nomor. 3 Tahun 2006 Tentang Perubahan atas UU No.7 Tahun 1989 Tentang Peradilan Agama, Lembaran Negara Republik Indonesia Tahun 2006 Nomor 22.

³³ Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama Lembaran Negara Republik Indonesia Tahun 1989.

the Defendant (Article 73 paragraph (1) Law No. 7 of 1989 in conjunction with Article 32 paragraph (2) UU No.1 of 1974).³⁴

- c. If the Plaintiff lives abroad, then the lawsuit is filed at the religious court / syar'iyah court whose jurisdiction includes the residence of the Defendant (Article 73 paragraph (2) of UU No. 7 of 1989).
- d. If the Plaintiff and Defendant reside abroad, then the lawsuit is filed at the religious court / syar'iyah court whose jurisdiction includes the place where the marriage was held or to the Central Jakarta Religious Court (Article 73 paragraph (3) UU No. 7 of 1989).

The lawsuit contains:

- a. Name, age, occupation, religion and residence of the Plaintiff and Defendant.
- b. *Posita* (facts of events and legal facts).
- c. *Petitum* (things that are prosecuted based on posita).

A lawsuit regarding child control, child support, wife's marriage and joint property can be filed together with a divorce suit or after the divorce decision has permanent legal force (Article 86 paragraph (1) of UU No. 7 of 1989).³⁵ Paying court fees (Article 121 paragraph (41) HIR, 145 paragraph (4) RBg Jo Article 89 UU No.7 of 1989), for those who cannot afford it can litigate for free (Prodeo) (Article 237 HIR, 273

³⁴ Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama Lembaran Negara Republik Indonesia Tahun 1989, Article 73.

³⁵ Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama Lembaran Negara Republik Indonesia Tahun 1989. Article 86.

RBg).³⁶ The Plaintiff and Defendants or their proxies attended the trial based on summons of the religious court / syar'iyah court (Articles 121, 124, and 125 HIR, 145 RBg).

As for the case settlement process, the plaintiff registered a divorce suit with the religious court / *mahkamah syari'iyah*. Plaintiffs and Defendants are summoned by the religious court / *mahkamah syar'iyah* to attend the trial. Stages of the trial:

- d. At the first trial hearing, the judge tries to reconcile both parties, and the husband and wife must come personally (Article 82 of Law No.7 of 1989).
- e. If unsuccessful, then the judge obliges both parties to first go through mediation (Article 3 paragraph (1) PERMA No.2 of 2003).³⁷
- f. If the mediation is unsuccessful, then the examination is continued by reading out the lawsuit, answers, answers to answers, evidence and conclusions. In the answer to answer stage (before proving) the Defendant can file a reconciliation suit (counterclaim) (Article 132a HIR, 158 RBg).

As for the rulings of the religious court / syar'iah court for divorce lawsuit are as follows:

- a. The lawsuit was granted. If the Defendant is not satisfied, he can file an appeal through the religious court / syar'iah court.

³⁶ Erfaniah Zuhriah, *Peradilan Agama di Indonesia*, (Malang; UIN-Malang Press, 2008), p.288.

³⁷ PERMA Nomor, 2. Tahun, 2003. Tentang Prosedur Mediasi di Pengadilan Agama.

- b. The lawsuit is rejected. The plaintiff can file an appeal through the religious court / syar'iah court.
- c. Lawsuits are not accepted. Plaintiffs can submit a new application.
- d. After the decision has permanent legal force, the clerk of the religious court / mahkamah syar'iyah will provide a divorce certificate as proof of divorce to both parties no later than 7 (seven) days after the decision is notified to the parties.

2. Divorce lawsuit in the View of Islam

In the view of Islam, the divorce lawsuit namely *Khulu'*. *Khulu'* comes from the word *Khulu'al-stawb* which means removing or changing clothes from the body (the clothes worn),³⁸ because women are the clothes of men and on the other hand men are the clothes for their women and follow what Allah has set for you, and it called also by ransom, that is, the wife redeems herself from her husband by returning what she has received (dowry) .³⁹ The wife separates from her husband by giving compensation.

Then the word *Khulu'* is used for a woman who asks her husband to break away from the marriage bond. Meanwhile, according to the definition of syari'at, the scholars say in many definitions, but all of them return to the understanding, that *Khulu'* is the separation (divorce) between

³⁸ A. Rahman I Doi, *Penjelasan Lengkap Hukum-hukum Allah (Syari'ah)*, (Jakarta: Raja Grafindo Persada, 2002), p. 251.

³⁹ Kamal Muchtar, *Asas-Asas Hukum Tentang Perkawinan*, (Jakarta: Bulan Bintang, 1974), p. 181.

a husband and wife with the pleasure of both and with payment the wife gives to her husband.⁴⁰

At the Compilation of Islamic law, the *khulu'* process is different with suing of divorce. If *khulu'* according to Article 148 paragraph (1) - (6) a wife submits a divorce lawsuit by means of *khulu'* submits her request to the religious court that oversees her place of residence along with the reasons thereof. The religious court then explained of the consequences of the *khulu'* and other advice. After both parties agree on the amount of ransom, the religious court gives a ruling on the permission of the husband to pledge his divorce before the religious court. In this case neither appeal nor causation shall apply. If no agreement is reached regarding the ransom, the religious court shall examine and decide the case as an ordinary case.⁴¹

This common case is the case for a divorce by the wife. According to Article 132 paragraph (1) compilation of Islamic law, he filed a divorce suit by the wife whose jurisdiction covers the residence of the plaintiff. Based on article 136 paragraph (2) during the divorce suit, at the request of the plaintiff or defendant, the court can determine what should be borne by the husband and determine the things that are necessary to ensure the maintenance of goods that are shared rights.⁴²

⁴⁰ Soetojo Prawirohamidjojo dan Marthalena Pohan, *Sejarah Perkembangan Hukum Perceraian di Indonesia dan di Belanda*, (Surabaya: Airlangga University Press, 1996), p. 33-34.

⁴¹ Dewan Perwakilan Rakyat Republik Indonesia, *Undang-Undang RI Nomor 1 Tahun 1974 tentang Perkawinan...*, p. 367

⁴²*Ibid.*,p. 361-363.

B. Verstek

1. Definition of Verstek

In writing there are those who use the term “law of absence”⁴³ while Supoemo mentions “outside event is present” *Verstek*).⁴⁴ In other side according to Subekti, continuous to use the original term “*Perstek*” not use “*Verstek*”.⁴⁵ The term outside event is not present in law as a translation of *Verstek procedure* or *Verstekvonnis* in the law dictionary.⁴⁶ The Verstek term according to Kamus Besar Bahasa Indonesia is absence.⁴⁷

Here is no difference in intentions contained in the term common law with civil law adapted in Indonesia. Therefore, the point of view of mention, it is not disputes because it used the original version, which the based on observations in accordance with legal terminology in Indonesia an that allows to use the Verstek term.

Regarding the definition of Verstek, it is inseparable of the connection with the function of proceedings and imposition of a decision on a disputed case which gives the judge the authority to deciding the decision without the presence of the plaintiff or defendant. Based on that statement, the Verstek

⁴³ Abdulkadir Muhammad, *Hukum Acara Perdata Indonesia*, (Bandung: Citra Aditya Bakti, 1992), p. 97.

⁴⁴ Soepomo, *Hukum Acara Perdata Pengadilan Negeri*, (Jakarta: Pradnya Paramita, 1993),p.34.

⁴⁵ Subekti, *Hukum Acara Perdata*, (Jakarta: Bina Cipta, 1977), p. 56.

⁴⁶ Marianne Termorshuizen, *Kamus Hukum Belanda Indonesia*, (Jakarta: Djambatan,1999), p. 484.

⁴⁷<https://kbbi.web.id/verstek>, accessed on June 23, 2021 at 11.44 WIB

cases can not be inseparable with provisions to Article 124 HIR and Article 125 verse 1 HIR.⁴⁸

a. Article 124 HIR, Verstek regulations to the plaintiff

The Article above the judge has the authority to issue a decision outside the presence or absence of the plaintiff based on the reason, if the plaintiff is not present at the trial which is determined without valid reason, then in such a condition the judge has the authority to decide the case without the presence of the plaintiff, which is called a Verstek decision which contains the dictum to release the defendant from the case. Then punished the plaintiffs to pay court fee.⁴⁹

b. Article 125 HIR, Verstek regulations to the defendant

Based on this article, the judge is given the authority to make a decision outside the presence or absence on condition that if the defendant does not attend the examination session which is determined without the valid reason, in this case can be decided by Verstek. Which contains the *dictum*: (1) approves the lawsuit in whole or in part, (2) states that the lawsuit does not accept if the lawsuit does not have a legal bases considering.⁵⁰

The explanation above, the definition of Verstek is the granting of authority to the judge to examine and decide the case though the plaintiff or defendant is not present at the trial on the specified date. Thus the decision

⁴⁸M. Yahya Harahap, *Hukum Acara Perdata*, (Jakarta:Sinar Grafika, 2017), p.443.

⁴⁹*Ibid.*,p. 443.

⁵⁰*Ibid.*,p. 443.

is taken and passed without any objection from the both of parties whose not attended at a trial proceeding.

