

### The Verstek Law Implementation In Religious Courts In South Sumatera

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**Keywords:**

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**Abstract:** *Verstek decisions are decisions that often occur in courts, especially in the Religious Courts, so the authors were interested in conducting them by using the formulation of the problem: how to apply verstek at Sekayu Religious Courts, South Sumatra. Then, what are the obstacles in implementing verstek at Sekayu Religious Court, South Sumatra. Empirical research was used as the method of research. Research result; the application of verstek at Sekayu Religious Court of South Sumatra has been carried out in accordance with applicable law. Meanwhile, the obstacles faced by the Sekayu Religious Court of South Sumatra in resolving the verstek case were; the number of divorce cases was quite high from year to year; the time required in handling takes a long time, from the beginning of registration until the decision was read out; the down-payment fee for the verstek case had been determined by the Religious Court based on the radius of residence of the applicant/plaintiff and the respondent/defendant, not adjusted to the financial capacity of the parties; and witness constraints, sometimes the parties present witnesses who had never seen or heard of the dispute, but indeed the husband and wife had been separated for a long time.*

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### Introduction

Indonesia as a rule of law country, every policy/decision issued by the government and law enforcers (judges) in Indonesia must be based on law. Law is used as a basic policy for state administrators in determining the direction, form, and content of legal decisions to be taken (Rahmadhony et al., 2021). Likewise, the judge in giving the *verstek* decision, because the *verstek* decision is a decision that is passed if the defendant is not present or does not also represent his attorney to appear before him even though he has been summoned properly. If the defendant does not file a *verzet* (resistance) legal remedy against the *verstek* decision, then the decision is considered as a

decision that has permanent legal force. However, the *verstek* decision is sometimes considered by some people to be unfair to the defendant because the decision was handed down without his presence. Meanwhile, cases cannot be hung without a definite end or must be resolved immediately. Even so, it does not mean that the door has been closed for the defendant (Harahap, 2015, p. 29). However, if a person who arrives on the first trial day is not present on the following trial day, then he will not receive a *verstek* decision, but the case will be examined in the usual way as a *contra-dictoir* case (*op tegenspraak*). (Syahrani, 2000, p. 49).

The application of *verstek* often occurs in the Religious Courts. It is because the Religious Court is a court for people who are Muslims. Like other courts in Indonesia, the Religious Courts also have a simple, fast and low-cost principle. Article 1 paragraph (1) of Law Number 50 of 2009 concerning Religious Courts explains that religious courts are courts for people who are Muslim. The absolute authority of the religious court is the authority in terms of the types of cases that can be heard at the religious court (Rasyid, 2013, p. 27) no exception in the Religious Courts.

In the practice of events within the Religious Courts regarding the *verstek* decision, there are still differences of opinion among legal practitioners. Some of them said that in a divorce case if the defendant was not present at the first and second hearings even though he had been summoned officially and properly, then the case could be decided *verstek* without being proven first. Others 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. (Darmawati & Zainuddin, 2015).

In this regard, the judges of the Religious Courts must be careful in passing *verstek* decisions in cases, especially 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 in the session that has been determined, 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 (Darmawati & Zainuddin, 2015). Therefore, the Panel of Judges, in giving decisions, of course, must really create legal certainty and be fair and provide benefits, so that in this case they must really know the real case and the legal regulations that will be applied, both the legal regulations written in the laws and regulations as well as unwritten legal regulations or customary law (Sanyoto, 2009).

The Religious Court is a legal institution for Muslims in Indonesia to resolve their problems. As the aim of the establishment of the Religious Courts is as an institution with an effort to realize a justice system that is respected, authoritative, quality, and able to go hand in hand with the environment of other judicial bodies (the meaning is that the intercession of religious courts must be carried out so that in the eyes of other courts it can

be equal from the aspect of authority and authority. ) realizing the Religious Court system as the executor of judicial power capable of realizing justice and truth and at the same time being one of the important forums for realizing Islam as rahmatan lil alamin. "An effort to enlarge the role of the Religious Courts system, apart from in the judicial sector as well as in the non-judicial sector by providing legal considerations, advice and opinions to state administrators at the central and regional levels. Such conditions were very difficult for the Religious Courts to function as an independent and autonomous judiciary power institution on a par with other courts, so demands for intercession are a must."(Manan, 2017, p. 7).

