

FACTORS AFFECTING THE PREDOMINANCE OF VERSTEK JUDGMENTS IN DIVORCE CASES BEFORE THE RELIGIOUS COURT

Muliadi Nur¹ dan Abdul Jamil²

Citation Guide:

Muliadi Nur dan Abdul Jamil,
'FACTORS AFFECTING THE PREDOMINANCE OF VERSTEK JUDGMENTS IN DIVORCE CASES BEFORE THE RELIGIOUS COURT'
[2021] 3 (1) Prophetic Law Review 78.

Received:

30 June 2020

Accepted:

17 February 2021

Published:

24 July 2021

DOI:

10.20885/PLR.vol3.iss1.art5



Copyright: © 2021 by the author. Licensee Prophetic Law Review Journal, Indonesia. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution 4.0 International License (CC BY SA).

Abstract

This study examines the factors affecting the predominance of verstek judgments in the disposition of divorce cases in religious courts. It was mainly aimed at analyzing the factors that influence the settlement of divorce cases in the absence of the defendant so that the judge decides through a verstek judgment. This research used a normative legal research with a statutory approach and a legal system. The study found three primary factors in the legal system that have lead to the verstek judgments for divorce cases in religious courts. First, the existing substantial components and legal arrangements have not explicitly regulated the criteria, limitations, or reasons for the absence of defendants who who are entitled to verstek examination in divorce cases. Second, the legal structure includes the paradigm of passive judges and strong adherence to procedures, as well as the summoning of the parties by bailiffs. Third, a cultural component, including the factor of awareness of the nature of marriage and the meaning of a divorce, and the rule of law in society regarding the rules and mechanisms for divorce settlement.

Keywords: *Dominant factors, verstek verdict, divorce cases*

A. Introduction

This study is derived from the empirical reality of the settlement of divorce cases by judges in religious courts. The data revealed that the *verstek* judgments were the most common judgments in divorce cases in religious courts due to the absence of the defendant.³

¹ Lecturer at the Sharia Faculty of the State Islamic Institute of Manado. E-mail: muliadi.nur@gmail.com

² Lecturer at the Faculty of Law, Universitas Islam Indonesia. E-mail: 904100102@uii.ac.id

³ Ambo Asse, 'Putusan Verstek Mendominasi Putusan Perceraian Pengadilan Agama (Analisis Khusus Pada Perkara Perceraian)' <<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/putusan->

Verstek refers to a judge's statement on the absence of a person who has been properly summoned although the procedural law requires his attendance.⁴ Article 125 HIR/Article 149 RBg regulates the occurrence of *Bij Verstek*, in which a defendant who has been properly summoned (*behoorlijk opgeroepend*) and fails to appear at the determined hearing even though he has been legally summoned.⁵

This is clear from reviewing judgments of religious courts. For example, the Bandung Religious Court has decided 70% of the total number of divorce cases it has received each year through *verstek* judgments.⁶ The same situation can be found in the Pamekasan Religious Court, where *verstek* judgments in divorce cases were the most dominant in terms of number when compared to other types of cases. This number accounted to around two-thirds of divorce cases submitted to the Pamekasan Religious Court, which included divorce applications submitted by husbands (*talaq/repudiation divorce*) or that filed by the wife (*judicial divorce*).⁷ Other supporting data were the judgment of the Samarinda religious court since 2012-2016 on judicial divorce cases, especially on the grounds of violation of *Taklik Talaq* (*divorce pledge*). Of all data on divorce pledge violations before the Samarinda Religious Court, it was found that almost 99.16% cases (around 235 cases) were decided in *verstek* judgments, and only two cases (0.84%) were decided with the presence of defendants at the trial.⁸

Civil procedural law holds the principle of *audi et alteram partem*, which in essence requires a fair hearing for both parties. In other words, both parties in a legal case must be equally considered, since both have the right to equal and fair treatment. Thus each must be given the opportunity to give their opinion. The examination of the case before the trial must be carried out in a balanced manner, including in the *verstek* judgment.⁹ However, in most

verstek-mendominasi-putusan-perceraian-pengadilan-agama-oleh-drs-h-ambo-asse-sh-mh-268> accessed in August 2019.