On common law said that default judgement can be done by judge if “*the defendant did not answer to appear and a default judgement was entered*”. If “*the defendant failed to plead or answer or failed to appear*” so, the defendant can be the given a verdict with the opposite verstek. If the defendant is present to fulfill the summons to the hearing, a decision may not be decided without going through an examination process which gives the defendant the right to file an argument or defenses.⁵¹

The main system of Verstek in procedural law is to encourage parties to obey procedural rules so that the cases settlement examination process is avoided from anarchy or arbitrariness. If the law determines that for the validity of the case investigation process, the parties must attend these provisions which can of course be used by the defendant in the bad faith. That to thwart the settlement of the case. Everyone is summoned to attend the trial, the defendant does not comply with the intention of obstructing and settlement of the case.⁵²

Pay attention to the possible consequences is that if the validity of the examination process depends on the presence of the parties the laws need to anticipate it through an examination procedure and the settlement of the case is not absolutely dependent at trial if absence without a valid reason can be threatened by imposing a decision without being present.

⁵¹*Ibid.*,p. 444.

⁵²*Ibid.*,p. 444

Although the application of the Verstek is not imperative the institution in the procedural law considered is effective in resolving cases.

Indeed, this Verstek program is very detrimental to the interest of the defendant because without being present and defense the decision was decided. But the loss was naturally inflicted on the defendant due to his attitude and actions that did not comply with procedural rules.

2. Verstek Procedure Requirements

As for that will be discuss in this description is Verstek program for the defendant regarding the legal requirement for the application of the Verstek procedure to the defendant referring to the provisions of article 123 paragraph 1 of HIR. According to that article, it can be stated that the following conditions are:⁵³

a. The defendant has been legally and properly summoned.

1) The call is carried out by the bailiff

This is emphasized in Article 388 jo. Article 390 Paragraph (1) HIR According to that article, the thing that is obliged to carry out summons is the bailiff at the district court. If the one of part who summoned is outside the relative jurisdiction for which the summons are made based on Article 5 Rv, delegate to the bailiff who authorized in that jurisdiction.

2) The Summons Form

⁵³R. Soeroso, *Hukum Acara Perdata HIR, Rbg, dan Yurisprudensi*, (Jakarta; Sinar Grafika, 2011) cet. 2, p. 56.

According to Article 390 Paragraph (1), Article 2 Paragraph (3) Rv summons are made in the form of: (1) a written letter which is called a summons. (2) Invalid summons in oral form because technically the summons are difficult or the truth cannot be proven so that it can be detrimental to the interest of defendant. The extent to which the scope of meaning in writing can be guided by the provisions of Article 2 Paragraph (3) Rv, covering telegram and regarding letter. Specifically regarding summons in divorce cases. Based on Article 27 PP No. 9 of 1975, can be carried out in media or mass media in general.

3) A valid Procedure of Summoning⁵⁴

The category of valid summons is outlined in Article 3 Paragraph (1) and (3) HIR.

- The residence of defendant is known: submitted to the person concerned himself or his family, delivery is made at the residence or preferred domicile to the village head, if the bailiff is not found in the residence then the place of residence is not known.
- The residence of defendant is not know: the bailiff delivers a summons to the mayor or regent and they announce by sticking it to the public door of the religious court room.
- Summon of defendant who is overseas: the method of summoning in a case like this is not regulated in HIR or RBG. Therefore in practice it is guided by the provisions has also been modified in a

⁵⁴M. Yahya Harahap, *Hukum Acara Perdata*, (Jakarta:Sinar Grafika, 2017), p.446.

form through diplomatic channels. If the defendant's residence abroad is not known, the procedure for the summons shall be subject to the provisions of Article 390 Paragraph (3).

4) The time interval between the summons and the session day.

So that if the summons is valid and proper must refer to Article 122 HIR or Article 10 Rv. This Article regulates the time interval between the summons and the session day. Firstly in normal circumstances, it depends on the distance between the defendant's residence, and the religious building. Which is 8 days if the distance is not far, 14 days if the distance is a bit far, and 20 days if the distance is far. Secondly, in an urgent situation the time interval can be shortened but not less than 3 days.

Thus the fixed brief description of the method of legal summons. But to gain a broader understanding has been discussed separately in the scope of the calling.

b. Absence Without a Valid Reason

The defendants do not attend the summons without the valid reason. It is referring to Article 125 Paragraph (1) HIR:⁵⁵

- 1) The defendant did not come on day the cases was examined.
- 2) The defendant does not order other people to represent him.
- 3) The defendant had been summoned properly but ignored and obeyed the summons without the valid reasons.

⁵⁵ K. Wantjik Saleh, *Hukum Acara Perdata*, (Jakarta: Ghalia Indonesia, 1977), p. 30.

4) In this case the judge can be authorized to decide a verstek decision that was called a decision outside the presence of the defendant.

So, if the defendant inversion or his representative is not present to fulfill the summons for examination at the determined court session, event though he has been properly summoned to the defendant, he may be punishment in the Verstek decision. Such a requirement is also known in the common law. Judge can impose default judgement if the defendant did not appear either in person or by counsel. These provisions are dependent in the defendat and defendant's counsel deny ever receiving any notice from the clerk.

As valid reasons it can be judged by judge's side. The plaintiff may state the defendant's invalid reasons, however, the judge has the right to judge whether the reason in valid or not.

3. An Application of the Verstek Decision⁵⁶

On the one side, the law places the presence of the defendant in court as a right not an imperative obligation. The law of fully surrendering is made of using right to defend their interest.⁵⁷ On the other side, the law does not impose imperative application of Verstek procedures. Judges do not have to impose Verstek decisions on defendant who do not attend the summons. Its application is optional to the judge to apply or not.

As explained above, if the defendant has been summoned properly but does not attend the first trial without the valid reason, the judge can

⁵⁶ M. Yahya Harahap, *Hukum Acara Perdata*,...p. 450-452.

⁵⁷ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 1988), p. 79.

immediately implement a Verstek procedure by imposing a verstek decision. This action can be done based on position the judge. However, accordance to fair trial consideration, if the defendant is not present to fulfill the first trial, it is not appropriate to directly punish him.

If the judge does not immediately issue a decision of verstek at the first trial, the judge orders the postponement of the trial. At the same time, the bailiff summons the defendant for the second time to attend a trial on the specified date. Accordance to the provisions of Article 126 HIR, it does not regulate tolerance limits on the possibility of postponement of trial if the defendant does not comply with the summons. The article only states that the court or judge can order the resignation but does not specify a limit at the time a resignation can be made.

If only based in provisions of the Article 126 HIR, the law does indeed justify an unlimited postponement. However the application can be considered anarchic and arbitrary towards the plaintiff. Is also contrary to the simple, speedy and low cost principles of justice outline in Article 4 Paragraph (2) UU No. 14 of 1970 as amended by UU No. 35 of 1999 and now in Article 4 Paragraph (2) UU No. 4 of 2004.⁵⁸ Even such application is contrary to the principles of legality and equal treatment. It can ignore the rights of the plaintiff.

According to description above, it is necessary to enforce tolerant boundaries based on civilized and humane feasibility in the framework of

⁵⁸ Undang-Undang Nomor 4 tahun 2004 Tentang Kekuasaan Kehakiman, Lembaran Negara Republik Indonesia Tahun 2004.

protecting in the interests of both parties in case. Based on this eligibility, the tolerance limit for postponement that can be justified by law and morals is at least 2 times and maximum of 3 times. In fact, tolerating several was considered too indulgent and contained an attitude of partiality to the defendant.

Therefore the maximum limit that can be justified is only up to three times. Thus, if the postponement and summons have been up to three times, but the defendant does not attend the trial without valid reasons, the judge obliged to issue a *Verstek* decision. If on the third resignation, the defendant still does not attend the trial without a valid reason, if the judge does not procedure then the judge is deemed not responsible for the sense of justice.

4. The Aspects that are Considered in Deciding

a. Legal Certainty Theory

Judges in resolving civil cases in court must find the right law. It is discovering law are not sufficient with laws alone, so judges must explore legal values that in society to find legal certainty for them. Legal certainty proves that law does not aim to achieve justice or benefit but only for certainty.⁵⁹ It is a guarantee regarding the law which contains justice. Norms which promote justice must indeed function as rules to be obeyed. According to Gustav Rdburch, legal certainty is a permanent part of the law. Based on this theory, it is value of justice and happiness.

⁵⁹ Achmad Ali, *Menguak Tabir Hukum (Suatu kajian Filosofis dan Sosiologi)*, (Jakarta: Toko Gunung Agung, 2002), pp. 82-83.

The general principle of legal certainty is inherent in any Western legal system and appears in many different shapes in the case law of the Court of Justice of the EU (CJEU), this principle requires that rules of law be known, clear, precise, stable, certain and predictable. How can these requirements be reconciled with the fact that the principle of legal certainty is among most uncertain, ambiguous and unpredictable of all European norms.⁶⁰

The principle of a legal certainty, in a fact the existence of this principle is interpreted as a condition where the law is certain because of the concrete strength of the law concerned. The existence of the principle of a legal certainty is a form of the protection for a justisiabel (justice seekers) against an arbitrary action, which means that a person will and can get something expected in certain circumstances. This statement is in the line with what Van Apeldoorn said that the legal certainty has two aspects, namely that the law can be determined in concrete terms, and a legal security. This means that those seeking justice want to know what constitutes the law in a certain matter before starting a case and a protection for justice seekers.⁶¹

b. Legality Principle

The principle of legality is contained in Article 58 Paragraph (1) which reads the same as the provisions of Article 5 Paragraph (1) of Law

⁶⁰ Jeremy Van Merbeek, *"The Principle of Legal Certainty in the Case law of the European Court of Justice: From Certainty to Trust,"* *European Law Review Issue 2* (2016): 275.

