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**VERSTEK DECISION IN DIVORCE CASE  
IN RELIGIOUS COURTS OF RANTAUPRAPAT****Risdalina, Kusno, Bernat Panjaitan, Maya Jannah**

Labuan Batu University

[risdalinaregar@gmail.com](mailto:risdalinaregar@gmail.com), [kusno120485@gmail.com](mailto:kusno120485@gmail.com), [bernat.pjt@gmail.com](mailto:bernat.pjt@gmail.com),  
[mayaeriadihsb@gmail.com](mailto:mayaeriadihsb@gmail.com)

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**Abstrak (Indonesia)**

**Latar Belakang:** Dalam Putusan Perdata yang salah satunya disebut Putusan Verstek terdapat proses persidangan perkara perceraian, Majelis Hakim berwenang memutus perkara sesuai dengan peraturan perundang-undangan yang berlaku. Verstek adalah putusan yang dijatuhkan oleh hakim tanpa kehadiran Tergugat di persidangan meskipun Tergugat telah dipanggil secara patut oleh juru sita pengadilan. Oleh karena itu hakim dapat memutus perkara dengan putusan verstek. Penulis mengambil lokasi penelitian di Pengadilan Agama Rantauprapat.

**Tujuan:** Tujuan dari penelitian ini adalah untuk menganalisis keputusan verstek dalam kasus perceraian di pengadilan agama rantauprapat.

**Metode:** Metode yang digunakan dalam penulisan ini adalah metode normatif Empiris, yaitu penelitian berdasarkan ketentuan perundang-undangan yang berlaku dengan melihat kondisi pelaksanaan yang ada di lapangan.

**Hasil:** Pengadilan Agama Rantauprapat berkedudukan di kabupaten Labuhanbatu Induk yang membawahi Kabupaten Labuhanbatu Utara dan Kabupaten Labuhanbatu Selatan, yang mempunyai tugas dan wewenang untuk menerima, memeriksa, mengadili, memutuskan dan menyelesaikan perkara perkawinan, warisan, wasiat, hibah, wakaf, dan sedekah serta menyelesaikan sengketa di bidang ekonomi syariah di kalangan umat Islam untuk menegakkan hukum dan keadilan, sebagaimana diatur dalam Undang-Undang Nomor Tahun 2006 tentang perubahan atas Undang-Undang Nomor Tahun 1989 tentang Pengadilan Agama.

**Kesimpulan:** Upaya Hukum Keputusan Verstek dalam Perkara Perceraian adalah dengan mengajukan gugatan terhadap putusan verstek dalam jangka waktu 14 (empat belas) hari setelah pemberitahuan diterima oleh tergugat.

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**Kata kunci:** Upaya Hukum, Keputusan Verstek, Perceraian.

**Abstract (English)**

**Background:** In a Civil Judgment, one of which is called a Verstek Judgment, there is a divorce case trial process, the Panel of Judges has the authority to decide cases in accordance with applicable laws and regulations. Verstek is a judgment rendered by a judge in the absence of the Defendant at trial even though the Defendant has been duly summoned by the bailiff of the court. Therefore the judge can decide the case with a verstex verdict. The author took the research site at the Rantauprapat Religious Court.

**Objective:** The purpose of this study was to analyze verstek decisions in divorce cases in rantauprapat religious courts.

**Methods:** The method used in this writing is the Empirical normative method, which is research based on the provisions of applicable laws and regulations by looking at the implementation conditions in the field.

**Results:** The Rantauprapat Religious Court is domiciled in Labuhanbatu Induk Regency which is in charge of North Labuhanbatu Regency and South Labuhanbatu Regency, which has the duty and authority to receive, examine, adjudicate, decide and settle cases of marriage, inheritance, wills, grants, waqf, and alms as well as resolve disputes in the field of sharia economy among Muslims to uphold law and justice, as stipulated in Law Number 3 Year 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts.

**Conclusion:** Verstek Decision Legal Remedies in Divorce Cases is by filing a challenge against the verstek decision within 14 (fourteen) days after the notification is received by the defendant.

**Keywords:** Legal Effort, Verstek Decision, Divorce.

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\*Correspondent Author: Risdalina  
Email : risdalinaregar@gmail.com



## INTRODUCTION

Literally humans were created by Allah SWT, living in pairs through marriage. Marriage is an important event in human life, because marriage does not

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only involve the personality of the two husband and wife candidates, but also involves family and community affairs. In general, marriage is considered as something sacred and because of that every religion always relates marriage principles with religious principles.

Marriage is also a way chosen by God as a way for humans to have children and preserve their lives, after each partner is ready to play a positive role in realizing the goal of marriage (Sayyiq Sabiq, 1993a).

God does not want to make humans like other creatures, who live freely following their instincts and relate between men and women in anarchy which does not have rules, but in order to maintain the honor and dignity of human dignity, God makes laws according to human dignity. With the consent and qabul ceremony as a symbol of a sense of pleasure, and in the presence of witnesses who witnessed that the male and female partners were bound to each other.

M. Zuffran Sabrie in his book entitled Religious Courts in the Pancasila State Institution argues that marriage according to Islamic law will at least (H. \_ M. Zuffran Sabrie, 1990):

1. Make the relationship between men and women become respect and mutual respect.
2. Providing the most peaceful path to sex as a human instinct, maintaining good offspring and preventing women from being oppressed by men.
3. Making the association of husband and wife under the auspices of maternal and paternal instincts, so that it will give birth to good offspring as the next generation for the mission of the caliphate.
4. Creating an orderly and safe atmosphere in social life.

In principle, the purpose of marriage is to form a happy and eternal family. This is confirmed in Law no. 1 of 1974 concerning marriage, that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in One Almighty God. The Compilation of Islamic Law confirms that marriage is a very strong contract or *mitsaqan ghalidzan* to obey orders and is an act of worship for those who carry it out .

In living the ark, the household is not always as harmonious as one would expect. Maintaining, preserving fish and balancing life between husband and wife is not an easy thing to do. Not achieving a harmonious life between husband and wife in fact ends in divorce.

Talaq and contested divorce are efforts made by a husband or wife to end a marriage based on certain reasons specified in the law. In order to be able to submit a request for talaq or a divorce suit to the Religious or State Court, it must be accompanied by sufficient reasons in accordance with the reasons specified in the Compilation of Islamic Law or Law Number 1 of 1974 concerning Marriage.

The Compilation of Islamic Law (KHI) and Law Number 1 of 1974 provide the same reasons for divorce, be it talaq divorce or contested divorce. There are two reasons added to the provisions of the Compilation of Islamic Law, namely first the husband violates the divorce decree and the second is religious conversion or

apostasy which causes disharmony in the household. Here's the whole for a divorce can be done, namely:

- a. One of the parties commits adultery or becomes a drunkard, gambler, etc., which is difficult to cure.
- b. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without valid reasons or for other reasons beyond his control.
- c. One of the parties gets a prison sentence of 5 (five) years or a more severe punishment after the marriage takes place.
- d. One of the parties commits cruelty or severe abuse that endangers the other party.
- e. One of the parties has a disability or illness with the result that he is unable to carry out his obligations as husband/wife.
- f. Between husband and wife there are constant disputes and fights and there is no hope of living in harmony in the household.
- g. Husband violates the taklik divorce.
- h. Conversion of religion or apostasy which causes disharmony in the household.