For example, the *verstek* case that was granted at the Sekayu Religious Court in South Sumatra, the case Number 0299/Pdt.G/2021/PA.Sky. This case is included in the field of marriage, then in accordance with the provisions of Article 89 paragraph (1) of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009 concerning Religious Courts, then all costs incurred in this case are borne by the Plaintiff; bearing in mind all the provisions of the applicable laws and regulations and syara' law relating to this case. The judge's decision states that the defendant who has been summoned officially and should appear before the trial, is not present; granted the plaintiff's lawsuit with *verstek*; dropped one *ba'in sughra* divorce of the defendant (defendant) against the plaintiff (plaintiff). This is the same as in the Bandung Religious Court, where many cases related to divorce were resolved with a *verstek* decision. Because the panel of judges who examined gave legal considerations, one of which was because the plaintiff's lawsuit was quite reasonable and not against the law, then in accordance with the provisions of Article 126 HIR it should be granted with *verstek* (Ata, 2016). Based on the application of *verstek* in the Religious Courts in the case above. So this study aims to find out how the condition of the application of *verstek* in the religious courts in Indonesia, especially in the Sekayu religious court, South Sumatra.

The results of the interim research explain that in imposing a *verstek* decision at the Sekayu Religious Court it still raises problems such as the defendant who does not know that he is being sued, even though the *verstek* decision at the Sekayu Religious Court in South Sumatra is in accordance with the rules. Then there are still obstacles faced by the Sekayu Religious Court in settling cases at the trial of the *verstek* case, namely; First; This is because divorce cases in the Sekayu Religious Court are quite high. Second; the time required is quite long. Third; the down payment fee for the case fee for the *verstek* case has been determined by the Religious Court based on the radius of residence of the applicant/plaintiff and the respondent/defendant, not according to the financial capabilities of the parties; and fourth; the problem of witnesses, sometimes the parties present witnesses who have never seen or heard of a dispute, but indeed the husband and wife have been separated for a long time.

## Research Methods

Empirical research was used as the research method. This research is a type of sociological legal research and can also be called field research, which examines the legal provisions that apply and what happens in reality in society. (Dewi, 2015). Or in other words, It is a research carried out on the actual situation or real situation that occurs in society with the intention of knowing and finding the facts and data needed, after the required data is collected then leads to problem identification which ultimately leads to problem solving. (Waluyo, 2012). According to Abdulkadir, the empirical approach is the legal research approach regarding the application of legal provisions to any particular legal event that occurs in society (Muhammad, 2004). Thus, Descriptive qualitative research data was used, because it was based on primary and secondary data (Henky Fernando, Irwan Abdullah, 2022).

After obtaining the primary data, then the data was selected, compiled and analyzed descriptively qualitatively, the analysis was done without using statistical formulas. The data was then translated logically and systematically, after that, the researchers analyzed so that conclusions and answers were expected to be obtained in accordance with the objectives and research problems. Stages of Qualitative Content Analysis, the process of content analysis research with a qualitative approach had several stages, namely: First, the description or orientation stage, where the researcher described what was seen, heard, felt, and asked. The second stage, the reduction stage, at this stage the researcher reduced all the information that has been obtained in the first stage to focus on a particular problem, the data that needed to be sorted was data that was interesting, important, useful and new. The third stage was the selection stage, at this stage the researcher outlines the focus that had been set in more detail. In this third stage, after the researcher conducted an in-depth analysis of the data and information obtained, the researcher could find themes by constructing the data obtained into new knowledge, hypotheses or knowledge. (Arikunto, 2011).