⁶¹ Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum*, Citra Aditya Bakti: Bandung, 1993, p. 2.

No. 14 of 1970 which reads: "the court shall judge according to the law without discriminating against people". This principle can be understood as affirming the equality of rights and degrees of everyone who litigates before a court session. The principle of legality includes human rights relating to the right of legal protection and the principle of equality in relation to equality before the law or the principle of equality.⁶²

c. Principle of Equality⁶³

The principle of equality in law or what is often referred to as equality before the law, interpreted dynamically, is believed to guarantee access to justice for all people regardless of background. Perception of the law is important in order to understand whether the law is fair or whether there is compliance with the law.

This is especially the case with government officials considering that they are the driving force of the "due process of law" (fair legal process) in the criminal justice system in the world, so their perception of the law will greatly influence and even determine the existence of the law. The principle of equality before the law comes from the recognition of individual freedom in connection with this. Thomas Jefferson stated that "that all men are created equal", especially in relation to basic human rights.⁶⁴

⁶² Ropaun Rambe, *Hukum Acara Pedata*, (Jakarta: Sinar Grafika, 2002), p.71.

⁶³ *Ibid.*, p.74.

⁶⁴ Teguh Prasetyo, *Hukum Pidana*, (Jakarta: PT. Raja Grafindo Persada, 2011), p. 17

The meaning of equality is equal rights. if this principle is connected with the function of the judiciary, it means that every person has the same rights and position before a trial. Rights and positions are equal before the law. In connection with the principle of equality, in court practice there are three fundamental elements, namely:⁶⁵

- 1) Equal rights or degrees in the trial process or equal before the law.
- 2) Equal protection on the law.
- 3) Get the right of treatment under the law or equal justice under the law.

Equality before the law is the principle or a basic value of the equality of a treatment in abstracto (a formulation of regulations) and in concreto (law enforcement) in realizing justice. The inequality in a formulation, a treatment or an imbalance or injustice is the impact of using predictive thinking (engineering thinking), and ignoring pure thinking which prioritizes justice which contains the values of an equality and a balance without an exception. In the terminology according to Black's Law Dictionary, Equality before the law is a status or a condition to be treated fairly according to the norms of justice that is established regularly. The keyword of this definition lies in the word justice as a norm, meaning that in the formulation, and enforcement of the law it must be fair, so that if

⁶⁵Ropaun Rambe, *Hukum Acara Pedata*, ...p. 74

there is discrimination in the formulation, and enforcement of the law, it violates the principle or the value of equality before the law.⁶⁶

Judges in carrying out their duties to receive, examine, decide and settle civil cases refer to the Civil Procedure Law, which main principles include the principle which states that judges are only passive, in the sense that in principle the case initiative is not from the judge, but from parties feel or feel that their rights / interests are disturbed or harmed by other parties. The principle of the judge is obliged to adjudicate all claims and are prohibited from passing decisions on cases that are not charged or grant more than those charged (Article 178 paragraph (2) and (3) HIR; Article 189 paragraph (2) and (3) RBg).⁶⁷

Therefore, by knowing legal principles, especially principles in Civil Procedural Law, judges in their judicial work is required to provide juridical thinking that is legal and has normative influence and binds the parties because they base their existence on the formulation of legislators and judges. So, that the verdict is the result of a juridical way of thinking resulting in a law characterized by appropriateness, harmony, fairness, fairness, and providing a legal certainty for justice seekers.

C. Religious Court and Gender

Divorce (both divorce and divorce) is just one of a numbercases handled in the Religious Courts that show serious effortsin paying attention to the

⁶⁶*Ibid.*,p. 75.

⁶⁷Article 178 paragraph (2) and (3) HIR; Article 189 paragraph (2) and (3) RBg

protection of women's interests. Apart from the concerning issue fulfillment of basic needs, the verdicts on these lawsuits are also related directly by protecting interests, dignity and value girls. The Religious Courts as one of the executors of judicial power are confronted on two big expectations. First, the Religious Courts are required to enforce the law and justice at its best. The Religious Courts are required to implement the law on in-concreto cases by paying attention to relevant and decisive facts.⁶⁸

On this side, the Religious Courts are required to implement normative aspects of law. Second, the Religious Courts are also required to pay more serious attention interests of women who are generally victims of dispute that happens in the family sphere. Religious Court judges are required to have extraordinary carefulness and sensitivity to the suffering faced by women and children who are victims of the husband / father's negligent behavior he replied. It is hoped that the decisions that arise from these cases are capable provide fast and appropriate solutions for women.⁶⁹

In response to this, the Supreme Court has issued a Court Regulation Agung Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Dealing with the Law (PERMA).⁷⁰ PERMA is motivated by desire The Supreme Court removed the barriers for women inside get access to justice and free women from all forms discrimination in the justice system.

⁶⁸ Amran Suadi , “*Peranan Peradilan Agama dalam Melindungi Hak Perempuan dan Anak Melalui Putusan Yang Memihak dan Dapat Dilaksanakan*”, *Jurnal Hukum dan Peradilan*, Volume 7, Nomor 3, November 2018 : 353.

⁶⁹ *Ibid.*, p. 355.

⁷⁰ Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum.

This will be in line with the development of contemporary legal thought wanting equal rights and access for women before the law (equal right before the law) voiced by exponents of feminist legal theory. Law, should not be perceived as a territory or domain of male power. Hegemonic masculinity of law should be abandoned and turned to law which is egalitarian and places men and women on an equal footing.

The Religious Courts have special attention to efforts to empower the women who are in the family are often perceived as inferior and are under the domination of men. According to Ade Irma Sakina and Dessy Hasanah in his research concludes that a culture of patriarchy is still lasting in developing Indonesian society structure. This patriarchal culture is manifested in various aspects and the scope of community life, such as economy, education, politics, and law, though. The implication of such a culture is the emergence of various social problems that shackle women's freedom and violate their rights should be owned by women.⁷¹

Even though Indonesia is a country of law, however in fact, the legal umbrella itself has not been able to accommodate various these social problems. The reason is still classic, because the realm of women is still considered too domestic. So that law enforcement is still quite weak and not gender fair. Therefore, the role of social workers is needed in this situation problem solving can be done quickly.

⁷¹Ade Irma Sakina dan Dessy Hasanah Siti A, *Menyoroti Budaya Patriarki di Indonesia*, *Social Work Journal*, Vol.7 No.1: 71.

Normatively, it can be seen from the normalization of how to file a lawsuit for divorce, both by women and men. Provisions regarding filing for divorce at the Religious Court indicate gender responsiveness. Such legal provisions are giving ease for women to respond to divorce suits because trials are held in the Court which covers his residence. A girl (Wife) who is busy with household chores should not be bothered with the obligation to attend a trial at a court which is located far from the place of stay. If this happens, then the law has burdened women with a burden extra that should not have been endured.⁷²

Then in the Supreme Court Circular Letter Number 1 of 2017 concerning Enforcement of the 2017 Supreme Court Plenary Meeting Results Formulation As a Guidance for the Implementation of Duties for Courts, in letter C number (1) stated that: In the context of implementing PERMA Number 3 of 2017 concerning Guidelines for Hearing Women Cases Against the Law to give legal protection for women's rights post-divorce, then payment liability resulting from divorce can be stated in the verdict with the sentence paid before pronouncement of divorce. The pledge of divorce can be carried out if the wife does not object to her husband not pay the obligation at that time.⁷³

The Religious Courts have made a real effort to take sides women and children by implementing these regulations, so that they can remove all forms of discrimination and legal dysfunction against the enforcement of legal rights women in conflict with the law. Even so, it still was There are several

⁷² Erna Sofyan Syukrie, *Pemberdayaan Perempuan dalam Pembangunan Berkelanjutan, Makalah yang disampaikan pada Seminar Pemberdayaan Perempuan* (Denpasar, 2003), p.6.

⁷³ Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum.

obstacles so that the existing instruments are not yet supported executions resulting from the divorce differ in Jordan, Malaysia and Australia.⁷⁴

Judges in deciding a case must always be oriented towards law enforcement and justice, so that decisions will be objectively assessed for the general public and especially for justice seekers, especially during the era of legal reform and current transformation, the role and function of law increasingly in place as an important instrument in making various changes planned.⁷⁵

In the context of the aim of enhancing the status of women, it appears that Turkish, Tunisian and Somali family laws are gender sensitive. This is manifested in the imposition of a prohibition on polygamy, permissibility without a guardian and a balanced distribution of inheritance between boys and girls. Unlike the case with several other Muslim countries which are still gender problematic.⁷⁶

The position of women in the Indonesian legal system, the 1945 Constitution and Law no. 39 of 1999 on Human Rights has emphasized the equality of women and men, but there are many products of state law that have the potential to cause discrimination for women. as in the early days of

⁷⁴ Amran Suadi , “Peranan Peradilan Agama dalam Melindungi Hak Perempuan dan Anak Melalui Putusan Yang Memihak dan Dapat Dilaksanakan”, *Jurnal Hukum dan Peradilan*, Volume 7, Nomor 3, November 2018 : 353 - 374

⁷⁵ Heru Susanto, “Peran Hakim Agung dalam Penemuan Hukum (*Reschtsvinbding*) dan Penciptaan Hukum (*Rechtsschepping*) Pada Era Reformasi dan Transformasi”, *Jurnal Hukum Masalah-Masalah Hukum*, Vol.36 No.2 April-Juni 2007, Semarang: Fakultas Hukum Undip: 91.

