



State and Fiqh: Examination of the Legal Status of Divorce in Verstek Decision Number 2939/Pdt.G/2023/PA.Mdn

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Abstrak

This research is grounded in Decision Number: 2939/Pdt.G/2023, wherein the presiding magistrate rendered a verdict of Verstek in his consideration of the case. In such cases, the decision is rendered by the court in the absence of either the defendant or their legal representative. The validity of a verstek verdict in the context of the legitimacy of a marriage may be contingent upon the applicable legislation within the jurisdiction in question; thus, this investigation will consider both positive law and Islamic law. The objective of this article is to undertake a critical analysis of the decision rendered in Decision Number: 2939/Pdt.G/2023, which pertains to the use of a verstek decision to terminate a marriage due to childlessness, followed by disputes and quarrels. This research is a normative legal study with a case-based approach. The principal data source is derived from court decisions in the field of marriage law. The analysis reveals that, in Decision Number: 2939/Pdt.G/2023, a verdict of divorce by verstek is considered valid if the stipulated procedures have been followed correctly and the party who is required to be present or provide a defence does not do so without a valid reason. Islamic law also establishes principles of justice and protection of individual rights, including in the marriage process. Accordingly, the legitimacy of a marriage concluded through a verstek verdict may be contingent upon the interpretation of Islamic schools of thought and the legal principles that are embraced. Likewise, in the context of marriage law in Indonesia, a verstek decision in a verstek divorce case can be recognized as valid if it has fulfilled the requirements stipulated in the law. Thus, to determine whether a verstek decision in a marriage is valid or not, it is necessary to consider the applicable legal context, both in terms of civil law and in terms of Islamic law (fiqh) or the applicable marriage law.

Keywords: Divorce, Fiqh, Verstek, State



Abstrak

Penelitian ini didasarkan pada Putusan Nomor: 2939/Pdt.G/2023, dalam putusan ini hakim menjatuhkan putusan Verstek dalam pertimbangan perkaranya. Dalam kasus seperti itu, keputusan diambil oleh pengadilan tanpa kehadiran terdakwa atau kuasa hukumnya. Keabsahan putusan verstek dalam rangka sahnya suatu perkawinan dapat bergantung pada peraturan perundang-undangan yang berlaku di wilayah hukum yang bersangkutan; Oleh karena itu, penyidikan ini akan mempertimbangkan hukum positif dan hukum Islam. Tulisan ini bertujuan untuk mengkaji secara kritis putusan yang tertuang dalam Putusan Nomor: 2939/Pdt.G/2023 tentang penggunaan putusan verstek untuk membubarkan perkawinan karena tidak mempunyai anak yang diikuti perselisihan dan pertengkaran. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kasus. Sumber data pokok berasal dari putusan pengadilan di bidang hukum perkawinan. Hasil analisis menunjukkan bahwa dalam Putusan Nomor: 2939/Pdt.G/2023, putusan cerai verstek dianggap sah apabila tata cara yang telah ditetapkan telah dilaksanakan dengan benar dan pihak yang diwajibkan hadir atau memberikan pembelaan tidak melakukan. jadi tanpa alasan yang sah. Hukum Islam juga menetapkan prinsip keadilan dan perlindungan hak-hak individu, termasuk dalam proses perkawinan. Keabsahan suatu perkawinan yang dilakukan melalui putusan verstek dapat bergantung pada penafsiran mazhab dan asas hukum yang dianutnya. Demikian pula dalam konteks hukum perkawinan di Indonesia, putusan verstek dalam perkara perceraian verstek dapat diakui sah apabila telah memenuhi syarat-syarat yang ditentukan dalam undang-undang. Dengan demikian, untuk menentukan sah atau tidaknya suatu keputusan verstek dalam suatu perkawinan, perlu mempertimbangkan konteks hukum yang berlaku, baik dari segi hukum perdata maupun dari segi hukum Islam (fiqh) atau hukum perkawinan yang berlaku.

Kata Kunci: Perceraian, Fiqh, Verstek, Negara

Introduction

Divorce is the final option when marital status cannot be maintained. In Indonesian Muslim communities,¹ divorce is common for a variety of reasons. Numerous studies have demonstrated that marital discord, domestic abuse, and each party's lack of accountability for upholding their respective rights and responsibilities inside the home are the main causes of divorce.² In the end, this condition leads one side to desire to dissolve the marriage. Divorce is strongly discouraged in Islamic law and is even listed among the deeds Allah detests. The Indonesian Muslim community holds this to be true, yet it does not preclude divorce from also happening.³

¹ Muhazir Muhazir, "Islam, Fatwa Dan Negara: Meretas Pluralisme Hukum Perceraian Di Aceh," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (December 1, 2021): 233–48, <https://doi.org/10.24090/mnh.v15i2.5150>.