## Discussion and Results

### *Verstek's* verdict in the Religious Courts

There were several conditions for a *verstek* decision to be imposed by a judge in deciding a case, including: first; the defendant is not present; If the defendant had been summoned properly, he or his legal representative does not appear, then the case would be decided *verstek*, the plaintiff was deemed to have won and the defendant was deemed to have lost. Second; decision out of attendance; as previously explained that the *verstek* decision fell as a result of the defendant's absence at the predetermined trial (Darmawati & Zainuddin, 2015). Third; the court summons made by the bailiff were not accepted by the defendant at all. This might be due to the fact that the defendant's residence did not match the address listed in the plaintiff's lawsuit. So, there was a possibility that until the case was finished the defendant did not know about it at all; and fourth; the defendant/respondent considered that the case could not be decided without the presence of all parties (Rusyadi, 2020).

The *verstek* decision that granted the lawsuit must comply with the provisions of Article 125 HIR paragraph (1) and Article 149 RBg paragraph (1), the defendant or his representative was not present at the hearing that has been determined (D. N. K. Putri & Izzuddin, 2022; S. A. Putri & Nugraha, 2020; Rusydi, 2020). Determination of the day of the trial became the authority of the panel of judges and was conveyed to the defendant through *relaas* summons and must be declared appropriate according to law. In addition, the petition or petition of lawsuit did not violate the provisions of laws and regulations and was supported by sufficient evidence. All of these conditions were examined, then a *verstek* decision was issued (Rusyadi, 2020).

In the event that a *verstek* decision was rendered in the absence of the defendant after being duly summoned, then, all events argued by the plaintiff must be considered true. In this case it was enough for the judge to examine whether the subpoena has been carried out officially and properly, if it has been carried out officially and properly, then a decision could be made without the presence of the defendant, and the argument for the plaintiff did not need to be proven again. (Kasus et al., 2021).

The advantages of a decision through a *verstek* case for the court of this decision decided in a short period of time and did not drag on resolve the *verstek* decision case. This was based on the principle of Justice in Indonesia, which resolved cases simply, quickly and at low cost. This advantage was also obtained by the plaintiff because if the plaintiff filed a claim that according to law was valid and did not violate the rights of the the plaintiff's claim would be accepted/granted by the judge, and the judge would considering the plaintiff's arguments by looking at the statements of witnesses who presented by the plaintiff (Ali & Sumanto, 2021).

Zaenal Aripin explained that the existence of the Religious Courts was a *conditio sine qua non*, that was, something that was absolute for Indonesian Muslims. As long as there were Muslims, as long as there are religious courts, even though at first, they were still in a simple form and pattern and had different names. Therefore, in the dynamics of Indonesian history, the existence of the Religious Courts was not something new. Even long before Indonesia's independence, since the time of the archipelago's Islamic kingdoms, the Religious Courts had carried out their functions which were not only limited to civil cases, but also criminal cases. (Aripin, 2012).

**Table 1.** The Application of *Verstek* at Sekayu Religious Court in 2016-2020

No	Year	Number of <i>Verstek</i> Cases
1	2016	694
2	2017	822
3	2018	863
4	2019	640
5	2020	523

(Source: Documentation of Sekayu Religious Court, 2021).

Based on Table 1 above, it was shown that the number of *verstek* cases in 2016 amounted to 694 cases. In 2017, there were 822 and in 2018 each amounted to 863 cases, in 2019 there were 640 cases, and in 2020 it was increased to 523 cases. As an example of decision Number 0299/Pdt.G/2016/PA.Sky. On the day of the trial determined by the plaintiff to have personally attended the trial while the defendant was never present nor did he send another person as his attorney to attend the trial. Even though the defendant had been officially and properly summoned through Relation Call Number 0299/Pdt.G/2021PA.Sky, it turned out that he was not present/not present without a valid reason, then the examination was carried out without the presence of the Defendant.