⁷⁶ Miftahul Huda, “RAGAM BANGUNAN PERUNDANG-UNDANGAN HUKUM KELUARGA DI NEGERA-NEGARA MUSLIM MODERN (*Kajian Tipologis*)”, *Jurnal Kajian Hukum Islam:Al-Manhaj*, Vol. XI No. 1 (Juni:2017): 52

independence, it has shown concern for women and gender equality. The position of women in Indonesian law has been explicitly explained by the regulations.⁷⁷

Patriarchal culture and ideology like in the western and eastern world still color various aspects of life and social structures that create gender inequality, relationships and family, inheritance and economy and in other fields. The Indonesian government has tried to apply the principles adhered to by the women's convention, namely the principles of substantive equality, non-discrimination and the principle of state obligations by harmonizing them into national law in accordance with the principles of gender equality and justice.⁷⁸

According to Mukti Arto, gender sensitivity is important for judges because from a cultural and social standpoint, women are in a weak and marginalized position, so it is the duty and responsibility of judges to lift women from adversity to obtain an equal and fair position with men.⁷⁹

Then from a legal standpoint, it must be admitted that many legal products are not in favor of women because they are constructed in a patriarchal social and cultural construction so that legal breakthroughs are needed to defend women's rights which are oppressed by patriarchal structures. Still from this legal point of view, even though efforts have been made to protect women

⁷⁷ M. Syaifuddin dan Sri Turatmiyah, "Perlindungan Hukum Terhadap Perempuan dalam Proses Gugat Cerai (Khulu') di Pengadilan Agama Palembang", *Jurnal Dinamika Hukum*, Vol.12, 2 Mei 2012: 249

⁷⁸*Ibid.*, p. 250.

⁷⁹Mukti Arto, *Pembaruan Hukum Islam melalui Putusan Hakim* (Yogyakarta: Pustaka Pelajar, 2015), p. 259.

through the reform of Islamic law, especially in the Marriage Law and Islamic Compilation Law such as the arrangement for polygamy permits, divorce must be in front of a court, joint property, limiting the age of marriage, etc. the idea has sometimes encountered obstacles in its application in court. That's why special treatment is needed in order to restore the spirit of justice which should be the right of women. Herein lies the urgency of legal contextualization with the perspective of women in court, especially in the Religious Courts.⁸⁰

⁸⁰Asni, *Pembaruan Hukum Islam di Indonesia: Telaah Epistemologis Kedudukan Perempuan dalam Hukum Keluarga*, (Jakarta: Direktorat Jenderal Pendidikan Islam Kementerian Agama Republik Indonesia, 2012), pp. 210- 224.

CHAPTER III

RESEARCH METHOD

A. Research Approach⁸¹

In the type of research the author uses in this study are called empirical legal research or sociology. It is examined through an interview process which is conducted by asking questions about the knowledge and experiences of judges to obtain the truth of facts in real life. It supported by reviewing the applicable laws and regulations with literature study.

To conduct research, the author uses a qualitative approach and includes the type of field research. It is methods are research procedures that produce descriptive data in the form of written or spoken words from people and observed behavior.⁸² Qualitative research aims to understand a particular situation to arrive at conclusions and break through its symptoms by interpreting the problem or concluding a combination of the various meanings of the problem as presented by the situation.⁸³

All informations are taken and collected from the field where the cases are located. Including documents containing the divorce and the judge's decision through the taken from the cases in Langsa Muslim Family Court. This research is also supported by library research which emphasizes searching and reviewing literatures related to the subject of both primary or secondary information.

⁸¹ Suratman and Philips Dillah, *Metode Penelitian Hukum*, (Bandung: Alfabeta, 2014), pp, 106-107.

⁸² Lexy J. Moleong, *Metode Penelitian Kualitatif*, (Bandung: Remaja Rosdakarya, 2007), p.4.

⁸³*Ibid.*, p.5.

B. Location and Time of Research

As for the research location is in Muslim Family Court. The research was conducted in that place because the primary data was the decision coming from that location. As for the research time is in the odd semester, which is in the range of January 2021 - February 2021.

C. Data Collection Instrument⁸⁴

Research instruments occupy a very important position concerning how obtain data in the field. Researchers themselves or with the help of others are the main data collection tools in qualitative research. This is done because using non-human tools, it is impossible to make adjustments to the realities in the field, humans are only tools that can relate to respondents or other objects, humans are able to understand their relation to the realities in the field and humans. Also as an instrument that can assess whether its presence is a causal factor, so that if something happens it can be realized and can also overcome it.

In making observations, the instruments that researchers use are field notebooks or writing instruments. This is done with the assumption that events found in the field, whether intentional or unintentional, are expected to be recorded immediately.

In the interview, the data collection instrument used interview guidelines, a cellphone that had a recording application. The interview guide is used to direct and make it easier for researchers to remember the main problems being

⁸⁴ Suratman and Philips Dillah, *Metode Penelitian Hukum*, (Bandung: Alfabeta, 2014), p.106.

interviewed. Slips are used to record the results of the interview. The slip is given identification, both the number and name of the informant. The cellphone is used to record the conversation during the interview. Its use can minimize the possibility of writer's error in recording and analyzing the results of the interview.

D. Technique of Data Collection⁸⁵

As for data collection methods will use are as follows:

1. Interview

An interview is an oral questions and answers between two or more people directly.⁸⁶ The preparation to conduct interviews with the judges responsible for the cases. In this research the researcher will interview three judges in Langsa Muslim Family Court.

2. Documentation⁸⁷

Documentation is data retrieval by tracing primary data from cases documentation in decisions in langsa muslim family court. Beside that, a study will carry out on various writings relate to verstek decisions to analyze the Verstek decisions in Langsa Muslim Family Court.

E. Data Sources⁸⁸

⁸⁵ Suratman and Philips Dillah, *Metode Penelitian Hukum...*, p. 106-107.

⁸⁶Husaini Usman and Purnomo Setiady Akbar, *Metodologi Penelitian*, (Yogyakarta:Andi,2003),p.57.

⁸⁷ Suratman and Philips Dillah, *Metode Penelitian Hukum...*, p.134.

⁸⁸*Ibid.*, pp. 66-67.

In general, research distinguishes between data obtained directly from the public (empirical) and material from the literature. The data obtained directly is called primary data, Whereas obtained from library materials are secondary data. The type of data used in study are:

- a. Primary data is a statement of facts obtained directly through field research. Court decisions as primary source of law.⁸⁹In this study the primary data is in the Verstekcases through observations of Langsa Muslim Family Court:

NO	CASE NUMBER
1	NOMOR 194/Pdt.G/2020/MS.Lgs
2	NOMOR 195/Pdt.G/2020/MS. Lgs
3	NOMOR 200/Pdt.G/2020/MS.Lgs

- b. Secondary data from this research is data obtained indirectly from literature studies to support the analysis of Verstek decisions in Langsa Muslim Family Court in the form of legislation, books, and other sources.
- c. Tertiary data which is complementary and supporting data such as bibliographies, dictionaries and others.

F. Technique of Data Analysis⁹⁰

Miles and Huberman as cited by Emzir⁹¹ suggest that activities in qualitative data analysis are carried out interactively and continue until they are

⁸⁹ Suratman and Philips Dillah, *Metode Penelitian Hukum...*, pp.71-77.

⁹⁰ *Ibid.*, pp. 144-145.

⁹¹ Emzir, *Metodologi Penelitian Kualitatif Analisis Data*, (Jakarta: Raja Grafindo Persada, 2010), p.133.

saturated. Activities in data analysis, namely reducing data, presenting data, and concluding and verifying.⁹²

⁹² Noeng Muhajir, *Metodologi Penelitian Kualitatif*, (Yogyakarta: Rake Sarasen, 1996), p. 104.

CHAPTER IV

THE RESEARCH RESULT

A. General Description of Langsa Muslim Family Court

Langsa Muslim Family Court for the first time is located at street of Prof. A Majid Ibrahim, West Langsa District, Langsa City and since 2015 the new building of the Syar'iyah Langsa Court office has changed its address to street of TM. Bahrum street, Paya Bujok Teungoh Village, Langsa Barat District, Langsa City, Nanggroe Aceh Darusalam Province, Postal Code 24415. Wherever all building designs are in accordance with the prototype from the Supreme Court of the Republic of Indonesia.