⁴ Sulaikin Lubis, *Hukum Acara Perdata Peradilan Agama di Indonesia* (Kencana dan Badan Penerbit Fakultas Hukum Universitas Indonesia 2018). 149.

⁵ R Tresna, *Komentar HIR* (Pradnya Paramita 1984). 106–109.

⁶ Ramdani Wahyu Sururie, 'Implementasi Mediasi dalam Sistem Peradilan Agama' (2012) 12(2) *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 145. Ema Rahmawati and Linda Rachmainy, 'Penjatuhan Putusan Verstek dalam Praktik di Pengadilan Agama dan Pengadilan Negeri Bandung dalam Kajian Hukum Acara Perdata Positif di Indonesia' (2017) 2(2) *ADHAPER: Jurnal Hukum Acara Perdata*, 219.

⁷ Eka Susylawati and Moh Hasan, 'Putusan Verstek pada Perkara Perceraian di Pengadilan Agama Pamekasan' (2011) 8(1) *NUANSA: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam*. 135–149.

⁸ Lilik Andaryuni, 'Putusan Verstek dalam Cerai Gugat Karena Pelanggaran Taklik Talak di Pengadilan Agama Samarinda' (2017) 16 (1) *Jurnal Istinbath Journal of Islamic Law*. 234.

⁹ I Gede Yuliartha et al., 'The Meaning of Audi et Alteram Partem Principle in Verstek Verdict of Civil Law' (2018) 69(3) *Journal of Law, Policy and Globalization*. 135.

court practices, especially in divorce cases, the defendant who has been properly summoned is absent, which results in the judge examining the case through *verstek* procedure.¹⁰

This empirical data raises some questions on the internal and external factors that lead to the predominant number of *verstek* judgments in divorce cases. What were the factors affecting this occurrence and the background for the absence of the defendant at trial as the reason for the *verstek* judgment by the judge?

In response to the above-mentioned social reality, two perspectives can be put forward. First an internal perspective of law (dogmatic/analytic approach) and second, an external perspective of law (socio-legal approach).¹¹ As seen from an internal legal perspective, the empirical reality of the *verstek* judgments is not problematic. Deciding cases through *verstek* institutions by referring to Article 125 HIR/Article 149 RBg is lawful for all against civil cases where the defendant party has been summoned legally and properly but does not attend the court without a valid reason according to the law.¹² This procedure emphasizes how judges work according to the formal and procedural rules that have been regulated in the prevailing regulations.

Nevertheless, an external perspective can consider it inappropriate since the law works as a mere fulfillment of formal procedures. First of all, the operation of law, is indeed determined and limited by formal standards as can be seen from formulations in various legal regulations. However, solely adhering to the formal design, without including other social elements, including cultural elements, is far from sufficient to understanding and explaining the behavior of the parties involved. The law shall involve values, ideas, attitudes and behaviors related to law. This is what Friedman conceptualizes as a legal culture.¹³

This study seeks to determine the applicable and influential factors in the adjudication of divorce cases, where the defendant is absent leading judges to *verstek* judgments, which have dominated most divorce cases so far.

¹⁰ HM Anshary MK. Hukum Acara Perdata Peradilan Agama dan Mahkamah Syar'iyah (CV Mandar Maju 2017). 104.

¹¹ M Syamsudin, 'Faktor-Faktor Sosiolegal yang Menentukan dalam Penanganan Perkara Korupsi di Pengadilan', (2010) 17(3) Jurnal Hukum IUS QUIA IUSTUM. 406. M Syamsudin, Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progresif, Ed 1, Kencana 2012. 132.

¹² Sarwono, Hukum Acara Perdata Teori Dan Praktik (Sinar Grafika 2011) 216.

¹³ Lawrence M. Friedman, The Legal System: A Social Science Perspective (Russel Sage Fondation, 1975). 15, 194, 223.