The judge decided to declare that the defendant, who had been summoned officially and deserved to appear before the court, was not present at the decision case Number 0299 Pdt.G/2021PA.Sky tried to;

1. Declare that the Defendant who has been summoned officially and should appear before the court is not present;
2. Grante the plaintiff's lawsuit in a *verstek* manner;
3. Dropp the bain sughra divorce of the defendant against the plaintiff;
4. Charge the plaintiff to pay the costs of this case in the amount of Rp. 930,000 (nine hundred and thirty thousand rupiah);

The analysis according to the theory of application of law, the *verstek* decision occurred because of the provisions in Article 125 paragraph (1) HIR or Article 149 paragraph (1) RBg, which stated that if the defendant, even though other appears as his representative, then the claim was accepted by decision without being present (*verstek*), unless it is clear to the district court that the claim is against rights or without reason. If you look at the provisions of the article, it seems simple, that is, on the day of the hearing that has been determined, if the defendant who had been summoned legally and properly did not appear, then the lawsuit was granted, except if the lawsuit was against rights and had no reason.

The full text of Article 125 HIR/149 RBg was as follows:

1. If the defendant did not appear on the day the case was to be examined, in addition he did not order another person to appear as his representative, even though he had been duly summoned, unless it was clear to the district court that the claim was against his rights or was unreasonable.
2. However, if the defendant in his letter of response referred to in Article 121 HIR/145 RBg raised an exception (denial) that the district court had no power to examine his case, then even if he himself or his representative did not appear, the district court was obliged to give a decision regarding the exception then, after hearing the person who sued it, only if the exception was not justified, then the district court would decide the main point of the case.
3. If the claim was accepted (legalized), then on the order of the chairperson the decision was notified to the person who was

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defeated and it was also explained to him that he had the right to challenge the decision of not appearing before the court panel at the time and in the manner determined by Article 129 HIR/153 RBg.

4. The court clerk wrote under the absentee decision who had been ordered to carry out the said work and what the person explained about it, either by letter or in writing.

The *verstek* decision was a judge's statement that a defendant who had been duly summoned was not present, while according to the procedural law he must be present. A person who came on the first trial day, then being absent on the following trial day, would not receive a *verstek* decision, but the case would be examined in the usual way as a *contra-dictoir* case (*op tegenspraak*). (Supomo, 2018, p. 44).

This was in line with Muhammad Hira Hidayat as the judge at Sekayu Religious Court in South Sumatra. He explained that “the panel of judges at the Sekayu Religious Court in South Sumatra in deciding the case followed the first opinion with a starting point by interpreting the provisions of Article 125 HIR/149 RBg *acontrario*. In practice, it seemed that what happens was not as simple as the article says, even the provisions of Article 126 HIR or Article 150 RBg itself determine. In the case mentioned in the two articles above, the district court, before passing a decision, may order that the party who did not appear be summoned once more to appear before another trial day, which the chairperson of the trial would notify the party who came, for the party who came, notification was the same as a call”. In practice, if the defendant was not present, he was always legally and properly summoned once or even twice more. The practice that had developed so far was that summons to the defendant would be made two or even three times, even though statutory provisions did not require this. This cannot be separated from the precautionary principle in applying procedural law so as not to harm justice seekers.

Judges as formulators and diggers of legal values that lived in society must plunge into the midst of society to know, feel and be able to explore the feelings of law and a sense of justice that live in society, so in dealing with a case or cases that fell under a provision the law, and it turned out that the judge had examined the provisions of the law, it turned out that it was not in line with the values of truth, justice, and ethical morality, the judge could set aside the provisions of the law, and made a decision that was in accordance with legal values and sense of justice in society.