Provisions regarding the reasons for divorce mentioned above, it can be concluded that basically even though divorce in marriage is not prohibited, one should not break off marriage relations so easily without good reasons. The Marriage Law basically makes it difficult for divorce to occur as the purpose of marriage determines that marriage is basically forever.

In the case of filing a divorce suit and/or a talaq divorce application to the Religious Court, where when the panel of judges examines the divorce lawsuit case and in the trial the Defendant does not appear consecutively even though he has been duly summoned, the judge will decide with a *verstek* decision.

The *verstek* ruling is part of the Civil Procedure Code in Indonesia. *Verstek* decisions are inseparable from the proceedings and the imposition of decisions on disputed cases, which authorizes the Judge to make decisions without the presence of the Defendant (Yahya Harahap, 2006a).

The *verstek* decision relates to the provisions of Article 125 paragraph (1) HIR. 1 Based on Article 125 paragraph (1) HIR, the Judge has the authority to make a decision outside the presence and/or without the presence of the Defendant with the following conditions:

- a) All of the Defendants or Defendants did not come on the appointed hearing day or did not send answers;
- b) The Defendant or the Defendants did not send their legal representatives/proxies to appear before them or did not send answers;
- c) The Defendant or the Defendants have been legally and properly summoned;
- d) Lawsuit is reasonable and based on law.

The conditions mentioned above must be examined carefully one by one, only if all of these requirements are truly fulfilled, the *verstek* decision is handed down by granting the lawsuit, so that the lawsuit may not be accepted if it has no legal basis.

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It needs to be stated, if on the appointed day the Defendant is not present and he does not order another person to attend as his representative, even though he has been duly summoned, then the lawsuit will be accepted with a decision of absence (*verstek*), unless it turns out that the Court that the claim is against the rights or unreasonable (R. Soeroso, 2011).

Based on pre-research conducted at the Rantau Prapat Religious Court as stated in Decision Number 239/Pdt.G/2012/PA.Rap, in which the plaintiff filed a lawsuit against her husband on the grounds that the Disputes and Quarrel continues continued between the Plaintiff and the Defendant so that one of them chose to separate (separate beds) and finally filed a lawsuit at the Rantauprapat Religious Court.

Regarding the lawsuit, the Rantauprapat Religious Court summoned the two split party in something special trial set for that To use examined, tried and decided on the case, but even though he had been properly summoned successively, the Defendant was not present . Then what about when the Defendant suddenly neglects not to attend the trial with reasons that can be accepted or not, of course it becomes a question of what legal steps can be taken by the Defendant when he learns that his marriage relationship has been broken by the Divorce Decision. Based on the description of the background of the problem, the problem can be formulated as follows: What is the basis of the judge and the legal consequences of the *Verstek* Decision in Divorce Cases for marital relations; and How *Verstek*'s Legal Remedies in Divorce Cases.

## **RESEARCH METHOD**

The method used in this paper is the Empirical normative method, which is a research method which in this case combines elements of Normative law then is supported by combining data obtained in the field. In this Empirical Normative method the implementation of Normative legal provisions (laws) in every particular legal event that occurs in a society.

## **Discussion**

### **1. Legal effort**

One type of Judge's decision is the *Verster's* Decision (a decision handed down by the Judge without the presence of the Defendant). Against this decision, there are rights of the parties who object or feel dissatisfied with the decision issued by the Panel of Judges in the proceedings at the Court, so the legal remedy that can be taken/taken is by filing a resistance. In terms of its relation to the problems examined in this thesis, which are the legal remedies taken by the Defendant against the *verstek* decision for a divorce lawsuit at the Rantauprapat Religious Court.

Cases decided by *verstek* are considered formally and materially completed. The defendant who loses cannot resubmit the case (a case that was terminated by being aborted), except for filing an objection known as a

"*verzet* ". After using *verzet* legal remedies, if deemed necessary, the defendant can use appeal legal remedies (Yahya Harahap, 2005).

Many mistakes have occurred in judicial practice regarding the efforts made by justice seekers against *verstek* decisions. There are frequent requests for appeals against *verstek* decisions. That is, a direct *verstek* verdict asked to appeal. Even though according to the provisions of Articles 128 and 129 HIR or Article 153 R.Bg, the appropriate legal remedy for this is only *verzet*. Because of the resistance, the plaintiff's position became the opposing party (*geopposeerde*), while the defendant became (opposant). If the resistance is acceptable, based on Article 129 paragraph (4) HIR 153 paragraph (5) RBg, then the implementation of the *verstek* award will stop, unless there is an order to continue to carry out the *verstek* award even though there is resistance. In the process of examining this kind of resistance, the plaintiff's original opponent is burdened with proof first, it is possible that the original plaintiff's opposing party defeated in the *verstek* decision, then becomes the winner in the resistance decision (Henny Mono, 2007).

Resistance is an integral part that is not separate from the original lawsuit. Therefore, the resistance is not a lawsuit or a new case, but is nothing but a rebuttal aimed at the untruthfulness of the argument for the lawsuit, with the reason that the *verstek* decision that was handed down was wrong and incorrect. In this regard, the Supreme Court decision No. 307K Sip 1975 warned that *verzet* against *verstek* should not be examined and decided as a new case. In such a way that the connection between the resistance and the original abort is such that the composition of the resistance (*topposant*) is exactly the same as the original defendant and the resisted (*geopposeorde*) is the original plaintiff. This is the confirmation of the Supreme Court decision 494K Pdt 1983 which said that in the *verzet* or *verstek* process, the opponent is the Defendant and the Defendant is the Plaintiff (Yahya Harahap, 2012).

Regarding the process of examining resistance or *verzet*, it is necessary to explain several legal bases that must be upheld, namely that the resistance is submitted to the Court which renders the *verstek* decision. The authority to receive and examine objections is the authority of the Religious Courts, which originally handed down the *verstek* decision. Thus, the request for resistance fulfills the formal requirements:

- 1) Submitted by the Defendant himself or his attorney.
- 2) Delivered to the Religious Court which passed the *Verstek* decision in accordance with the time limit specified in Article 129 paragraph (2) HIR.
- 3) The resistance is aimed at the *verstek* decision without attracting other parties, apart from the original plaintiff.

If a *verzet* is filed against a *verstek* decision, it automatically follows the law The *verstek* decision becomes raw again, its existence is deemed to have never existed and the *verstek* decision cannot be executed, even though the decision includes an order that can be implemented first (Yahya Harahap, 2012).