As for the geographic location of the Syar'iyah Langsa Court at the astronomical location of the office building: 04 ° 24'35.68 "-04 ° 33'47.03" N and 97 ° 53'14.59 "-98 ° 04'42.16" East Longitude. The boundaries of the Langsa Barat office area like at North is Strait of Malacca, South is Manyak Payed District, Aceh Tamiang, West is Kemanatan Birem Bayeun, East is Strait of Malacca. As for the altitude of the area is at 25 meters above sea level and Langsa City has a tropical climate.⁹³

As for Demographic conditions the majority of Langsa City residents are Acehnese, Chinese, Malay, Batak, and Javanese. The Aceh language is used by the majority of the people of Langsa City, Indonesian remains the mother tongue and also as a colloquial language used in conversations both in government,

⁹³Look At, <http://ms-langsa.go.id/link/2021010611281321126569095ff53c5d9d2f9.html>.

universities, schools and offices, no difference from Malaysia and Indonesian, only a few words and meanings a slightly different accent.

Meanwhile, Islam is the religion of the majority of the people of Langsa City and the people of Aceh in general. Islamic Sharia law is the basic rule in the life of the people of Langsa City. Christianity is also part of the population, while Buddhism is widely adopted by the Chinese community. Langsa City is a city that is rich in ethnic differences and the people live in peace and have strong religious tolerance.

Vision of the langsa syar'iyah court is " *Terwujudnya Mahkamah Syar'iyah Langsa Yang Agung*". As for the mission of the syari'ah court is firstly, maintain the independence of the judiciary. Secondly, providing just legal services to justice seekers. Thirdly, improve the quality of leadership in the judiciary. Fourthly, increase the credibility and transparency of the judiciary. As for motto is :“*MANTAP*” (*Melayani, Amanah, Netral, Transparan, Akuntabel, Profesional*).⁹⁴

Organizational Structure of Langsa Muslim Family Court:⁹⁵

1. Judges: 3 people (including the Chairperson and Deputy Chairperson).
2. Registrar: 4 people (including the Registrar and Junior Registrar).
3. Bailiff : 3 people.
4. Secretariat: 7 People (Including Secretary, Head of Subdivision and Staff).

⁹⁴ Look at <http://ms-langsa.go.id/link/visimisi.html>

⁹⁵ Look at <http://ms-langsa.go.id/link/201912101121385690376115def1d529a290.html>

NAME & NIP	RANK/GROUP	POSITION
YEDI SUPARMAN, S.H.I., M.H. NIP. 19760606 200502 1 001	PEMBINA (IV/a)	CHAIRMAN
T. MUFARDISSHADRI, S. H.I., M.H. NIP. 19810127 200604 1 017	PEMBINA TK. I (III/d)	VICE OF CHAIRMAN
ROICHAN MAHBUB, S.H.I. NIP. 19870119 201101 1 009	PENATA (III/c)	JUDGE
IBNU RUSYDI, Lc. NIP. 19890507 201712 1 001	PENATA (III/a)	JUDGE
ROYAN BAWONO, S.H.I. NIP. 19910608 201712 1 003	PENATA (III/a)	JUDGE
KHALIDAH, S.Ag. NIP. 19760915 200003 2 001	PENATA TK. I (III/d)	COMMITTEE
AZHARI, S.H. NIP. 19780805 200604 1 003	PENATA (III/c)	SECRETARY
NURUL SYAFRINA RIDWAN, S.H.I. NIP. 19871115 201212 2 002	PENATA MUDA TK. I (III/b)	YOUTH COMMITTEE
Ir. ATHIATUN ZAKIAH, S.H. NIP. 19681205 199803 2 002	PENATA TK. I (III/d)	YOUTH LAW COMMITTEE
RASYADI, S.H. NIP. 19680310 199203 1 006	PENATA TK. I (III/d)	YOUTH COMMITTEE OF JINAYAH
ICHSAN, S.T. NIP. 19820804 200912 1 001	PENATA (III/c)	GENERAL DAN FINANCIAL SECTION
MUHAMMADAN AKHYAR, S.H. NIP. 19640108 199403 1 002	PENATA TK. I (III/d)	EMPLOYMENT AND ORGANIZATION PART
HAYATI AYU MIKO, SE NIP. 19850116 201001 2 028	PENATA MUDA TK. I (III/b)	PLANNING AND REPORTING SECTION

B. Legal Considerations by the Judges in Verstek Cases

According to positive procedural law in civil cases, judges are required to seek formal truth, this is because the broad scope of the case is fully determined by the parties in the case. Likewise, in civil Islam, judges are not

obliged to seek material truth, but are only obliged to seek formal truth. This is in accordance with what was decided by Qadli Shuraih when deciding a civil case between Ali ibn Abi Thalib r.a, about the armor that fell from his camel named auraq, with a Jew who held the armor in his hands, then Qadli Syurah sentenced the Jews. That the clothes were his, because Ali ibn Abi Talib did not have two witnesses.

With regard to the Verstek decision in which the practice of the laws governing the verstek and also the environment of the Religious Courts is R.Bg Article 149 and HIR Article 125, although it is carried out only attended by one party but has legal and strong legal force.

Apart from that, the Verstek decision is important to see that the number of cases submitted to Langsa Muslim family Court is not small. Since 2020, there have been 466 cases received by the Langsa Muslim family Court, of which 366 cases were divorce cases and most of them were divorce cases which were decided in Verstek. The probability of a break in verstek is about 60-70%. This shows that this case is not insignificant and it is necessary to study the judge's consideration in deciding the case for the absence of the defendant.⁹⁶

Before deciding a case with Verstek, the judge usually considers the validity of the summons sent to the defendant and the reasons for his absence.⁹⁷

Then the judge examined the suitability of the plaintiff's *posita* and

⁹⁶Roichan Mahbub, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

⁹⁷Ibnu Rusydi, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

petitum procedures and whether the claim was reasonable or not. If the lawsuit is groundless, that is, if events that justify the charges are not filed, the lawsuit will be rejected.

This was done by the judge in decision No. 194 / Pdt.G / 2020 / MS.Lgs, where the judge considered the defendant's absence. Whereas on the day the trial was determined, the plaintiff appeared in person at the trial, while the defendant never appeared before nor ordered another person as a legal representative or proxy, even though he had been formally and properly summoned and his absence was not caused by a valid obstacle, Even though the main point of the lawsuit is that since the beginning of 2020 the defendant has even remarried secretly and even the defendant often behaves rudely and gets angry with no clear cause. To make matters worse, the defendant even said dirty and harsh words, so that, there were frequent disputes and fights on an ongoing basis. To corroborate all the arguments of the Plaintiff's claim, the right to present 2 (two) witnesses from the village priest and the plaintiff's cousin who knew and witnessed the dispute between the Plaintiff and the Defendant.⁹⁸

Furthermore, in the case No.195 / Pdt.G / MS.Lgs, the defendant who was summoned was also absent and did not send his representative even though he had been summoned officially and properly. Whereas since 2012 the terms of the plaintiff and defendant began to waver and since then the defendant left the plaintiff without valid reasons and did not even return home

⁹⁸Ibnu Rusydi, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

until 2020. For 8 years, the defendant did not support the plaintiff and his children. The judge also considered the plaintiff's arguments by bringing in 2 witnesses from the *Aceh Peduli* foundation who worked with the plaintiff and knew the defendant and had seen several disputes that occurred.

As for the case No.200 / Pdt.G / 2020 / MS.Lgs, the defendant who was summoned was also absent and did not send his representative even though he had been officially and properly summoned. That for 10 years their household was harmonious in the end in 2019 to 2020 there were frequent arguments because the defendant left the plaintiff and married without the plaintiff's knowledge and culminated in July 2019 the defendant left the plaintiff and they separated from home. There were 2 witnesses presented, namely from the plaintiff's older brother and had witnessed firsthand the argument between the defendant and the plaintiff.

From the explanation above, there are several aspects. As for legal considerations by the judges based on the arguments of *al-Qur'an, Hadith, fiqh* principles and sources such as civil procedural law.⁹⁹ A case may not be decided based on the judge's will without a clear and precise basis.

Basically, in the case of the Verstek that was decided in the decision studied above, we can see that legal considerations used are almost the same as pseudo in the context of mutual benefit. As for what is used by the judge at the direct sharia court is the same as stated in the decision data points. The three of

⁹⁹Royan Bawono, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

them are based on the plaintiffs' arguments and witness statements along with the legal bases found in the sources of Islamic law and the book of laws.

Anyone has arguing must obliged to prove it.¹⁰⁰ This shows the importance of witness statements as proof of the plaintiff's argument. The action of the judge of the syaria court in presenting the witnesses as stated in the above-mentioned decision was so that the decision that was passed had strong legal considerations. Ibnu Rusdi expressed the same thing about witnesses in case examination, according to him that among the actions of judges in examining civil cases which are very important and which must first be mentioned is the hearing of the witnesses.¹⁰¹ This includes the judge's action regarding the proof of something submitted by the alitigant.

The advantage of verdicts through Verstek cases for the court this decision is decided in a short period of time and does not drag in resolving cases of verstek decisions. This is based on the principle of justice in Indonesia which resolves cases simply, quickly, and a low cost. This advantage is also obtained by the plaintiff because if the plaintiff submits a lawsuit argument which according to law is valid and does not violate the rights, then the plaintiff's claim will be accepted / granted by the judge, and the judge will consider the plaintiff's arguments by looking at the statements of the witnesses that the plaintiff has presented. . If in the testimony of the witnesses the judge

¹⁰⁰Roichan Mahbub, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in mahkamah syar'iyah Langsa, Langsa, 25 Januari 2021.