B. Problem Formulation

The aforementioned problems lead to the formulation of the following research problem: what factors influence the settlement of divorce cases in the absence of the defendant/respondent so that the judge decides the case through a *verstek* judgment as has been predominant in most judgments for divorce cases so far?

C. Methodology

This is a normative legal research using a statutory approach, analyzing the legal system. This study used secondary data sources and primary data simultaneously to be presented qualitatively. Data was collected through document review and supported by open interviews with research informants and sources, namely Judges, Registrars of the Religious Court of Makassar, parties initiating dissolution proceedings (plaintiffs), and relevant parties to provide information about the object under study. All data was then analyzed interactively.

D. Results and Discussion

1. Procedure for Divorce Cases in Court

Two court institutions with authority to handle divorce cases in Indonesia are the Religious Court¹⁴ for Muslims, and the Civil District Court¹⁵ for non-Muslims. The authority to handle divorce cases for religious courts arises under Article 49 of Law No. 7 of 1989 on Religious Courts (hereinafter referred to as UUPA). This article grants the authority to adjudicate civil cases in the areas of: (a) marriage; (b) inheritance, wills and gifts made under Islamic law; and (c) waqf and alms. Article 49 UUPA No. 7 of 1989 has now been amended by the issuance of Law no. 3 of 2006 (First Amendment /UUPA-P1) with additional judicial authority related to sharia economic dispute resolution. However, as seen from its history, the existence of the Religious Courts has long been recognized through its initial establishment by the Dutch government with Staatblad (LN) 1882 No. 152 jo Staatblad 1937 for Religious Courts in Java and Madura, Staatblad 1937 No. 638 and 639 in South Kalimantan. Then, following Indonesia's independence, the government established a Religious Court for areas other than Java-Madura and South Kalimantan with Government Regulation No. 45 of 1957. However, these regulations do not stipulate procedural law regarding examination, adjudication, and settlement of cases. Thus, the Religious Court Bench takes the

¹⁴ Law No. 7 of 1989 on Religious Courts.

¹⁵ Law No. 2 of 1986 on General Courts.

essence of procedural law from *fiqh* literature, with varying applications from one Religious Court to another.¹⁶

The Civil District Court also has the jurisdiction to hear divorce cases for non-Muslim parties. The basis for the formation of the Civil Court organization refers to the provisions of Law No. 2 of 1986 regarding Civil Courts, jo. Law No. 8 of 2004 on Amendments to Law No. 2 of 1986 on General Courts.¹⁷

Based on the provisions of Article 54 of the UUPA, the procedural law that applies to courts within the Religious Courts is the same as the civil procedural law that applies in the Civil Court, in addition to special procedural law, which is regulated separately, especially in adjudicating marital disputes.

Because the provisions of Article 54 of the UUPA enforce the applicable procedural law within the General Court, the products of legislation include; *Het Herzien Indlanshe Reglement* (HIR) for Java-Madura and *Rechtreglement voor de Buitengewesten* (R.Bg) for outside Java-Madura, *Reglement op de Burgerlijke Rechtsvordering* (BRv) Procedural Law of *Raad van Justitie and Residentie Gerecht* for European groups, *Burgerlijke Wet Boek* (KUHP) Book IV on Evidence, *Wetboek van Koophande* (Wvk) KUHD, Law No. 20 of 1947 on the Deuteronomy Court in Java-Madura, Law no. 14 of 1970 on Basic Provisions of Judicial Power, which was amended by Law No. 35 of 1999 which was later replaced by Law no. 4 of 2004 on Judicial Power and subsequently replaced by Law no. 48 of 2009, Law no. 14 of 1985 on the Supreme Court which was later amended by Law no. 5 of 2004 and subsequently a second amendment was made by Law No. 3 of 2009, and Law no. 2 of 1986 on General Courts, which as a whole applies to the General Courts, also applies to the Religious Courts, except for matters that have been specifically regulated in the UUPA which includes some procedures for examining disputes in the field of marriage.¹⁸

Special procedural law regarding hearing marriage disputes (divorce) can be found in the laws and regulations, including; (1) UUPA No. 7 of 1989 as amended by Law no. 3 of 2006 and the second amendment to Law no. 50 of 2009; (2) Law no. 1 of 1974 on Marriage; (3) PP No. 9 of 1975 on the Rules for Implementing the Marriage Law; (4) Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law (KHI); (5)

¹⁶ Abdul Manan, Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama (Kencana, 2005) 6–9.