## 2. *Verstek's verdict*

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The judge's decision is a statement made by the judge as a state official who is authorized to do so, uttered in front of the court with the aim of ending or resolving a case or dispute between the parties (Mertokusumo, 1998).

Verdict is product of the examination of cases conducted by judges . Based on Article 178 HIR /189 RBG, stated that after the examination is complete, the judge because of his position must hold deliberations to make a decision to be handed down (R. Soeroso, 2011).

A judge's decision has several parts, including the legal considerations section or known as the preamble and the decision-making section. Things that need to be considered are the legal considerations that form the basis of the judge's considerations in deciding cases, as well as the verdict that contains the judge's decision.

There are two categories of decisions, namely interlocutory decisions and final decisions. Interlocutory decisions are also known as provisional decisions. There are various types of interlocutory decisions, namely preparatoir decisions, incidental decisions, and provisional decisions. Preparatoir decisions are used to prepare cases, as well as incidental decisions, while provisional decisions are decisions handed down in connection with demands in the main case, while preliminary actions are taken for the benefit of one of the parties.

According to the Indonesian dictionary, *verstek* is absent (in front of a judge). (Tri kurnia nurhayati, n.d.) Meanwhile, according to the legal dictionary, *verstek* is a court decision or verdict given by a judge without the presence of the defendant (Yan Pramadya Puspa, n.d.).

Ruling is part of the Civil Procedure Code in Indonesia. *Verstek* decisions are inseparable from the proceedings and the imposition of decisions on disputed cases, which authorizes the Judge to make decisions without the presence of the Defendant (Yahya Harahap, 2012).

In the laws that regulate *verstek* and also apply in the Religious Courts are Article 149 R.Bg and Article 125. HIR, which reads: "If on the appointed day, the defendant is not present nor does he order other people to present as his representative, even though he has been duly summoned, the lawsuit will be accepted with a decision not to appear (*verstek*), unless it turns out to the Court that the lawsuit is against or has no reason."

The *verstek* decision relates to the provisions of Article 125 paragraph (1) HIR. Based on Article 125 paragraph (1) HIR, the Judge has the authority to make a decision outside the presence and or without the presence of the Defendant with the following conditions:

- a) All of the Defendants or Defendants did not come on the appointed hearing day or did not send answers;
- b) The Defendant or the Defendants did not send their legal representatives/proxies to appear before them or did not send answers;
- c) The Defendant or the Defendants have been legally and properly summoned;

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d) Lawsuit is reasonable and based on law.

The conditions mentioned above must be examined carefully one by one, only if all of these requirements are truly fulfilled, the verstek decision is handed down by granting the lawsuit, so that the lawsuit may not be accepted if it has no legal basis.

If the Defendant is more than one person, then one of them is not present to fulfill the court summons, regardless of whether the absence is based on valid reasons or not, according to Article 127 HIR, the following procedure must be enforced (Yahya Harahap, 2016):

**A. Imperatively, Examination Postponed .**

For example, the defendant consists of 5 people. On the appointed day of the hearing, one or two people do not show up to attend the trial hearing. In such case, there is no other choice for the judge other than:

- adjourning the trial to another day;
- ordered to summon the defendant who was not present, to be present at the next hearing;
- whereas for the defendant who was present, it was sufficient to notify the resignation at the hearing.

**B. May not examine Defendants who are present and may not drop Verstek to those who are not present**

As stated above, based on Article 127 HIR, postponement of the first hearing to another day if one of the defendants is not present is imperative, that is, the judge is obliged to postpone the hearing, and at the same time, order once again to summon the defendant concerned. Therefore:

- judges are prohibited or not allowed to examine the defendants who are present,
- What the judge must do is:
  - a. Withdrawal of trial, and
  - b. Summons the defendant once again who is not present.
- It is also not permissible to apply the verstek event to a defendant who is not present.

So the only action a judge can take in a case like this is to postpone the trial date.

**C. Still Absent At The Next Session, Examination Process Conducted Contradictory**

If it turns out that at the next session the defendant is still absent without a valid reason, the judge can choose the following actions:

- 1) Postpone the trial for the second time
  - The law permits the judge to postpone the trial for the second time;
  - Simultaneously, ordered to summon the defendant to attend the upcoming trial.

Even though the law allows it, such an application is considered imprecise and unprofessional. So it's better if avoided.

- 2) Carry out contradictory examinations. Effective and efficient actions:



- Carry out the process of examining the defendants who were present with the plaintiff in a contradictory manner (*contradictory*) or *op tegenspraak*
- Meanwhile, for the defendant who is not present, the examination applies to him without refutation of the plaintiff's argument, as a result, the defendant is deemed to admit the plaintiff's argument.

However, even though the examination process is deemed to apply to the defendant who is not present: The judge must order to summon him at the next trial, and at the next session, he has the opportunity to file a rebuttal if he attends the trial (Yahya harahap, 2016).

#### **a. Marriage**

Marriage is an important event in human life, because marriage does not only involve the personality of the two husband and wife candidates, but also involves family and community affairs. In general, marriage is considered as something sacred and because of that every religion always relates marriage principles with religious principles.

Marriage is also a way chosen by God as a way for humans to have children and preserve their lives, after each partner is ready to play a positive role in realizing the goal of marriage (Sayyiq Sabiq, 1993a).

Marriage in Islam is meant to fulfill one's spiritual needs in a lawful way and to carry on their offspring in an atmosphere of mutual love (*mawaddah*) and affection (*rahmah*) between husband and wife. (Masykuri Abdillah, 1998) This is in accordance with the word of Allah in the Qur'an which means: *and among the signs of His power is that He created for you wives of your own kind, so that you are inclined and feel at ease with him, and He made them between you with love and affection. . Indeed, in that there are signs for people who think.*

Big Indonesian Dictionary states that marriage has the meaning of the relationship between a man and a woman to legally become husband and wife (Ministry of Education and Culture, 1990). According to syara' , marriage is a contract that allows a man to associate freely with certain women and uses a marriage contract at the time of the contract (Peunoh Daly, 1980c). Article 1 of Law No. 1 of 1974 concerning marriage states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One Supreme God.

The Compilation of Islamic Law confirms that marriage is a very strong contract or *mitsaqan ghalidzan* to obey orders and is an act of worship for those who carry it out (Peunoh Daly, 1980a).

Article 14 of the Compilation of Islamic Law states that when it comes to carrying out a marriage there must be (Peunoh Daly, 1980b):

- a. Future husband;
- b. Future wife
- c. Marriage guardian;
- d. Two witnesses, and
- e. Ijab and qabul

Abdurrahman Al-Jaziry argues that a marriage that does not meet the requirements, then the status of the marriage becomes *fasid* (damaged), while a marriage that does not fulfill the pillars then the marriage becomes *void* (canceled) (Peunoh Daly, 1980a). The pillars of marriage are :

- 1) There are two brides
- 2) The existence of a guardian from the prospective bride
- 3) There are two witnesses
- 4) There is a shighot marriage contract or consent qabul
- 5) Mahar or dowry (Slamet Abidin, 1999).