¹⁰¹Ibnu Rusydi, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

considers that he has met the formal and material requirements as a witness, then the testimony can be accepted.

The principle of civil procedural law provides the basis for judges in their judicial work to provide juridical thinking that is legal and has a normative effect and binds the parties because they base their existence on the formulation of lawmakers and judges, so that their decisions are the result of juridical thinking that produces law. Characterized by appropriateness, harmony, worthiness, fairness and providing a legal certainty for justice seekers.

Civil case examination is carried out in stages, starting with the lawsuit, answering the parties or their proxies, the proof, the judge giving legal consideration to each petitum submitted by the Plaintiff, and the verdict at each level of the court up to the verdict with permanent legal force and carrying out the execution.

Legal findings by the judges in resolving cases can be found in the legal considerations of each petitum presented to him, which is characterized by:¹⁰²

- a. Legal considerations constitute the obligation of the judge to try each petitum of the Plaintiff's claim.
- b. Legal considerations containing in detail the reasons for the rejection or acceptance of each Plaintiff's petitum.
- c. Legal considerations are constructed after the subject matter.
- d. Legal considerations as one of the principles in court decisions.

¹⁰²Herowati Poesoko, *Karakteristik Pertimbangan Hukum Hakim dan Urgensinya dalam Perkara Perdata*, 2014, pp. 11–16.

- e. Legal considerations include legal discovery and legal creation. There is a difference between the legal considerations of the *judex facti* and the *judex jurist*.
- f. Legal considerations are the basis for the birth of decisions.

Apart from the aforementioned matters, judges' legal considerations are useful for legal development, especially Civil Procedural Law, so that new theories or new arguments can be found that are useful for the development of practical and theoretical law.

C. Analysis of Verstek Decisions on Gender Perspective

Civil Procedure Law is formulated as a legal rule that regulates the process of settling civil cases through a judge (court) from the time a lawsuit is filed to the implementation of a judge's decision. Therefore, Civil Procedure Law will be used when there is a civil dispute. So those for people who feel their rights have been violated or harmed, their interests are protected by law, by submitting demands / lawsuits to court, so that the disputed case can be resolved so that the implementation of the decision (the execution) can be realized so that people who feel their rights have been harmed or their rights are violated, with through a court decision that has permanent legal force. Then the decision is carried out (execution), then the right is restored back to the rightful. However, it must go through a process and be regulated by Legislation.

Gender is an analysis used in placing an equal position between men and women to create a more egalitarian social order. So, gender can be categorized

as an operational tool in measuring the problems of men and women, especially those related to the division of roles in society constructed by the community itself.

Gender is not only aimed at women alone, but also at men. It's just that those who are considered as in a marginalized position now are women, so it is women who are more highlighted in discussions to pursue gender equality that has been achieved by men at several levels in social roles, especially in the field of education because this field is expected to encourage a change in frame of mind , act, and play a role in various segments of social life.

The principle of justice is highly respected in Islam. Justice provided by Islam is in the form of equality and equality regarding the rights and obligations of men and women in accordance with their respective responsibilities. So, Islam does not view the rights of men and women as identical or exactly the same. Islam has never embraced preferences and discrimination that benefit men and harm women. Islam also outlines the principle of equality between men and women, but not the same or identical. The word "equality" (equality) has acquired a kind of sanctity, because these words have included the notion of justice and non-discrimination.

In decision No.194 / Pdt.G / 2020 / MS.Lgs, the location of the case stated that the household life of the Plaintiff and the Defendant went on harmoniously for approximately 3 years, would However, since the beginning of January 2020, the household order between the Plaintiff and the Defendant began to waver between the Plaintiff and the Defendant and there were frequent

arguments, the cause of which was that the Defendant had remarried another woman without the Plaintiff's permission and the Plaintiff was not willing to be combined, then since it was discovered that the Defendant had remarried, The Defendant often behaved rudely and was angry with no clear cause, if he was angry, he often said harsh and dirty words, so there was often a commotion, disagreement and constant bickering, even though the Plaintiff had tried to yield and be patient, but the Defendant never changes which make household life not harmonious and harmonious.

Whereas the peak of the dispute and dispute between the Plaintiff and the Defendant occurred at the end of January 2020 with causes as mentioned above, then. The Defendant left the Plaintiff until now. As a result, the Plaintiff and Defendant separated from their homes. Whereas on the predetermined trial days, the Plaintiff attended the trial in person, while the Defendant never came to appear and did not order another person to appear as his representative or legal proxy, even though he had been summoned formally and properly and his absence was not caused by a legal obstacle.

In decision No. 195 / Pdt.G / 2020 / MS.Lgs, the location of the case stated that the Plaintiff's household with the Defendant began to waver because since January 2012, the Defendant left the Plaintiff for reasons that are not clear, however the Defendant has never home until now. Whereas after the Defendant had been away for approximately 8 years, the Defendant had never provided compulsory support for the Plaintiff and during that time the Defendant did not want to care or leave the Plaintiff's own life and his children

and the Defendant never came at the trial even though it had been formally summoned and proper

In the decision No.200 / Pdt.G / 2020 / MS.Lgs, the location of the case stated that the Defendant had remarried another woman without the Plaintiff's permission and the Plaintiff found out that after 2 years the Defendant was married, then the Plaintiff was not willing to compete, so it often misunderstood and bickering constantly, which makes household life not harmonious and harmonious. Whereas the peak of the dispute and dispute between the Plaintiff and the Defendant occurred in July 2019 with causes as mentioned above, then the Defendant left the Plaintiff until now. As a result, the Plaintiff and Defendant lived in separate houses.

In the three decisions we can see that the court system uses the principle of speed and low cost. This can take into account the interests of the plaintiff. Basically, the summons at the syar'iyah court were made 2 times if the first summons was not known the reason for the defendant's absence.¹⁰³ However, there are times when summons are only made once if the defendant does not wish to appear in court. The talk about women's rights in this case, women's rights as defenders basically have been fulfilled if the lawsuit is passed. In a lawsuit for divorce, the only thing that can be decided is what is being sued. Likewise, a plaintiff who only asks for divorce in the front of the court will be granted it according to the lawsuit filed no more or less.¹⁰⁴

¹⁰³Roichan Mahbub, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

¹⁰⁴Royan Bawono, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

However, the rules of the Supreme Court explain that if the plaintiff demands his or her rights which has been lost in a claim for divorce, the court will grant it. In essence, what is in the lawsuit will be granted. According to Mr. Roichan Mahbub, this verstek case is actually important for the plaintiff and the rights of the plaintiff can be fulfilled. This is in accordance with the principle of equal rights before the court.

Protection of women is all efforts aimed at protecting women and providing a sense of security in fulfilling their rights by giving consistent and systematic attention aimed at achieving gender equality. So the judge gave women's rights in the verstek decision in the form of the arguments for the lawsuit submitted by the plaintiff. The lawsuit filed by the plaintiff must be grounded and not against rights. To strengthen the arguments of the lawsuit, the plaintiff must also submit evidence in the form of documentary evidence, namely, photocopies of identity cards and photocopies of excerpts of marriage certificates, as well as evidence of witnesses presented from the family or people closest to the plaintiff. If the claims are all valid because the formal and material requirements of evidence which have perfect evidentiary value are met, the judge will grant the claim.¹⁰⁵

Protection of women is all efforts aimed at protecting women and providing a sense of security in fulfilling their rights by giving consistent and systematic attention aimed at achieving gender equality. So the judge gave women's rights in the verstek decision in the form of the arguments for the

¹⁰⁵Roichan Mahbub, Judge of Mahkamah Syar'iyah Langsa, interview held meeting in Mahkamah Syar'iyah Langsa, Langsa, 25 Januari 2021.

lawsuit submitted by the plaintiff. The lawsuit filed by the plaintiff must be grounded and not against rights. To strengthen the arguments of the lawsuit, the plaintiff must also submit evidence in the form of documentary evidence, namely, photocopies of identity cards and photocopies of excerpts of marriage certificates, as well as evidence of witnesses presented from the family or people closest to the plaintiff. If the claims are all valid because the formal and material requirements of evidence which have perfect evidentiary value is met, the judge will grant the claim.

The right of women which is also protected by the judge is that the judge considers the reasons for divorce argued by the plaintiff, that between the plaintiff and the defendant there have been constant disputes and quarrels in the household and the defendant has left the plaintiff. Of the three decisions, the defendant left the plaintiff and even remarried without the plaintiff's permission. concerning time, it varies from 2-8 years to be left without fulfilling its rights and obligations. And to make matters worse, neither the plaintiffs nor their children support them.

The panel of judges also found the fact that it was no longer possible for the plaintiff and the defendant to be united as husband and wife because the plaintiff and defendant were no longer harmonious. The reason is the decisions that have been described above are that the defendant often behaves rudely to the plaintiff and even likes to say harsh and dirty words, the defendant often ignores the plaintiff's rights by leaving the plaintiff and his children without providing support.

From some of the case descriptions above, we can see that the judges at the Islamic court have met the criteria in fulfilling women's rights. although the judges in all decisions are male, this does not reduce the slightest possibility of protecting women's rights in the direct religious court. From this we can see that justice against women can be protected even though the judge who decides the cases are male.