¹⁷ Aris Bintania, Hukum Acara Peradilan Agama Dalam Kerangka Fiqh Al-Qadha (Rajawali Pers, 2013) 1.

¹⁸ Ibid 2.

Regulation of the Minister of Religion No. 30 of 2005 on Guardian Judges; (6) PERMA No. 1 of 2008 on Mediation Procedures in Courts, and (7) other regulations relating to marriage disputes, the book of Islamic *fiqh* as a source of legal discovery.¹⁹

Among the cases unique to marriage disputes are: Divorce, Divorce, *Li'an* (the denial of paternity), *Khul* (mutual divorce), Marriage Cancellation, Polygamy Permit, Determination of *Adhol* Guardians, and disputes over joint assets in marriage.²⁰ Furthermore, this research seeks to explain why the settlement of divorce cases is dominated by *verstek* judgments at the Makassar Religious Court.

The following data on the handling of divorce cases in the Religious Court of Makassar provides an overview of divorce cases received and decided in a *verstek* judgment by the Makassar Religious Court since 2016-2018.

Table 1. Recapitulation of Divorce Cases Received by the Religious Court of Makassar in 2016-2018

No	Year	Repudiation Divorce	Judicial Divorce	Number
1	2016	623	1.800	2.423
2	2017	628	1.729	2.357
3	2018	716	1.992	2.708
Total		1.967	5.521	7.488

Data Source: The Religious Court of Makassar

In principle, the marriage law in Indonesia complicates divorce petitions.²¹ Divorce is not only the right of the husband, but also the right of the wife through the petition of judicial divorce. However, despite the convoluted process of divorce petitions under the law of marriage, there has been a large number of divorce cases, especially judicial divorce. Table 1 presents that from 2016 to 2018, the petition of divorce cases (both for repudiation/thalaq, and judicial divorce) in the Religious Court of Makassar has increased in the last three years.

Table 2. Recapitulation of Divorce Case Decided by *Verstek* in the Religious Court of Makassar in 2016-2018

No	Year	Repudiation Divorce	Judicial Divorce	<i>Verstek</i> Judgment
1	2016	455	1.473	1.542
2	2017	529	1.478	1.606
3	2018	554	1.582	1.820
Total		1.538	4.533	4.967

Data Source: The Religious Court of Makassar

¹⁹ Ibid 3.

²⁰ Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama* (Pustaka Pelajar 1996). 201–203.

²¹ Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia* (Kencana 2017). 8.

Table 2 shows that the divorce cases before the Religious Court of Makassar in the last three years (2016-2018) were predominantly settled with *verstek* judgments by judges, the same as those in the previous years.²²

This indication deserves serious attention, although the status of *verstek* judgment on divorce cases are considered legal and constitutional. The judges shall be very careful in handling divorce cases because the judgment changes the old state (husband and wife) to a new state (not husband and wife anymore). In other words, it will end the legal marital relationship between a wife and husband, and will have a major impact on children, property and other family relationships. Thus, the principle of prudence of judges in making *verstek* judgments must only be seen as an emergency exit. The frequent use of *verstek* judgments in divorce cases gave birth to a tendency to simplify the process of divorce petition in the religious court without incurring any consequences to the absent party. In fact, there has been a widely believed assumption that divorce proceedings are nothing more than purchasing a legal letter.

2. Factors Affecting the Predominance of *Verstek* Judgments in Divorce Cases

The legal system perspective considers the process of handling cases, including divorce cases in court, as a process far from a neutral process, not occurring in a vacuum, but rather involving many influential factors, including structural components, substance and culture, especially the parties involved in the judicial process.