Article 1 Law no. 1 of 1974 concerning Marriage states that marriage aims to form a happy and eternal family (household) based on Belief in the One and Only God.

In line with that, article 2 of the Compilation of Islamic Law states that marriage aims to create a household life that is *sakinah*, *mawaddah*, *warahmah*.

Husband and wife are basically required to help and complement each other so that each can develop their personality, help and achieve spiritual and material well-being, which means that marriages are held not only temporarily, but forever. From the formulation that has been stated above can imply that marriage can give birth to physical and spiritual happiness that is eternal.

Some of the opinions that have been put forward above conclude that marriage aims to :

- 1) Make the relationship between men and women become respect and mutual respect.
- 2) Making the relationship between husband and wife be under the auspices of maternal and paternal instincts, so that it will give birth to good offspring as the next generation of the caliphate's mission.
- 3) Creating peace of mind and body that can lead to happiness, namely affection between families.

## **b. Divorce**

### **1. Definition of Talaq and Divorce**

Marriages can break up due to three things, namely Death, Divorce, and on Court Decisions. Dissolution of marriage caused by divorce can occur due to divorce or based on a divorce lawsuit .

Sayyid Sabiq in his book *Fiqhus Sunnah* defines talaq as *removing the marital cord and ending the husband and wife relationship* (Sayyiq Sabiq, 1993a). Abu Zakaria Al-Ansari in his book *Fathul Wahab* defines *thalaq* as *breaking off the marriage contract with the word talaq and the like* (Syekh al-Islam Abi Yasya Zakari al-Ansari, n.d.).

The Syafi'i school of thought defines tala q as the release of the marriage contract with lafadz talak or something similar to it. This definition implies that the law of divorce applies directly both in *raj'i divorce* and in *bain divorce*. Meanwhile, the Maliki School defines that divorce is a legal

condition that causes the halal relationship of husband and wife to fall (Zainuddin bin Abdul Aziz, n.d.).

The Compilation of Islamic Law in general gives the meaning of Talaq as a husband's pledge before a religious court session which is one of the reasons for the breakup of a marriage. court decision regarding divorce suit Divorce contested in Islam is also called *khulu'*. Sayyid Sabiq in his book Fiqh Sunnah argues that *Khulu'* is a wife separating herself from her husband with compensation to him (Sayyiq Sabiq, 1993b).

The Compilation of Islamic Law confirms the meaning of *Khulu'* as a divorce that occurs at the request of the wife by giving a ransom or *iwadl* to and with the consent of the husband. In line with the opinion above, the Compilation of Islamic Law provides a definition of lawsuit for divorce, namely a divorce suit filed by the wife or her attorney to the court whose area covers the place of residence of the plaintiff.

From the several definitions that have been put forward above, it can be concluded that talaq and divorce are contested efforts made by a husband or wife to end a marriage based on certain reasons specified in the law.

## 2. Kinds of Talaq and Divorce

Law No. 1 of 1974 concerning marriage provides the understanding that divorce is the breaking up of a marriage . Article 38 states that a marriage can break up because;

1. Death,
2. Divorce,
3. By court decision.

The Compilation of Islamic Law states that the dissolution of a marriage due to divorce can occur due to divorce or a divorce lawsuit , in other words, divorce is a divorce because the husband submitted a divorce application to the Court. While the lawsuit for divorce is a divorce suit filed by the wife or her attorney to the court whose area covers the place of residence of the plaintiff.

Various kinds of talaq and ways of termination based on the provisions of the Compilation of Islamic Law are as follows:

- a. *Talaq Raj'i* is the first or second divorce, in this divorce the husband has the right to reconcile as long as the wife is in the iddah period.
- b. *Talak Ba'in Shughra* is a divorce that cannot be referred to, but a new marriage contract with her ex-husband is permitted, even though he is in an iddah state. *Talak ba'in shughra* as referred to in paragraph (1) is:
  - 1) The divorce that happened was *qabla ad-dukhul*.
  - 2) Divorce by ransom or *khuluk*.
  - 3) *Talak* handed down by a religious court.
- c. *Talak Ba'in Kubra* is a divorce that occurs for the third time. This type of divorce cannot be reconciled and cannot be re-married unless the marriage

was carried out after the ex-wife married another person and then there was a ba'da ad-dukhul divorce and her iddah period expired.

- d. *Sunni* talaq is permissible divorce, i.e. divorce that is imposed on a wife who is pure and does not interfere with that sacred time.
- e. *Talaq Bid'i* is a divorce that is prohibited, namely divorce that is handed down when the wife is menstruating, or the wife is in a state of purity but has been interfered with during that sacred time.

Fiqh experts differ on divorce . Divorce is a "forbidden" act, except for the right reasons. This was revealed by the Hanafi and Hambali groups. The Hambali group explains the laws of divorce, as follows:

- a. Compulsory thalaq , namely thalaq imposed by the judge (mediator) because the division between husband and wife is already heavy. And according to the law this is the only way.
- b. Thalaq Haram is thalaq without reason. It is forbidden to cause harm between husband and wife, and there is no benefit to be achieved by doing thalaq.
- c. Thalaq Sunnah, namely because the wife neglects her obligations to Allah such as praying and so on, even though the husband is unable to force her to carry out these obligations, or the wife throws away her shame.

### 3. Reasons for Dropping Talaq and Divorce

Talaq and contested divorce are efforts made by a husband or wife to end a marriage based on certain reasons specified in the law. In order to be able to submit a request for talaq or a divorce suit to the Religious or State Court, it must be accompanied by sufficient reasons in accordance with the reasons specified in the Compilation of Islamic Law or Law Number 1 of 1974 concerning Marriage.

The Compilation of Islamic Law (KHI) and Law Number 1 of 1974 provide the same reasons for divorce, be it talaq divorce or contested divorce. There are two reasons added to the provisions of the Compilation of Islamic Law , namely first the husband violates the divorce decree and the second is religious conversion or apostasy which causes disharmony in the household. Here's the whole way to get a divorce, namely:

- a) One of the parties commits adultery or becomes a drunkard, gambler, etc., which is difficult to cure.
- b) One party leaves the other party for 2 (two) consecutive years without the other party's permission and without valid reasons or for other reasons beyond his control.
- c) One of the parties gets a prison sentence of 5 (five) years or a more severe punishment after the marriage takes place.
- d) One of the parties commits cruelty or severe abuse that endangers the other party.
- e) One of the parties has a disability or illness with the result that he is unable to carry out his obligations as husband/wife.
- f) Between husband and wife there are constant disputes and fights and there is no hope of living in harmony in the household.

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- g) Husband violates the taklik divorce.
- h) Conversion of religion or apostasy that causes disorganization
- i) harmony in the household.