Thus, the judge in trying a case submitted to him must know clearly about the facts and events that exist in the case. Therefore, the panel of judges before making their decision must first find the facts and events revealed by the plaintiff and the defendant, as well as the evidence presented by the parties in the trial. With regard to this latter matter, the panel of judges must evaluate and qualify these events and facts so that concrete events/facts are found. After the

Panel of Judges found events and facts objectively, the Panel of Judges tried to find the right and accurate law for the events that occurred. If the legal bases put forward by the parties to the case are incomplete, then the panel of judges, because of their position, could add/complement the legal bases as long as they did not harm the parties to the case.

The panel of judges had tried to advise the Plaintiff to discourage divorce from the Defendant, but to no avail, and because the Defendant had never attended court, the Mediation as stipulated in the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 could not be carried out in order to prove the arguments of the plaintiff's claim. The arguments for the lawsuit filed by the plaintiff must be legal and reasoned. To prove the arguments, the plaintiff must submit 2 (two) witnesses at the trial. The two witnesses presented by the plaintiff at trial must be adults and have been sworn in, so they met the formal requirements as stipulated in Article 172 paragraph 1 Number 4 Rbg. From the statements of the two plaintiff's witnesses regarding the posita Numbers 4 and 5, these were facts that had been heard by themselves and were relevant to the arguments that must be proven by the plaintiff, therefore the witness' statement had met the material requirements as stipulated in Article 308 Rbg, then the witness' statement had strength of evidence and admissibility as evidence. The statements of witness 1 and witness 2 of the plaintiff agreed and mutually reinforced one another, therefore the statements of the two witnesses fulfill Article 308 and Article 309 Rbg.

Proof by the plaintiff was in the form of witnesses from the family or people closest to the wife. To prove the arguments put forward by the plaintiff, at least 2 (two) witnesses must be present at the trial. The witness presented by the plaintiff must be an adult and have been sworn in, so that he meets the formal requirements as stipulated in Article 172 paragraph (1) number 4 Rbg. Testimony in the divorce process itself was different from testimony in other procedural proceedings. Witnesses in the divorce process applied specifically, witnesses were the closest family, where witnesses were absolute and mandatory for the plaintiff. This was intended to avoid the plaintiff's engineering arguments. Other evidence was also from the summons conveyed by the bailiff to the defendant whether it was valid and appropriate according to law to be submitted to the panel of judges who would examine the case, with evidence that must be recorded in the minutes that had been submitted through chief village.

Whereas from the plaintiff's statement and also corroborated by the testimony of the witnesses at the trial, the panel of judges found the fact that it was no longer possible for the plaintiff and the defendant to be united as husband and wife because the plaintiff and the defendant were no longer harmonious, and frequent disputes and quarrels occurred continuously. In this case, the panel of judges considers that the households of the plaintiff and the defendant have no further benefit to be defended, what else was connected with the defendant who was not willing to attend the trial, in order to defend his rights before the court. Because the defendant had never been present at trial and the plaintiff's lawsuit had been based on rights and has



legal grounds, then according to Article 149 Rbg, the plaintiff's lawsuit could be granted without the presence of the defendant, and the decision was decided in a *verstek* by the panel of judges.

The panel of judges considered that based on the facts from the testimony of witnesses that the marriage of the plaintiff and the defendant had really broken up and had reached a level that could no longer be reconciled, because there was no desire from the parties to continue their marriage, even the defendant had 6 (six) years left the plaintiff and his whereabouts were unknown, so the purpose of marriage was to establish a harmonious, physically and mentally prosperous household as referred in the *Al-Qur'an* letter *Ar-Rum* verse 21 and Article 1 of Law Number 1 Year 1974 Jo Article 3 Compilation of Laws Islam, could not materialize and maintain a household that is already so fragile, it would actually provide prolonged harm for the family. Thus, the solution that was considered fair and beneficial for both parties was divorce. Based on the considerations, the panel of judges is of the opinion that there were sufficient reasons for the plaintiff to divorce the defendant, in accordance with the provisions of Article 39 paragraph (2) of Law Number 1 of 1974 as revised by Law Number 16 of 2019 concerning Marriage Jo Article 19 letter (f) and letter (b) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) and letter (b) Compilation of Islamic Law. Therefore, the plaintiff's lawsuit could be granted with *verstek*.