Structural components consists of institutions created by the legal system with various functions in order to support the operation of said system. This component is established to see how the legal system provides services to the utilization of legal materials on a regular basis. The substantive component serves as the output of the legal system, in the form of regulations and judgments that are used by both regulators and those they regulate. The culture component consists of values and attitudes that influence the operation of law, which Friedman refers to as the legal culture which serves as a bridge that connects legal regulations with the legal behavior of all citizens in the community.

This study has identified and analyzed the various factors involved in the dominance of the *verstek* judgments in divorce cases in religious courts, which are classified as follows:

²² An interview with Muh Shafar, 'Young Registrar of the Religious Court of Makassar' (March, 27, 2019).

a. Substance/Legal Arrangement Components

The substance of the legal arrangement regarding a Defendant's absence from the case examination in court (*verstek*), as stipulated in the updated Indonesian Reglemen (HIR) Article 125 paragraph (1)/Article 149 paragraph (1) RBg which states:

“If the defendant, although summoned legally, does not come on the specified day, and does not order another person to act as his representative, then the claim is accepted by a judgment without attendance (*verstek*), unless it is clear to the district court that the claim is against the right or not based on reason.”²³

This article indicates that the *verstek* judgment is required to meet several basic provisions, namely:

- a. The Defendant did not appear and did not send his/her authorized representative in the trial until the case was decided by the court;
- b. The Defendant was summoned formally and properly;
- c. The defendant's absence was not due to any legitimate cause or obstacle;
- d. Case examination took place *ex parte*, because the defendant did not appear;
- e. The plaintiff's claim does not conflict with the plaintiff's legal rights and has legal grounds.²⁴

The existence of the *verstek* regulation and judgment aims to punish Defendants who deliberately ignore the court summons. This absence is an indication that the Defendant acknowledges the arguments in the Plaintiff's claim, and therefore is seen as a pure and unanimous acknowledgment as intended by Article 174 HIR/311 R.Bg and 1925 KUHPdt.

The provisions for *verstek* regulation and the existence of punishment in the form of a *verstek* judgment, in fact, do not compel the parties (Defendant/Respondent) to appear at trial. On the contrary, they deliberately and consciously make use of *verstek* provisions and institutionalization as a way to facilitate their desire and purpose for divorced, using various reasons for absence.

Verstek regulation should not only be based and emphasized on the Defendant's absence in fulfilling the voluntary summons, but also be based on a firm arrangement to encourage the parties to obey the law and procedural order. This avoids the process of investigating the settlement of cases arbitrarily. Therefore, the *verstek* arrangement in the settlement of divorce cases needs to be strictly regulated, especially regarding the

²³ Herzien Inlandsch Reglement (HIR) Article 125.

²⁴ Abdurrachman, Hukum Acara Perdata, (Universitas Trisakti 2005), 64.

criteria and limitations, as well as the reasons for the absence of the defendant, which allows the application of *verstek* examination in divorce cases.

b. Legal Structural Components

Civil Procedure Law recognizes the principle that “judges are passive.” That is, the judge only has the authority to rule to the extent that is stated and demanded by the parties in case. The judge may not grant more than the parties’ demands. Judges are limited to receiving and examining cases as long as the matters submitted by the plaintiff and defendant are concerned. Therefore, the function and role of judges in civil case proceedings are limited to fact finding, and these facts are discovered in accordance with the reasons and facts submitted by the parties during the trial process.

The paradigm of passive judges and strong adherence to procedures is still prevalent, including in the settlement of divorce cases. Thus, the trend of verdicts in divorce cases seems to have become routine, monotonous, quick and simple judgments, and generally grants the lawsuit/petition of the plaintiff/petitioner.