Claimed divorce according to Islam can be harmonized with legal provisions, sometimes divorce is obligatory, sunnah, makruh, and lawful. It depends on the condition of the husband and wife.

a. Change (Allowed)

for women to seek divorce (*khulu'*) if the wife hates her husband's morals or is worried about committing a sin because she cannot fulfill her rights . If the husband loves her, then it is sunnah for the wife to be patient and not choose divorce. Allah SWT says in the Qur'an albaqarah letter which means: " *If you are worried that both (husband and wife) cannot carry out Allah's laws, then there is no sin on both of them regarding the payment given by the wife to redeem herself.*"

b. *Khulu' is forbidden* . This can happen due to two circumstances, namely:

1. From the Husband's Side.

If the husband troubles the wife and breaks off communication with her, or deliberately does not give her rights and the like so that the wife pays the ransom to her by way of a divorce suit, then the *khulu'* is invalid, and the ransom is returned to the woman. Allah SWT says in Surat an-Nisa' verse 19 which means: " *O you who believe, it is not lawful for you to destroy women by force and do not trouble them because you want to take back some of what you have given them, except when they do real abominable work. and get along with them properly. then if you don't like them, (then be patient) because maybe you don't like something, even though Allah made a lot of good in it .*

2. From the wife's side

If a wife asks for a divorce even though her household relationship is good and there are no disputes or fights between the husband and wife. And there is no *syar'i* reason that justifies the existence of *khulu'* , so this is prohibited.

c. *Mustahabbah* (Sunnah) Women Ask for Divorce ( *Khulu'* ).

If the husband applies *mufarrith* (underestimates) the rights of Allah, then the wife is *sunnah khulu'* . According to the school of Ahmad bin Hanbal.

d. Required

Sometimes the law of *khulu'* becomes obligatory in some circumstances. For example, for people who never pray, even though they have been reminded. Likewise if the husband has beliefs or actions that can cause the wife's beliefs to leave Islam and make her an apostate.

#### 4. Talaq and Divorce Procedures

The Compilation of Islamic Law and Law No. 1 of 1974 concerning marriage provides a distinction between talak divorce and contested divorce. *Talaq divorce* is a husband's pledge before a religious court session which is one of the reasons for breaking up a marriage, as referred to in articles

129, 130 and 131 KHI, while a contested divorce is a wife's request to file a divorce with the court.

The Compilation of Islamic Law provides an explanation of the procedures for talaq divorce, namely that a husband who will impose divorce on his wife or a wife who files for divorce by way of khulu' against her husband can submit a request both verbally and in writing to the Religious Court which administers the wife's residence accompanied by reasons and requested that a trial be held for the purposes of divorce talaq.

Legally the Religious Courts that receive the request can grant or reject the request, the Religious Court concerned studies the request by summoning the applicant and his wife to ask for an explanation of everything related to the intention of imposing a divorce.

Examination of the application or lawsuit for divorce is carried out by the judge no later than 30 (thirty) days after receiving the file or letter of divorce suit. The judge then sets the time for the trial of the divorce suit by summoning the plaintiff and the defendant or their attorney. The defendant who is carried out based on the reason that one party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or because of other things beyond his ability, the trial for examining the divorce suit is set for at least 6 (six) months from the date of since the filing of the divorce suit at the Registrar's Office of the Religious Court.

During the divorce lawsuit at the request of the plaintiff or the defendant based on consideration of the harm that may arise, the Religious Court may allow the husband and wife not to live in the same house, and during the course of the divorce lawsuit, at the request of the plaintiff or the defendant, the Religious Court may determine matters - things that must be borne by the husband.

After the divorce case is decided, the clerk of the Religious Court delivers a copy of the divorce decision to the husband and wife or their attorney by withdrawing the excerpt of the marriage certificate from each person concerned. The Registrar of the Religious Court is obliged to send a copy of the decision of the Religious Court which has permanent legal force without being stamped to the Marriage Registrar in the area where the wife lives for registration. The Registrar of the Religious Courts then sends a statement letter to each husband and wife or their attorney that the decision has permanent legal force and is proof of divorce for the husband and ex-wife. The Registrar of the Religious Court makes a note in the space provided on the relevant Marriage Certificate that they have divorced.

## RESULTS AND DISCUSSION

### 1. Basis of Judges and Legal Consequences of Verstek Decisions in Divorce Cases Against Marital Relations in Rantau Prapat Religious Courts

The Rantau Prapat Religious Court is located in Labuhanbatu Induk Regency which oversees North Labuhanbatu Regency and South Labuhanbatu Regency, which has the duty and authority to receive, examine, adjudicate, decide and resolve cases of marriage, inheritance, wills, grants, endowments, and almsgiving and resolve disputes in the field of sharia economics among Muslims to uphold law and justice, as stipulated in Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts.

The task of the Religious Courts is to receive, examine, adjudicate, and settle cases submitted to them. In order to carry out these main tasks, the Judge is obliged to make a decision or determination of all cases that are tried. In the procedural law regarding verstek it has been regulated in articles 125-129 HIR and articles 149-153 RBg. In the verstek decision, it is interpreted as a decision handed down by a panel of judges without the presence of the defendant, no his presence was without a valid reason even though he had been duly summoned (*default without reason*).

In the practice of events within the Religious Courts regarding the verstek decision, there are still differences of opinion among legal practitioners.

Because some of them say that in a divorce case if the defendant is not present at the first and second sessions even though he has been summoned officially and properly, then the case can be decided verstek without being proven first. Some also say that if the defendant has been summoned properly and officially and it turns out that the defendant is not present without a valid reason, then the case may only be decided if it has been carefully examined and the arguments for the lawsuit have been proven, because proof in this case is absolutely necessary.

Religious courts that have the authority to try certain cases, as stated in the General Explanation first paragraph, Article 2, Article 3A, Article 49, Article 50, and Article 52 of Law no. 3 of 2006 are certain cases of Law Number 3 of 2006, namely: Islamic cases covering the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah, economics syari'ah, dispute right of ownership which arises consequence exists dispute to which field Becomes authority over the field which is under the authority of the Religious Courts, Isbat witnessing the sighting of the new moon in determining the beginning of the month in the Hijriyah year, as well as providing information or advice regarding differences in determining the direction of Qibla and determining the time of prayer, but until now the cases that have dominated the highest number of cases are cases that covering the field of marriage, especially divorce cases (divorce contest and divorce divorce). In this regard, legal practitioners in the Religious Courts must be careful in passing verstek decisions in divorce cases, because in the field of divorce there are many aspects that must be considered, complicated and very complex.

If the defendant has been summoned officially and properly, but the defendant is not present and does not send his representative at the appointed hearing, it is better for the Panel of Judges to recall the defendant for the second time, not to directly pass a verstek decision even though the plaintiff's claim rests on the law. Cases that have been decided by verstek are considered formally and

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materially to have been completely adjudicated. So the defendant who loses, may no longer submit the case again, except for filing a resistance which is called a *verzet*. After using *verzet* legal remedies, if necessary, the defendant can use appeal legal remedies.