According to positive law, the judge could decide for parties who were not present as long as they had been summoned in accordance with the legal provisions regarding the procedure for summons, if the plaintiff was not present and was also not represented by his lawyer, then the lawsuit could be dismissed and if the plaintiff is present while the defendant is not present and has been summoned according to law, as long as the plaintiff's lawsuit had a legal basis it won without the need to prove it (*verstek* decision). The requirements for lawsuits and examinations must be oral unless there was an age, in positive law lawsuits were prioritized in writing and in examinations they were also carried out in writing, besides they could also be carried out orally.

In this *verstek* decision, women's legal protection rights were not protected, including in terms of imposing court fees on the plaintiff, the amount of which would be stated in the verdict. The summons of the defendant in the law is stipulated as 3 (three) summons, however contained in the decision of the Sekayu Religious Court Number Pdt.G/2016/PA.Sky the court had officially summoned and properly summoned 4 times by the bailiff. This could be detrimental to women because deciding cases was protracted and wasting time with just that matter even the woman had filed for divorce to be resolved quickly, but it was hindered because the defendant (husband) never came even though he had been called 3 times. In other cases, the women's rights that were not protected in the *verstek* decision were to obtain living expenses and children's education until adulthood could not be granted by the panel of judges because the defendant (husband) was not present at the trial. The duty and responsibility of a husband towards his children to pay for the maintenance of the child until the child was an adult and

independent. However, with this *verstek* decision, women must support the needs of their own children without getting the cost of supporting the children from their husbands.

This *verstek* decision should be beneficial for the plaintiff (wife) to obtain her rights which have been proposed in the arguments of the lawsuit to earn *iddah*, *muth'ah*, *kiswah* and child maintenance costs given by the defendant (husband) to the plaintiff (wife) in the divorce trial program which was decided and tried by the panel of judges at the Sekayu Religious Court. However, in reality in the *verstek* decision which was decided in the Pdt.G/2016/PA.Sky decision, the plaintiff's argument asked the panel of judges to sentence the defendant to bear the living expenses and costs of the child's education to adulthood, the amount of which was adjusted to the level of the child's needs. this verdict. In this case, it could be detrimental to the woman.

The above statements was in line with the results of an interview with Ade Sofyan as the judge at Sekayu Religious Court stating that: "In this *verstek* decision case, the Supreme Court could place female judges both in the Religious Courts, which were mostly related to cases related to women. This was done so that female judges could apply the principle of non-discrimination, identify unequal treatment, and guarantee women's rights. Usually, a woman had a higher perspective in making a decision. If in a case law enforcer was deemed to have no sensitivity when handling cases involving women. So, when there was a case involving a woman, whether she was a witness, a victim or a party in conflict with the law, the judge did not see the case against women as a whole. Efforts to solve problems related to women in the world of justice needed to apply the principle of gender in the judicial environment. In line with proving the existence of the theory of existence, the Law of the Republic of Indonesia Number 14 of 1970 as revised to become Law Number 48 of 2009 concerning Judicial Power which provides an opportunity for the Religious Courts to carry out their own reforms. One of the important things in this reform was to produce laws and regulations related to Islamic law to be used in resolving cases in the Religious Courts.

Thus, the application of *verstek* at Sekayu Religious Court of South Sumatra complied with the provisions of Article 125 HIR/149 RBg conditions (a) to (e) are met, while the contents of the decision depended heavily on the results of the evidence from the Plaintiff and in fact the process of examining the case until it was decided is far more complex. fast. The effect on husbands and wives was very positive because divorce is completed more quickly and could prevent actions that could damage the foundations of family life in a legal state, based on Pancasila. Even from the legal aspect of marriage as material law the goals aspired to have not been realized. The role of judges as law enforcers who were wise in modern justice was not only to uphold "substantive" justice, but simultaneously with procedural justice (which was in accordance with the applicable procedural law).

