

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

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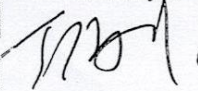
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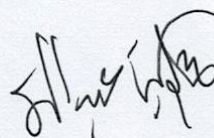
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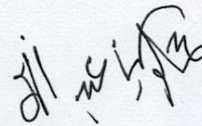
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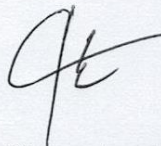


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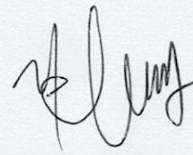
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ABSTRACT

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.

⁴ Mahkamah 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. VerstekDecision

Verstekdecision 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 peresent 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 theVerstekverdict 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 PerkaraNo. 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 defendantso 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 Relaas 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 Relaas 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, *Menguak 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 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

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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.