Based on the historical record of HIR and RBg, two legal references were designed for Indonesians who firmly hold the principles of probative facts.²⁵ HIR and RBg, which are currently used as basic guidelines in civil procedural law, adhere to the principle that the court is assigned to find the real truth in the cases at hand. Busmann explained that in civil proceedings, the court is not only bound by the half-assed formal truth or the distortion of the facts from one of the parties, but also the facts found by the court within the limits determined by the litigants.²⁶ Wichers also recommended that courts examine civil cases based on procedural law, which ensures that the best possible material truth is achieved. The obligation to speak truthfully is also enforced by sanctions, for example through the threat of paying court fees, paying compensation, or and adverse judgment if the obligation to speak truth is violated.²⁷

It is timely to reexamining the paradigm of the passivity of judges and court institutions in the examination of civil cases. Judges and court institutions should act more actively in order to produce fair judgments. The activeness and prudence of judges are also becoming factors that play a role in resolving divorce cases decided

²⁵ Mudakir Iskandar Syah, *Hukum dan Keadilan*, (Grafindo Utama, 1985). 68.

²⁶ R Soepomo, *Hukum Acara Perdata Pengadilan Negeri*, (Pradnya Paramita, 2004). 12.

²⁷ *Ibid* 14.

by *verstek*. Even though the defendant has been summoned and decides to be absent from the court, it does not necessarily mean that the case must be decided through *verstek* verdict. Judges need to exercise caution as a way to avoid unlawful and improper summons based on procedural law. Judges are also required to actively explore the reasons for the defendant's failure to appear. This attempt is necessary to prevent the verdict of *verstek* triggered by irregularities committed by the litigants.²⁸

Another factor in the component of the legal structure affecting the predominance of *verstek* judgments in divorce case is the summoning of the defendant by a bailiff /acting bailiff.²⁹ As the forefront of the judiciary, the bailiff/acting bailiff shall be held responsible in carrying out his duties, one of which is summoning the litigants.³⁰ Summons according to civil procedural law are conveyed formally (officially) and properly (properly) to the parties involved in a case in court in order to carry out the relief requested and ordered by the panel of judges or court.³¹

It is expected that the bailiff/acting bailiff deliver the summons with high integrity by building good communication and avoid preaching or commanding the respondents. However, in practice, some bailiffs/acting bailiffs may act inconsistently with their duties in the service of summons on the parties, especially to the defendant. Even worse, sometimes they even take sides and command the defendant by saying "if you want to quickly proceed and receive a speedy divorce verdict, you don't need to attend the trial, just sign the summons, and I will deliver the verdict when it is decided." Most defendants agree to this practice, who, from the beginning, wanted to avoid complicated legal procedures for the sake of having a speedy divorce process and a judgment.³²

c. Components of Culture and Legal Obedience of The Litigants

Undoubtedly or not, the predominant number of divorce cases examined and decided through *verstek* judgments due to the absence of the defendants has had a negative impact on the Indonesians in seeing the nature of marriage and the meaning of divorce itself. As one of the sub-systems in the legal system as stated by Friedman, the

²⁸ An interview with Nurmaali, 'Judge of the Religious Court of Sengkang' (March 25, 2019).

²⁹ Bailiffs/ Acting Bailiffs have an important role in the structure of the trial, namely, to assist the smooth operation of court proceedings and to act are under the coordination of the Registrar.

³⁰ Law No. 7 of 1989 on Religious Courts Article 38.

³¹ Herzien Inlandsch Reglement (HIR) Articles 338, 390 (1), 121 (1).

³² An interview with Rahman Zain, 'A Defendant in a Divorce Case' (April 22, 2019).

legal culture or social culture plays a very important role. Legal culture manifests the current social mindset and social forces that determine how the law is obeyed, avoided, or even abused. As explained in the previous discussion, the reluctance of most people (justice seekers) in divorce cases to attend trials is clear evidence of disobedience of the law itself.³³