### **The Obstacles of *Verstek* Decision at Sekayu Religious Court, South Sumatra**

The obstacles faced by the Sekayu Religious Court of South Sumatra in settling cases at the *verstek* trial which the researchers analyzed using the theory of judge's decisions were as follows: First, the number of cases. The *verstek* case, one of which was the divorce case at the Sekayu Religious Court, South Sumatra, was quite high in number from year to year. This was in line with the results of an interview with Mr. Toni Abdul Gratitude as the judge at the Sekayu Religious Court, South Sumatra, who stated that: "The divorce rate at the Sekayu Religious Court in South Sumatra had increased from year to year. In 2022 alone, up to March, there were 200 cases that registered divorces, both contested divorces and *talaq* divorces, and it was about 20 cases per year.

Second, the time. The time required for handling the case at Sekayu Religious Court in South Sumatra usually took quite a long time, from the initial registration until the decision was read out. However, regarding the speedy or slow settlement of cases, it was adjusted according to the weight of the dispute, this also applied to the settlement of cases through trial. Regarding how long it took to settle a divorce case, in general, it was depended on the weight of the dispute. Muhammad Hira Hidayat as a judge at the Sekayu Religious Court in South Sumatra stated that: "For the time itself was not certain, if both parties were present then mediation would be tried first, usually the trial was adjourned and the next trial was held at the Sekayu Religious Court, South Sumatra. If one of the parties, in this case the plaintiff/petitioner was present, while the defendant/respondent was not present while a summons had been submitted to him, then the case could be decided *verstek* if it met the requirements and sufficient evidence. So, the case settlement time could be resolved more quickly and could only be done once in a trial.

Then, Toni Abdul Gratitude as a judge at the Sekayu Religious Court in South Sumatra explained that: "The time for settling divorce cases at trial seems to be quicker when compared to other cases at Sekayu Religious Court, South Sumatra, because it took into account the legal principle of fast cases. Divorce cases at trial were usually resolved/decided more quickly if the parties, in this case the defendant/respondent who had been summoned legally and properly, were not present at the trial and are accompanied by sufficient evidence, then the case would be decided on the same day according to legal principles. quick matter. In terms of time, it was not only related to the litigation process in court, but also related to the time taken from the place of residence of the case to the place where the trial itself was held. Having this trial was very helpful and lightens the burden on the community, especially those who lived far from the court office and physically and emotionally the parties to the litigation can be calmer and more focused on following the proceedings because they were not too tired due to the distance from their residence and the court venue was closer. For the speed or length of the trial process, it was based on the level of the case, if all the cases met the existing requirements, then the process would be fast. Meanwhile, the travel time for justice seekers to the place where the trial was held shorter

and this affects the physical and emotional conditions of the parties themselves, so that the parties could be calmer in participating in the trial.”

As for the settlement of divorce cases which were usually carried out in the courtroom of Sekayu Religious Court, South Sumatra, it seemed long because it was to maximize the examination of the parties to the litigation and to summon again one of the parties who was not present at the trial even though he has been summoned legally and properly to be present at the trial court Sekayu religion, South Sumatra. In the settlement of divorce cases which were held in the courtroom of the Sekayu Religious Court of South Sumatra, it took a long time because as an effort to be more optimal in examining cases and also as an effort to recall one of the litigants at the next trial according to procedural law, but if you had been summoned twice legally and properly absent, the case could be decided in a *verstek* or without the presence of the defendant/respondent.