## **2. Verstek's Legal Basis**

P *verstek* envoy, in Article 149 paragraph (1) RBg states that: If on the appointed day the defendant does not come even though he has been properly summoned, and also does not send his representative, then the lawsuit is granted without his presence (*Verstek*) unless it turns out that according to the district court Therefore, that the claim has no legal basis or is unreasonable. On this basis it is clear that if the Defendant/Respondent is not present on the appointed day, even though he has been duly summoned but he is still absent and does not send his representative, the Judge can resolve the case with a *verstek* decision.

This can be excluded if it turns out that according to the Court that the lawsuit has no legal basis or reason, even though the Defendant/Respondent is not present, the Judge can decide that the lawsuit cannot be granted. Furthermore, it is also explained in article 125 paragraph (1) HIR which states that: If on the appointed day, the defendant is not present and he does not order another person to attend as his representative, even though he has been properly summoned, then the lawsuit is accepted with an unanimous decision. present (*verstek*), unless it turns out to the Court that the lawsuit is against rights or without reason.

With regard to the main duties of the judiciary body are to receive, examine, adjudicate, and resolve cases submitted to it. In order to carry out these main tasks, the Judge is obliged to make a decision or determination of all cases that are tried. In the procedural law regarding *verstek* it has been regulated in articles 125-129 HIR and articles 149-153 RBg.

Basically, in the process of litigation in the Religious Courts , they will be subject to legal provisions as stated in the provisions of the Law on the Religious Courts System, HIR and Compilation of Islamic Law. The party who wishes to divorce his partner is called the Plaintiff. The plaintiff (wife) or through his attorney filed a lawsuit/ Application submitted to the Chairperson of the Religious Court at the Rantauprapat Religious Court, with several documents / conditions that must be met:

1. Letter of Application/Lawsuit
2. Power of Attorney that has been legalized (if using a Legal Counsel)
3. Evidence that corroborates to file a lawsuit or application, such as KTP, KK, Power of Attorney, Deed etc

Furthermore, the Plaintiff / his Proxy pays the down payment for the lawsuit by depositing the down payment for the case through a bank appointed by the Court , Provides proof of transfer and keeps a copy for archives , Receives proof of receipt of the Claim Letter/Appeal , Waits for a summons from the Religious Court submitted by the bailiff/substitute bailiff and attend the hearing according to a predetermined schedule .

After the parties attend the trial according to a predetermined schedule, basically the parties will go through the stages of the trial process that must be



passed at the Court, namely 11 (eleven) stages that must be passed by the parties to the litigation at the Rantau Prapat Religious Court, namely (Drs. H. Ribat, n.d.):

1. Mediation, which is the stage where the judge will appoint a mediator to reconcile the parties. Usually the mediation period is 30 (thirty) days;
2. Reading of the Lawsuit by the Plaintiff;
3. Exceptions and Answers from the Defendant. If desired, the Defendant may file a counterclaim against the Plaintiff;
4. Replica of the Plaintiff;
5. Duplicate of the Defendant;
6. Interlocutory Decision, if there is an Exception related to Absolute Competence (Power to Trial a Court);
7. Local Examination (PS), if the case is related to land/land matters;
8. Evidence from the Plaintiff by submitting Written Evidence, Witness Statements or Expert Statements;
9. Evidence from the Defendant by submitting Written Evidence, Witness Statements or Expert Statements;
10. Conclusion of the Plaintiff and Defendant;
11. Court decision, is the stage where the judge makes a decision on the case being tried. There are 4 (four) possible decisions, namely: (1) The decision is granted in its entirety, (2) The decision is granted in part, (3) The decision is unacceptable, and (4) The decision is rejected.

If the parties, especially the defendant, have been duly summoned twice in succession and are found not to be present at the trial, the panel of judges may examine the divorce case without the defendant present. In practice, when the author attends a divorce trial for the purposes of this research, the panel of judges at the Rantau Prapat Religious Court will still give a decision on a *verstek* divorce case with a note that if at the first summons the defendant is not present, the judges will postpone the trial to another day with ordered the bailiff to recall the defendant who was not present, so that he would be present at the next hearing .

In the next trial, if the defendant is also not present at the hearing, then the panel of judges at the Rantau Prapat Religious Court will examine the main case by looking at the evidence and statements of the witnesses and will then give a *verstek* decision with the provision that if one of the conditions in the proof has been fulfilled as a requirement for filing divorce as specified in the formulation of article 116 of the Compilation of Islamic Law, namely:

- a) One of the parties commits adultery or becomes a drunkard, gambler, etc., which is difficult to cure.
- b) One party leaves the other party for 2 (two) consecutive years without the other party's permission and without valid reasons or for other reasons beyond his control.
- c) One of the parties gets a prison sentence of 5 (five) years or a more severe punishment after the marriage takes place.
- d) One of the parties commits cruelty or severe abuse that endangers the other party.
- e) One of the parties has a disability or illness with the result that he is unable to carry out his obligations as husband/wife.

- f) Between husband and wife there are constant disputes and fights and there is no hope of living in harmony in the household.
- g) Husband violates the taklik divorce.
- h) Conversion of religion or apostasy which causes disharmony in the household.

Thus, the *verstek* decision handed down by the Panel of Judges of the Rantauprapat Religious Court will have permanent legal force (*inkrach*) if the defendant does not take any legal action within the allotted timeframe which is commonly known as *verzet*. Thus, legally, the plaintiff and the defendant have officially divorced. Furthermore, if there is resistance received by the court, the implementation of the *verstek decision* will stop, unless there is an order to continue implementing the *verstek decision* (Art. 153 paragraph 5 RBg, 129 paragraph 4 HIR).

In the examination of resistance (*verzet procedure*), because the position of the parties has not changed, it is the plaintiff (against) who must start with proof. If the plaintiff does not appear in the event of resistance, then the case is examined in a *contradictory manner*. Meanwhile, if the defendant in the event of resistance does not come again, then for the second time the *verstek is terminated*, against which the counterclaim (*verzet*) is not accepted (*niet ontvankelijk verklaard*), Ps. 153 paragraph 6 RBg, 129 paragraph 5 HIR. If there are several defendants, while one or more of them do not come or do not order their representatives to appear even though they have been properly summoned, the case is examined in a *contradictory manner* (Mertokusumo, 1998).

*Verstek* and the term *contradictoir* (excluding the presence of the defendant) must be distinguished. Decisions without the presence of the defendant (*verstek decision*), in which the defendant never appears at all to court and without valid reasons even though he has been summoned officially and properly. Whereas the decision outside the presence of the defendant (*contradictory*) is when the verdict is handed down the defendant is not present, but has attended the trial even once.