The research data shows the predominant number of *verstek* verdict on divorce cases in the Religious Court of Makassar as compared to other types of judgments for legal cases.³⁴ This fact is reinforced by the statement of the young registrar of law at the Religious Court of Makassar that most of the defendants/respondents of divorce cases in the Religious Court of Makassar do not attend the case as a way to allow the judges of the religious court decide in *verstek*.³⁵ The absence of the respondent/defendant at trial even though he had been summoned properly and legally, was mostly due to the agreement between the two parties (husband and wife) not to attend the trial.³⁶ In fact, it is not uncommon for the defendant to direct, finance all processes until the case is decided.³⁷

Another reason for the absence of the defendants was the deliberate factor of avoiding existing procedures with the aim that the trial could be completed quickly. In fact, generally, the *verstek* judgment for divorce cases could be completed by the Religious Court only in two trials.³⁸ A factor triggered by the defendant's lack of understanding in the proceedings also complicates the matter. For example, initially, the defendant intended to punish his wife by not wanting to attend the trial, even though he had been summoned legally and properly. This act eventually resulted in a *verstek* judgment. Nonetheless, in practice, this factor was not frequently found in many divorce cases.

Another factor related to the defendant's absence from the divorce trial was the plaintiff's coercion to the defendant not to attend the trial³⁹ so that the judge decided the case through the *verstek* procedure, even though in practice this factor

³³ Abdul Jamil, 'Konstruksi Hukum Acara Peradilan Agama Menuju Terwujudnya Putusan yang Adil' (2009) 3 (6) Jurnal Media Hukum, 8.

³⁴ Also see data on table 2 regarding Recapitulation of Divorce Case Decided by *Verstek* in the Religious Court of Makassar in 2016-2018.

³⁵ An interview with Shafar (n 22).

³⁶ Ibid.

³⁷ An interview with Alimuddin M, 'A Judge of The Religious Court of Makassar' (March 21, 2019).

³⁸ An interview with Abubakar, 'An interview with Abubakar, 'Petitioner's Witness in Divorce Case' (April, 10, 2019).

³⁹ An interview with Zain (n 32).

was very rare. The factors of shame, laziness, or an attempt to speed up the divorce process are the most frequently occurring reasons in religious courts and in society. In a judicial divorce case, when the husband is never present at the trial, the wife finds it difficult to sue for the living for herself and for the support of her child. However, not all the wives who commence for the divorce, understand these rights.⁴⁰

Commonly, divorce cases are decided through *verstek* judgment and it has become the predominant type of judgment for divorce cases, thus giving rise to a social trend to simplify divorcing process in a religious court, since it does not give any consequences to the absent party. These factors are inversely proportionate to the philosophy of the existence of a *verstek* regulation. In procedural law, the main objective of *verstek* regulation is to encourage parties to obey procedural rules, as a way to avoid the process of hearing divorce cases arbitrarily.⁴¹

Therefore, this condition highlights the need to build a law-abiding culture and cultural awareness to the law in the community. The greater the community awareness and obedience to the law, the greater the legal culture, possibly changing the people's mindset regarding the existing laws. In simple terms, the level of public compliance with the law is one indicator of the functioning of the law. Hence, in the future, there needs to be legal awareness for the public regarding the legal arrangements for divorce and the settlement mechanism in the Religious Courts. Such legal characteristics in Roscoe Pound's legal concept are known as "law as a tool of social engineering," or in Mochtar Kusumaatmadja's terminology is known as the law which functions as a tool for community reform.

E. Conclusion

The following factors are known to influence the handling of divorce cases that are decided by *verstek* in religious courts. First, the substance/legal arrangement component of the *verstek* regulation in the settlement of existing divorces that has not been concretely regulated, especially regarding certain criteria and limitations for *verstek* judgment, as well as reasons for the defendants' absence that the meet the criteria for *verstek* examination in divorce cases. Second, the component of the legal structure, which includes the passive judge paradigm and strong adherence to procedures, which are still prevalent, including

⁴⁰ An interview with Sri Nur, 'The Plaintiff in Divorce Case' (April, 24, 2019).