Three, the down-payment fees for the *verstek* case had been determined by the Religious Court based on the radius of residence of the applicant/plaintiff and the respondent/defendant. In a litigation, the litigants not only pay court fees, but many things that must be spent, such as transportation costs, witnesses and others. Regarding the down payment for court costs, the same was the case with the opinion of the Chairman of the South Sumatra Sekayu Religious Court, according to Ade Sofyan, a South Sumatra Sekayu Religious Court Judge explained that; "Payment for the case is adjusted according to the radius of residence of the parties, if there was excess, it could be returned to the parties. In its name, the down payment could be more or less, if there is an excess, it would be returned to the litigants. For this trial the down payment for the case fee was calculated based on the radius of the case from the Sekayu Religious Court of South Sumatra to the residence of the plaintiff/applicant and the defendant/respondent".

Fourth, witness constraints. Provisions for witnesses in civil cases were regulated in Articles 145 and 146 HIR / Article 172 Rbg. This was in line with Muhammad Hira Hidayat as the judge at the Sekayu Religious Court, South Sumatra, explaining that; "when the statements of the witnesses presented by the plaintiff were witnesses who had never seen or heard of a dispute, but indeed the husband and wife had been separated for a long time." Thus this was in line with the theory of the judge's decision, according to Mackenzie the ratio decidendi theory, this theory was based on a fundamental philosophical basis that considers all aspects related to the subject matter in dispute and then looked for statutory regulations that were relevant to the subject matter in dispute as a basis The law in making decisions and judges' considerations must be based on a clear motivation to uphold the law and provide justice for the parties to the case. One of the member judges of Sekayu Religious Court also emphasized that the down payment for the case fee was sometimes more and sometimes less. If there was an excess, then the right of the applicant/plaintiff was to take it, if it was lacking, the parties must pay back to the existing officers. The fee for the case in court is also almost the same as the payment for the case in general, because basically the down payment for the case fee was for the trial process.

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The fee is the same, it was called the down payment of the court fee, if there was excess, it would be returned to the litigants; if there was a deficiency, it would be added. In fact, if both parties to the litigation continue to attend court if there was a summons, there would definitely be a remaining down payment for the court fee, but if you rarely attended court if there was a summons, the costs would increase. Because the actual cost of the case was for the trial process, everything could be transparently checked at the cashier, how much he paid and how much was spent on the case, if there was an excess then he had the right to ask for the rest of the down payment, even if it was not returned then it was said to be stealing. Because the down payment is the right of the litigation”.

### **Conclusion**

The application of *verstek* in the Sekayu Religious Court of South Sumatra, after the author of the analysis used the theory of law application, it was discovered that it had been carried out starting with an identity check, advising from a panel of judges, examining the main case, proving a certificate with a marriage book, witnesses of two people, usually family, so the case was decided by *verstek* it was based on the judge's consideration and is in accordance with the provisions of Article 125 HIR/149 RBg conditions (a) to (e) were fulfilled, while the contents of the decision depend heavily on the results of the plaintiff's evidence. Even though there were indeed problems in the *verstek* case, such as the Defendant who did not know that he was being sued, however, according to existing and current regulations, the application of the regulations regarding *verstek* at Sekayu Religious Court, South Sumatra, was appropriate. However, it could not be denied that the fast technological progress had not been accompanied by regulatory advances that were able to balance it, such as the calling system that needed to be fixed, because the era was online and digital. Meanwhile, the obstacles faced by the Sekayu Religious Court in settling cases at the *verstek* trial were; first; case quantity. The number of *verstek* cases, one of which was the divorce case at Sekayu Religious Court, was quite high from year to year. Second; the time required for handling the case at Sekayu Religious Court in South Sumatra usually took quite a long time, from the initial registration until the decision was read out. Third; the down payment fee for the case fee for the *verstek* case had been determined by the Religious Court based on the radius of residence of the applicant/plaintiff and the respondent/defendant, not according to the financial capabilities of the parties; and fourth; the problem of witnesses, sometimes the parties present witnesses who had never seen or heard of a dispute, but indeed the husband and wife had been separated for a long time.

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