The Verstek verdict is very important for the plaintiff. Looking at the existing cases, it can be seen that judges at Langsa Muslim Family court have paid attention to women's rights in these decisions. This has an impact after a woman's decision can make her life choices without having to get involved with husbands or men who are not responsible for her. In Islam, women's rights are very concerned. Likewise with the system in the country of Indonesia, the rights between men and women are equal. In the judicial system also uses the same system, there is a principle of equality and a principle of equal rights before the law.

CHAPTER V

CONCLUSION AND SUGGESTION

A. Conclusion

1. The legal considerations used by the judges in Langsa Muslim family court judges are Whereas, in the absence of the Defendant in the trial, the panel of judges was of the opinion that the Defendant had given up his right of reply and was deemed to have acknowledged all the arguments of the Plaintiff's claim. The judge's action in hearing witness testimony as stated in the aforementioned decision is so that the verdict passed has strong legal considerations. In addition, the judge also uses a strong legal basis, starting from the arguments such as *al-Qur'an*, *Hadith*, *fiqh* rules, and also laws.
2. The legal protection of women's right due to the Verstek decision on divorce in Langsa muslim family court it has been realized with evidence of summoning only twice considering the principles of justice, namely fast cases and low cost. Fulfillment of women's rights in the assessment of the decision above means that the judge's claim is granted for the plaintiff's arguments which are strengthened by the witnesses. Here we can see that in Langsa Muslim family court have fulfilled their duties accordingly and are in accordance with the principle of equal rights for men and women in the eyes of the law. With the divorce suit granted in court, women can be freed from the bonds of men who have taken away many of their rights.

B. Suggestion

The author appealed to the judges in particular and other judges to pay close attention to the prevailing system of procedures with high vigilance to make the fairest possible decisions.

There needs to be an increase in people's legal insight into Islamic law and positive law through religious lectures, providing legal consultation and intensive community recitation education.

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TRANSKIP WAWANCARA

Dalam upaya memperoleh data, penelitian ini menggunakan wawancara sebagai metode utama untuk melakukan pengkajian dalam secara mendalam, yang sifatnya general karena adanya keterkaitan di antara indikator yang ditujukan kepada informan.

Nama Informan : Roichan Mahbub, S.H.I
 Jabatan : Hakim Mahkamah Syar'iyah Langsa
 Tanggal : 25 Januari 2021
 Jam : 15:00 - Selesai
 Tempat Wawancara : Kantor Mahkamah Syar'iyah Langsa
 Topik Wawancara : Putusan verstek pada cerai gugat tinjauan gender.

No	Variabel	Pertanyaan Wawancara
1	Analisis putusan verstek pada cerai gugat di Mahkamah Syar'iyah Langsa	<p>1. Berapakah presentase putusan verstek pada cerai gugat di MS Langsa? Jawaban: dilihat dari presentase kasus ini lumayan banyak sekitar 70 an atau 80 an dari banyaknya kasus.</p> <p>2. Pada saat proses persidangan berapa banyak jumlah panggilan yang diajukan kepada tergugat pada umumnya di MS Langsa? Jawaban: ya panggilan sekali saja, tapi biasanya kami memanggil ya dua kali, aturannya kalau merujuk pada peraturan sekali aja, karna disitu kan dikatakan dapat dalam artian tidak wajib. Akan tetapi pada kasus perceraian ada asas mempersulit perceraian kan, nah disitulah kami mempertimbangkan untuk memanggil lagi.</p> <p>3. Apakah pertimbangan hukum oleh hakim di MS Langsa dari tiap kasus berbeda walau kasusnya sama, apakah ada hal yang melatarbelakangi nya pak? Jawaban: sama saja pertimbangan hukum yang dipakai. Semua merujuk pada dalil-dalil hukum yang berlaku.</p>

No	Variabel	Pertanyaan Wawancara
	Refleksi	
2	Dampak Putusan verstek pada cerai gugat terhadap hak perempuan di Mahkamah Syar'iyah Langsa	<p>1. Bagaimana pemenuhan hak-hak perempuan (Penggugat) pasca putusan cerai gugat di MS Langsa? (ya, alasan.. /tidak,alasan..) Jawaban: ya terpenuhi, karna sifatnya apa yang digugat itu yang dikabulkan dan tidak lebh dari itu.</p> <p>2. Apakah menurut bapak, pasca persidangan perempuan justru di posisi yang menguntungkan atau merugikan? (ya, alasan../tidak,alasan..) Jawaban: ya tergantung, tapi sebenarnya dia diuntungkan karena yang dia gugat ini dikabulkan. Sekali lagi kan apa yang diminta itu yang dikabulkan.</p>
	Refleksi	

TRANSKIP WAWANCARA

Dalam upaya memperoleh data, penelitian ini menggunakan wawancara sebagai metode utama untuk melakukan pengkajian dalam secara mendalam, yang sifatnya general karena adanya keterkaitan di antara indikator yang ditujukan kepada informan.

Nama Informan : Ibnu Rusydi, Lc
 Jabatan : Hakim Mahkamah Syar'iyah Langsa
 Tanggal : 25 Januari 2021
 Jam : 15:00 - Selesai
 Tempat Wawancara : Kantor Mahkamah Syar'iyah Langsa
 Topik Wawancara : Putusan verstek pada cerai gugat tinjauan gender.

No	Variabel	Pertanyaan Wawancara
1	Analisis putusan verstek pada cerai gugat di Mahkamah Syar'iyah Langsa	<p>1. Berapakah presentase putusan verstek pada cerai gugat di MS Langsa? Jawaban: sama ya seperti yang dikatakan pak roichan tadi yang mana presentasinya memang lumayan banyak sekitar ya 70 - 80 kasus perbulan</p> <p>2. Pada saat proses persidangan berapa banyak jumlah panggilan yang diajukan kepada tergugat pada umumnya di MS Langsa? Jawaban: pada pemanggilan basanya 2 kali, apabila pada panggilan kedua tergugat tidak mau hadir ya berarti dia sudah tidak peduli dengan haknya berbicara dan langsung diputuskan.</p> <p>3. Apakah pertimbangan hukum oleh hakim di MS Langsa dari tiap kasus berbeda walau kasusnya sama, apakah ada hal yang melatarbelakangi nya pak? Jawaban: untuk pertimbangan hukum oleh hakim pada umumnya sama saja, merujuk pada undang-undang yang berlaku dan sebagainya.</p>

No	Variabel	Pertanyaan Wawancara
Refleksi		
2	Dampak Putusan verstek pada cerai gugat terhadap hak perempuan di Mahkamah Syar'iyah Langsa	<p>4. Bagaimana pemenuhan hak-hak perempuan (Penggugat) pasca putusan cerai gugat di MS Langsa? (ya, alasan.. /tidak,alasan..) Jawaban: jika berkata terpenuhi atau tidaknya jelas jika gugatan dikabulkan pasti terpenuhi, karena penggugat hanya menggugat cerai lalu dikabulkan nah itukan hak yang ingin didapatkan yaitu berpisah dengan suaminya.</p> <p>5. Apakah menurut bapak, pasca persidangan perempuan justru di posisi yang menguntungkan atau merugikan? (ya, alasan../tidak,alasan..) Jawaban: jelas diuntungkan karena apa yang dia tuntutan dikabulkan seperti yang saya katakan tadi.</p>
Refleksi		

TRANSKIP WAWANCARA

Dalam upaya memperoleh data, penelitian ini menggunakan wawancara sebagai metode utama untuk melakukan pengkajian dalam secara mendalam, yang sifatnya general karena adanya keterkaitan di antara indikator yang ditujukan kepada informan.

Nama Informan : Royan Bawono, S.H.i
 Jabatan : Hakim Mahkamah Syar'iyah Langsa
 Tanggal : 25 Januari 2021
 Jam : 15:00 - Selesai
 Tempat Wawancara : Kantor Mahkamah Syar'iyah Langsa
 Topik Wawancara : Putusan verstek pada cerai gugat tinjauan gender.