⁴¹ Sunarto, *Peran Aktif Hakim dalam Perkara Perdata* (Kencana 2014). 145.

the adjudication of divorce cases, as well as the factor of summoning the parties by bailiffs. Third, the cultural component, which includes cultural awareness of the nature of marriage and the meaning of divorce, as well as the law in society regarding the rules and mechanisms for settling divorce in court. These three components have proven to be the most influential factors that lead to the predominant *verstek* judgments on divorce cases in religious courts.

References

Books

- Abdurrachman, Hukum Acara Perdata (Universitas Trisakti, 2005).
- Anshary MK HM, Hukum Acara Perdata Peradilan Agama dan Mahkamah Syar'iyah, (CV Mandar Maju, 2017).
- Arto M, Praktek Perkara Perdata pada Pengadilan Agama (Pustaka Pelajar, 1996).
- Bintania A, Hukum Acara Peradilan Agama dalam Kerangka Fiqh Al-Qadha (Rajawali Pers, 2013).
- Kusumaatmadja M, Konsep-Konsep Hukum dalam Pembangunan (Alumni, 2013).
- Lubis S, Hukum Acara Perdata Peradilan Agama di Indonesia (Kencana dan Badan Penerbit Fakultas Hukum Universitas Indonesia, 2018).
- M. Friedman L, The Legal System: A Sosial Science Prespektive (Russel Sage Fondation, 1975).
- Manan A, Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama (Kencana 2005).
- _____, Aneka Masalah Hukum Perdata Islam di Indonesia (Kencana, 2017).
- Sarwono, Hukum Acara Perdata Teori dan Praktik (Sinar Grafika, 2011).
- Soepomo R, Hukum Acara Perdata Pengadilan Negeri (Pradnya Paramita, 2004).
- Sunarto, Peran Aktif Hakim dalam Perkara Perdata (Kencana, 2014).
- Syah MI, Hukum dan Keadilan (Grafindo Utama, 1985).
- Syamsudin, M., Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progresif (First Edition, Kencana, 2012).
- Tresna R, Komentar HIR (Pradnya Paramita, 1984).

Journals

- Andaryuni L, 'Putusan Verstek dalam Cerai Gugat Karena Pelanggaran Taklik Talak di Pengadilan Agama Samarinda' (2017) 16 (1), Jurnal Istinbath Jurnal of Islamic Law.
- Jamil A, 'Konstruksi Hukum Acara Peradilan Agama Menuju Terwujudnya Putusan yang Adil' (2009) 3 (6) Jurnal Media Hukum.
- Rahmawati E and Rachmainy L, 'Penjatuhan Putusan Verstek dalam Praktik di Pengadilan Agama dan Pengadilan Negeri Bandung dalam Kajian Hukum Acara Perdata Positif di Indonesia' (2017) 2(2) ADHAPER: Jurnal Hukum Acara Perdata, 219.
- Sururie RW, 'Implementasi Mediasi dalam Sistem Peradilan Agama' (2012) 12(2). Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan.
- Susylawati E and Hasan M, 'Putusan Verstek pada Perkara Perceraian di Pengadilan Agama Pamekasan' (2011) 8 (1) NUANSA: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam.

Syamsudin M, 'Faktor-Faktor Sosiolegal yang Menentukan dalam Penanganan Perkara Korupsi di Pengadilan' (2010) 17(3) Jurnal Hukum IUS QUIA IUSTUM.

Yuliartha IG and others, 'The Meaning of Audi Et Alteram Partem Principle In Verstek Verdict of Civil Law' (2018) 69(3) Journal of Law, Policy and Globalization.

Legislations

Herzien Inlandsch Reglement (HIR)

Law No. 2 of 1986 on General Courts

Law No. 7 of 1989 on Religious Courts

Online

Asse A, 'Putusan Verstek Mendominasi Putusan Perceraian Pengadilan Agama (Analisis Khusus Pada Perkara Perceraian)' accessed from <<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/putusan-verstek-mendominasi-putusan-perceraian-pengadilan-agama-oleh-drs-h-ambo-asse-sh-mh-268>> on August, 13, 2019.