In a divorce case with a *verstek decision*, the author takes the case number case. 239/Pdt.G/2012/PA-Rap, the situation is as follows:

#### **Case Position**

- That, the Plaintiff (wife), 28 years old, Islam, Elementary School Education, Residential Trading Work, Rantauprapat, hereby filed a lawsuit against the Defendant (husband) 32 Years Old, Islamic Religion, Elementary School Education, Trade Work, Residence of Rantauprapat.
- Whereas, on June 1 2004, the Plaintiff and the Defendant had entered into an Islamic marriage, and were blessed with two children.
- Whereas, in 2012, between the Plaintiff and the Defendant began to have frequent disputes in the household resulting in quarrels, in which the Defendant was rude accompanied by violence against the Plaintiff and often went out at night gambling and consuming drugs.
- As a result of the actions of the Defendant, the Plaintiff admonished the Defendant to be responsible for their household needs, the Plaintiff's warning was ignored by the Defendant so he left the Plaintiff, since then the

Plaintiff and the Defendant separated and the Respondent relinquished his responsibilities as a husband or father to their children. his son.

- Since the departure of the Defendant, automatically all of the Plaintiff's living expenses are responsible, the family has tried to reconcile, as a result of the Defendant's actions that released his responsibilities, the Plaintiff is determined to file a divorce against the Defendant, by attaching the Lawsuit, photocopy of the Marriage Certificate and presenting two witnesses.
- During the trial, the Defendant was formally summoned to appear before the trial, but the Defendant was absent without a valid reason.
- Amar's consideration of the judge stated that the Plaintiff's lawsuit was in accordance with Article 19 letter ff Government Regulation Number 9 of 1975 in conjunction with Article 116 law f Compilation of Islamic Law/KHI where the household conditions of the Plaintiff and Defendant could no longer be maintained, they were separated and there were continuous disputes, so The plaintiff's claim can be granted by the judge.
- Judging
  1. Stating that the Defendant had been summoned properly the court had not attended formally.
  2. Granted the Plaintiff's Lawsuit with Verstek.
  3. Dropping One Bain Sugra divorce on the Plaintiff
  4. Order the Registrar of the Rantauprapat Religious Court to submit a copy of the decision that has permanent legal force to the Marriage Registrar Officer who has been provided for this purpose.

Based on the position of the case No. 239/Pdt.G/2012/PA-Rap, concerning *verstek* on the basis of a judge deciding a *verstek divorce case* based on Article 19 letter f Government Regulation Number. 9 of 1975 Jo article 116 law f Compilation of Islamic Law / KHI and in the trial the Defendant never appeared even though he had been duly summoned according to article 145 RBG jo article 26 Government Regulation Number. 9 of 1975 concerning Marriage Implementation Regulations. As a result of Verstek's decision, the Plaintiff and Defendant broke up due to divorce even though the Defendant was not present at the trial for three consecutive times.

From the results of the author's research at the Rantauprapat Religious Court, the number of cases of verstek decisions over the last three years is as follows:

Year	Number of Verstek Divorce Cases	Information
2019	763 Cases	Disconnected
2020	825 Cases	Disconnected
2021	943 Cases	Disconnected

From the data above, it shows that the number of cases decided by verstek judges increases every year.

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### 3. Verstek Decision Legal Remedies in Divorce Cases

Regarding the verstek decision, the panel of judges only considered whether the summons for the Defendant's absence was valid or not to attend the trial, while the Defendant who was dissatisfied with the decision could make an appeal to a higher court level.

Ruling is part of the Civil Procedure Code in Indonesia. Verstek decisions are inseparable from the proceedings and the imposition of decisions on disputed cases, which authorizes the Judge to make decisions without the presence of the Defendant (Yahya Harahap, 2006b).

In other words, a verstek decision is a decision that is passed if the defendant is not present or does not represent his attorney to appear even though he has been properly summoned. According to Yahya Harahap, in his book *Civil Procedure Law Concerning: Lawsuits, Trials, Confiscations, Evidence, and Judge's Decisions* (pp. 391-394), there are four conditions if the defendant is more than one person:

At the first hearing all the defendants were not present, then the *verstek event can immediately be applied* ;

- 1) If the judge postpones the trial because all the defendants are not present at the first trial, then at the next trial all the defendants are still absent, the verstek procedure can be applied;
- 2) One of the defendants is not present, the trial must be adjourned;
- 3) One or all of the defendants who were present at the first trial were not present on the following trial day, but the defendant who was absent before, is now present.

In the laws that regulate verstek and also apply in the Religious Courts are Article 149 R.Bg and Article 125. HIR, which reads: "If on the appointed day, the defendant is not present nor does he order other people to present as his representative, even though he has been duly summoned, the lawsuit will be accepted with a decision not to appear (verstek), unless it turns out to the Court that the lawsuit is against or has no reason."

The verstek decision relates to the provisions of Article 125 paragraph (1) HIR. Based on Article 125 paragraph (1) HIR, the Judge has the authority to make a decision outside the presence and or without the presence of the Defendant with the following conditions :

- a) All of the Defendants or Defendants did not come on the appointed hearing day or did not send answers;
- b) The Defendant or the Defendants did not send their legal representatives/proxies to appear before them or did not send answers;
  - a. The Defendant or the Defendants have been legally and properly summoned;
  - b. Lawsuit is reasonable and based on law.

The conditions mentioned above must be carefully examined one by one , so that if all of these requirements are truly fulfilled, a verstek decision is imposed

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by granting the plaintiff's claim and a *verstek* decision can also be handed down by a panel of judges by declaring the plaintiff's claim cannot be accepted if it has no basis. *h u k u m* .

Based on the author's research that, the *verstek* decision handed down by the Panel of Judges of the Rantauprapat Religious Court will have permanent legal force (*inkracht*) if the defendant within the stipulated time limit (during 14 days from the decision) does not take any legal action which is commonly referred to as *verzet*, then thus legally divorced between the plaintiff and the defendant.

Furthermore, if there is resistance received by the Rantauprapat Religious Court, the implementation of the *verstek decision* will stop, unless there is an order to continue implementing the *verstek decision* (Article 153 paragraph 5 RBg, 129 paragraph 4 HIR).

In the examination of resistance (*verzet* procedure), because the position of the parties has not changed, it is the plaintiff (against) who must start with proof. If the plaintiff does not appear in the event of resistance, then the case is examined in a *contradictory manner* . Meanwhile, if the Defendant in the event of resistance does not come again, then for the second time the *verstek is cut off* , against which the counterclaim ( *verzet* ) is not accepted ( *niet ontvankelijk verklaard* ).

In the provisions of Article 153 paragraph 6 RBg, 129 paragraph 5 HIR it is stated that if there are several defendants, while one or more of them do not come or do not order their representatives to appear even though they have been properly summoned, the case is examined in a *contradictory manner* .

*Verstek* and the term *contradictoir* (excluding the presence of the defendant) must be distinguished. Decision without the presence of the defendant ( *verstek decision* ), in which the defendant has never appeared at all in court and without any valid reasons even though he has been summoned officially and properly. While the decision outside the presence of the defendant ( *contradictory* ) is when the verdict is handed down the defendant is not present, but has attended a trial even once. The *verstek decision* is *verzet* , while the *contradictory decision* is an appeal.