No	Variabel	Pertanyaan Wawancara
1	Analisis putusan verstek pada cerai gugat di Mahkamah Syar'iyah Langsa	<p>1. Berapakah presentase putusan verstek pada cerai gugat di MS Langsa? Jawaban: kasus verstek pada cerai gugat terhitung banyak, dari banyaknya kasus cerai gugat sebagian besar diputuskan secara verstek.</p> <p>2. Pada saat proses persidangan berapa banyak jumlah panggilan yang diajukan kepada tergugat pada umumnya di MS Langsa? Jawaban: untuk pemanggilan biasanya disini yaa dua kali saja karna mengingat asas cepat dan biaya ringan. Jika dipanggil 3 sampai 4 kali akan merugikan penggugat.</p> <p>3. Apakah pertimbangan hukum oleh hakim di MS Langsa dari tiap kasus berbeda walau kasusnya sama, apakah ada hal yang melatarbelakangi nya pak? Jawaban: seperti yang sudah ada dalam putusan yang sudah ada di tangan kamu kan, jadi pada umumnya pertimbangan hukum oleh hakim ino tetap merujuk pada perauran yang berlaku.</p>

No	Variabel	Pertanyaan Wawancara
Refleksi		
2	Dampak Putusan verstek pada cerai gugat terhadap hak perempuan di Mahkamah Syar'iyah Langsa	<p>4. Bagaimana pemenuhan hak-hak perempuan (Penggugat) pasca putusan cerai gugat di MS Langsa? (ya, alasan.. /tidak,alasan..)</p> <p>Jawaban: menurut saya pasca perceraian kan setelah diputuskan perkara. Perkara yang dikabulkan itu jelas sesuai dengan apa yang diinginkan penggugat. Jadi jelas terpenuhi.</p> <p>5. Apakah menurut bapak, pasca persidangan perempuan justru di posisi yang menguntungkan atau merugikan? (ya, alasan../tidak,alasan..)</p> <p>Jawaban: drugikan mungkin ketika gugatan atau dalil-dalil penggugat tidak dipenuhi atau dikabulkan. Namun pada petusan yang kamu pegang semuanya terkabulkan nah itu berarti diuntungkan.</p>
Refleksi		





KEPUTUSAN DEKAN FAKULTAS SYARIAH INSTITUT AGAMA ISLAM NEGERI LANGSA
NOMOR 669 TAHUN 2020

T E N T A N G
PENUNJUKAN PEMBIMBING SKRIPSI MAHASISWA FAKULTAS SYARIAH
INSTITUT AGAMA ISLAM NEGERI LANGSA

DENGAN RAHMAT TUHAN YANG MAHA ESA
DEKAN FAKULTAS SYARIAH INSTITUT AGAMA ISLAM NEGERI LANGSA :

- Menimbang : a. Bahwa untuk kelancaran Pelaksanaan Studi Mahasiswa Fakultas Syariah Institut Agama Islam Negeri Langsa maka dipandang perlu menetapkan Pembimbing Skripsi Mahasiswa Fakultas Syariah Institut Agama Islam Negeri Langsa;
b. Bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, perlu menetapkan Keputusan Dekan Fakultas Syariah Institut Agama Islam Negeri Langsa;
- Mengingat : 1. Undang-Undang Nomor: 20 Tahun 2003, Tentang Sistem Pendidikan Nasional;
2. Undang-undang Nomor 12 Tahun 2012 Tentang Pendidikan Tinggi;
3. Peraturan Pemerintah Nomor 4 Tahun 2014 Tentang Penyelenggaraan Pendidikan Tinggi dan Pengelolaan Perguruan Tinggi;
4. Peraturan Presiden Republik Indonesia Nomor 146 Tahun 2014 Tentang Perubahan Sekolah Tinggi Agama Islam Negeri Zawiyah Cot Kala Langsa Menjadi Institut Agama Islam Negeri Langsa;
5. Peraturan Menteri Agama Republik Indonesia Nomor: 10 Tahun 2015 tanggal 12 Februari 2015, tentang Organisasi dan Tata Kerja Institut Agama Islam Negeri (IAIN) Zawiyah Cot Kala Langsa.
6. Peraturan Menteri Agama Republik Indonesia Nomor `14 Tahun 2017 tentang Statuta Institut Agama Islam Negeri Langsa.
7. Surat Keputusan Menteri Agama Republik Indonesia Nomor: B.II/3/17201 tanggal 24 April 2019 tentang pengangkatan Rektor Institut Agama Islam Negeri Langsa Masa Jabatan 2019-2023;
8. Surat Keputusan Menteri Agama Republik Indonesia Nomor: 140 Tahun 2019 tanggal 9 Mei 2019.

MEMUTUSKAN:

Menetapkan : **PENUNJUKAN PEMBIMBING SKRIPSI MAHASISWA FAKULTAS SYARIAH
INSTITUT AGAMA ISLAM NEGERI LANGSA**

KESATU : Menunjuk Dosen Fakultas Syariah Institut Agama Islam Negeri Langsa Saudara :

1. Budi Juliandi, MA

(Sebagai Pembimbing Pertama / membimbing Isi)

2. M. Alwin Abdillah, Lc. LLM

(Sebagai Pembimbing Kedua / membimbing Metodologi)

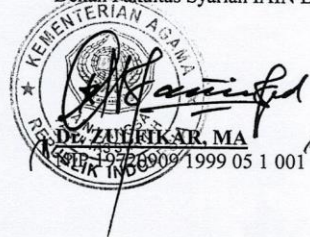
Untuk membimbing Skripsi :

N a m a : **Nur Afina Ulya**
Tempat / Tgl.Lahir : Langsa, 08 Oktober 1999
Nim : 2022017020
Fakultas/ Jurusan/Prodi : Syari'ah / Hukum Keluarga Islam (Ahwal Syakhshiyah)
Judul Skripsi : **The Verstek Decisions On Divorce In Langsa
Muslim Family Court: A Gender Perspective.**

- KEDUA : Bimbingan harus diselesaikan selambat-lambatnya selama 6 (enam) bulan terhitung sejak tanggal ditetapkan.
- KETIGA : Kutipan atau Salinan Keputusan ini disampaikan kepada yang bersangkutan untuk diketahui dan dipergunakan sebagaimana mestinya.
- KEEMPAT : Keputusan ini berlaku pada tanggal yang ditetapkan hingga 29 Juni 2021

Ditetapkan di Langsa,
Pada Tanggal 30 Desember 2020

Dekan Fakultas Syariah IAIN Langsa



Tembusan:

1. Jurusan/Prodi dilingkungan Fakultas Syariah
2. Pembimbing I dan Pembimbing II
3. Mahasiswa yang bersangkutan



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 Website: www.iainlangsa.ac.id

Nomor : 107 /In.24/FSY/PP.00.9/02/2021

Perihal : **Mohon Izin Untuk Penelitian Ilmiah**

Langsa, 15 Februari 2021

Kepada Yth,

Ketua Mahkamah Syar'iyah Langsa

Di

Tempat

Assalamu'alaikum Wr. Wb.

Dengan hormat,

Dengan ini kami maklumkan kepada Bapak/Ibu bahwa Mahasiswa kami yang tersebut di bawah ini :

Nama	:	Nur Afina Ulya
Tempat/Tgl Lahir	:	Langsa, 08 Oktober 1999
Nim	:	2022017020
Semester	:	VII (Tujuh)
Fakultas/ Jurusan / Prodi	:	Syariah / Hukum Keluarga Islam (Ahwal Syakhshiyah)
Alamat	:	Gampong Paya Bujuk Tunong Kec. Langsa Baro

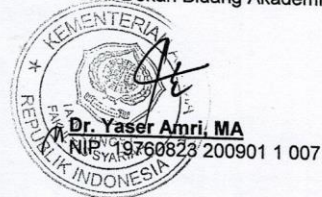
Bermaksud mengadakan penelitian di wilayah Bapak/Ibu, sehubungan dengan penyusunan Skripsi berjudul "**The Verstek Decisions On Divorce In Langsa Muslim Family Court: A Gender Perspective**".

Untuk kelancaran penelitian dimaksud kami mengharapkan Kepada Bapak/Ibu berkenan memberikan bantuan sepenuhnya sesuai dengan ketentuan yang berlaku, segala biaya penelitian dimaksud ditanggung yang bersangkutan.

Demikian harapan kami atas bantuan serta perhatian Bapak/Ibu kami ucapkan terima kasih.

Wassalamu'alaikum Wr. Wb.

A.n. Dekan,
 Wakil Dekan Bidang Akademik





MAHKAMAH SYAR'IAH LANGSA

محكمة شرعية لقسا

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Nomor : W1.A.4/287 /HK.01/ 02 /2021 Langsa, 25 Februari 2021
 Lampiran : -
 Perihal : mohon izin untuk Penelitian ilmiah.

Kepada Yth.
 Wakil Dekan Fakultas Syariah IAIN Langsa.
 Di Tempat.

Sehubungan dengan surat Saudara no.189/ln.24/FSY/PP.00.9/2021 tanggal 15 Februari 2021 perihal mohon izin untuk Penelitian ilmiah kepada :

Nama : Nur Afina Ulya
 NIM : 2022017020
 Program Studi : Hukum Keluarga Islam (Ahwal Syakhshiyah)

Dapat kami berikan izin untuk melakukan penelitian, wawancara, pengumpulan data, mempelajari kasus-kasus dan literatur yang berkaitan dengan peningkatan mutu mahasiswa.

Demikian surat keterangan ini disampaikan, agar dapat digunakan sebagaimana mestinya.



Yedi Suparman, S.H.I., M.H.

Tembusan :
 1. Nur Afina Ulya
 2. Pertiinggal

CURRICULUM VITAE

PERSONAL DATA:

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EXPERIENCE ORGANIZATION:

- 2017 Member of LDK Al-Furqan IAIN Langsa
- 2018 Secretary of Senate Syariah faculty
- 2018 Member of Volunteer of Internasional Language
- 2019 Member of Regeneration division of LDK al-Furqan
- 2019 Vice of Volunteer of Internasional Language
- 2019 Member of KAMMI IAIN LANGSA
- 2020 The Chief of Regeneration Division of LDK
- 2020 The Chief of Strategy Study of KAMMI
- 2020 The Chief of Volunteer of Internasional Language
- 2021 Secretary of KAMMI IAIN Langsa

MOTTO: BLOOM WHERE YOU ARE PLANTED