Opposition to the *verstek decision* can be filed within 14 (fourteen) days after the notification is received by the private defendant. If the *verstek decision* is not notified to the defendant personally, resistance can still be filed until the 8th day after the warning to implement the *verstek decision* or if the defendant does not appear after being summoned properly, resistance can be filed until the 8th day (for Java and Madura regions) ), while the 14th day (for regions outside Java and Madura) after the *verstek decision* is executed (Article 129 paragraph (2) HIR/ Article 153 paragraph (2) RBg).

Resistance (*verzet*) against the *verstek decision* is filed like filing an ordinary lawsuit. The defendant who filed the challenge is called the *opponent* , while the plaintiff is called the *opponent* . Examination and decision on resistance cases are the same as ordinary cases. With this resistance, the execution is suspended, unless the *verstek decision* is handed down by a decision that can be implemented earlier (*uit voerbaar bij voorraad*) as stipulated in Article 190 paragraph (1) RBg/ Article 180 paragraph (1) HIR.

In this resistance process, it is the plaintiff who must prove his argument because the position of the plaintiffs has not changed. So the conditions for submitting *verstek* are:

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1. The Defendant did not come on the appointed hearing day.
2. The Defendant did not send a legal representative/proxy to appear before him.
3. The Defendant has been duly summoned.
4. Petitum is not against rights.
5. Petitum reasoned.

If conditions 1, 2 and 3 are met, but the regulations violate rights or are unreasonable, then even though the case is decided *by verstek*, the lawsuit is rejected. If conditions 1, 2 and 3 are met, but there is a formal error in the lawsuit, for example it was filed by those who are not entitled, then the lawsuit is declared inadmissible.

In the provisions of Article 123 HIR paragraph (2) requires the judge to first give a decision regarding the exception by hearing the plaintiff about this exception, if the defendant does not come and does not also send a response letter which also contains the exception that the district court concerned is not in power, examines the case, so the exception concerns absolute power (absolute) or relative power.

If the exception is justified, the judge will not examine the subject matter further. It will not be examined whether the petitum violates rights or the petitum is justified. The judge will give a decision that the District Court is not authorized to adjudicate the dispute (in the event that there is an exception to recognize absolute power), or will issue a decision that the defendant who has been duly summoned is not present and states that the district court concerned is not authorized to hear the lawsuit has been proposed (in the case of exceptions regarding relative power). If the exception is not justified, this exception is rejected, the judge will examine the main case. In the event that the claim is reasonable and does not conflict with the law, the claim will be granted in whole or in part with *verstek*.

## CONCLUSION

Based on the description above, it can be concluded as follows:

1. The basis of the judge and the legal consequences of the Verstek Decision in Divorce Cases for marital relations is basically, if at the first summons and second summons the defendant was not present at the trial or did not send his attorney at all. The verdict was handed down by the panel of judges when the plaintiff's lawsuit complied with the provisions and evidence as stated in one of the reasons stated in the provisions of article 116 of the Compilation of Islamic Law. Article 19 letter f Government Regulation Number. 9 of 1975 Jo article 116 law f Compilation of Islamic Law / KHI and in the trial the Defendant never appeared even though he had been duly summoned according to article 145 RBG jo article 26 Government Regulation Number. 9 of 1975 concerning Marriage Implementation Regulations. The verstek decision handed down by the Panel of Judges at the Rantauprapat Religious Court will have permanent legal force (inkrach) if the defendant does not take any legal action within the specified timeframe, which is commonly known as verzet. Thus, legally, the plaintiff and the defendant have officially divorced

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2. Verstek Decision Legal Remedies in Divorce Cases is by filing a challenge against the *verstek* decision within 14 (fourteen) days after the notification is received by the defendant. If the *verstek* decision is not notified to the defendant personally, resistance can still be filed until the 8th day after the warning to implement the *verstek decision* or if the defendant does not appear after being summoned properly, resistance can be filed until the 8th day (for Java and Madura regions) ), while the 14th day (for regions outside Java and Madura) after the *verstek decision* is executed (Article 129 paragraph (2) HIR/ Article 153 paragraph (2) RBg.

## BIBLIOGRAPHY

- Drs. H. Ribat. (n.d.). *Interview with the Chairperson of the PA-Rap* .
- H. \_ M. Zuffran Sabrie. (1990). *Religious courts in the Pancasila state*. Antara Library.
- Henny Mono. (2007). *Civil Litigation Practice*. Bayu Media.
- Masykuri Abdillah. (1998). *Distortion of the Sacrifice of Marriage in the Present Law Platform*.
- Mertokusumo, S. (1998). Indonesian civil procedure law. *First Printing*.(Yogyakarta: Liberty, 1993).
- Ministry of Education and Culture. (1990). *Big Indonesian Dictionary*. Balai Pustaka.
- Peunoh Daly. (1980a). *Islamic Law Compilation*. Crescent Star.
- Peunoh Daly. (1980b). *Islamic Law Compilation*.
- Peunoh Daly. (1980c). *Islamic Marriage Law: A Comparative Study Among Sunnah Experts and Islamic Countries*. Crescent Star.
- R. Soeroso. (2011). *HIR Civil Procedure Law, Rbg, and Jurisprudence*. Graphics Light.
- Sayyiq Sabiq. (1993a). *Fiqh Sunnah*. PT Al-Ma'arif.
- Sayyiq Sabiq. (1993b). *Fiqh Sunnah*. PT Al-Ma'arif.
- Slamet Abidin, H. A. (1999). *Fiqh Munakahat*. Pustaka Setia.
- Syekh al-Islam Abi Yasya Zakari al-Ansari. (n.d.). *Fathu al-Wahab*. Thoha Putra.
- Tri kurnia nurhayati. (n.d.). *Complete Indonesian Dictionary*. Eska Media.
- Yahya Harahap. (2005). *Position of Authority and the Jakarta Religious Court*. Sinar Graphic.
- Yahya Harahap. (2006a). *Civil Procedure Code*. Sinar Graphic.
- Yahya Harahap. (2006b). *Civil Procedure Law*. Sinar Graphic.
- Yahya Harahap. (2012). *Civil Procedure Code*. Sinar Graphic.
- Yahya Harahap. (2016). *Civil Procedure Code: Lawsuits, Trials, Confiscations, Evidence, and Court Decisions*. Sinar Graphic.
- Yahya harahap. (2016). *Civil Procedure Code: Lawsuits, Trials, Confiscations, Evidence, and Court Decisions*. Sinar Graphic.
- Yan Pramadya Puspa. (n.d.). *Legal Dictionary*. Various Knowledges.
- Zainuddin bin Abdul Aziz. (n.d.). *Fathul Mu'in*. Alhidayah.



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