² Muchamad Coirun Nizar, "The Religious Court's Decisions on Divorce: A Maqāṣid Shari'a Perspective," *Ulumuna* 24, no. 2 (January 19, 2021): 398–416, <https://doi.org/10.20414/ujis.v24i2.408>.

³ Linda Azizah, "Analisis Perceraian dalam Kompilasi Hukum Islam," *Al-'Adalah* 9, no. 2 (February 28, 2017): 415–22, <https://doi.org/10.24042/adalah.v10i2.295>.

Divorce in Indonesia cannot be carried out outside of court.⁴ Divorce can only occur in front of the court, according to the Marriage Law. This rule highlights the fact that a divorce cannot be decided upon without a judge's approval. It does not, however, exclude the chance that a large number of divorces are still finalized out of court for a variety of reasons pertaining to expense, distance, and the length of the divorce procedure.⁵ Despite the fact that the Religious Court divorce process is simple, inexpensive, and expeditious, this condition demonstrates that there is still a great deal of negative stigma associated with it.

Domestic disputes in the millennial era and technological developments are carried out by most people, especially by couples who marry at a young age.⁶ In general, the dispute is carried out by the husband, but many disputes are also carried out by the wife.⁷ With the dispute from one of the spouses or both of them, it will lead to separation, resulting in the household becoming disharmonious, the goodness of each partner no longer visible, and their children becoming neglected.⁸ If the household is not okay and not harmonious, then divorce will occur. Or, in other words, the marriage bond will be broken. According to the Marriage Law, marriage can be terminated by three things: death, divorce, and court decisions.⁹

The dissolution of marriage by a judge's decision or at the request of one of the parties is known as divorce. Article 114 of the Compilation of Islamic Law (KHI) explains that divorce can end a marriage when the husband applies for divorce or when the wife applies for divorce based on a divorce case.¹⁰ These situations are referred to as *ceraai gugat* and *ceraai talak* in the context of religious courts. Article 117 of the KHI explains that divorce is an application for permission from the husband to the religious court to divorce his wife, while Article 132 paragraph (1) of the KHI explains that divorce is a lawsuit filed by the wife

⁴ Muhazir Muhazir, Azwir Azwir, and Zubir Zubir, "Legal Institutions in Resolving Divorce Cases in Aceh," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 May (May 30, 2024): 211–30, <https://doi.org/10.29240/jhi.v9i1.8529>.

⁵ Khairuddin Khairuddin, "Alasan Perceraian Luar Pengadilan Dan Akibatnya Bagi Masyarakat Desa Sanggaberu Kecamatan Gunung Meriah Aceh Singkil," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 5, no. 1 (March 31, 2022): 43–58, <https://doi.org/10.29313/tahkim.v5i1.9356>.

⁶ Dudi Badruzaman, "Pengaruh Pernikahan Usia Muda Terhadap Gugatan Cerai Di Pengadilan Agama Antapani Bandung," *Muslim Heritage* 6, no. 1 (June 30, 2021), <https://doi.org/10.21154/muslimheritage.v6i1.2653>.

⁷ Gozwan Jundan, "Perceraian Usia Tiga Tahun Perkawinan Dari Pasangan Muda," *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 1, no. 1 (September 2, 2020): 39–60, <https://doi.org/10.15575/as.v1i1.7801>.

⁸ Lewi Ana, "Cerai Talak Dengan Alasan Virginitas Dalam Tinjauan Hukum Islam Dan Feminisme," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 2 (2022): 162, <https://doi.org/10.32694/qst.v20i2.1713>.

⁹ Abdullah Taufik, "Putusan Verstek Pengadilan Agama Pada Cerai Talak Perspektif Keadilan Gender," *Mahakim: Journal of Islamic Family Law* 2, no. 2 (2018): 71, <https://doi.org/10.30762/mh.v2i2.973>.

¹⁰ Dudi Badruzaman, "Tingkat Gugatan Perceraian Antara Pasangan Pernikahan Dini di Pengadilan Agama," *Asy-Syari'ah* 23, no. 1 (August 13, 2021): 125–42, <https://doi.org/10.15575/as.v23i1.6656>.

against the husband to apply for divorce through the court, which is then granted by the court, thus ending the marriage of the plaintiff and the defendant.¹¹

Divorce is a complex and delicate event in people's lives, both emotionally and legally. In a contemporary city like Medan City, divorce frequently incorporates a number of factors, including Islamic law, which serves as the foundation for many marriages. An intriguing topic to examine in this context is the divorce verdict of divorce by verdict, as it happened in Decision Study Number 2939/Pdt.G/2023/PA.Mdn.

Research by Sudirman,¹² Abdul Jamil,¹³ Bustanul Arifien Rusydi,¹⁴ and Fidya Rahma Insani¹⁵ explained that the *verstek* verdict has been regulated in civil procedural law, but in many cases regarding divorce cases, it tends to be detrimental to one side, especially women who do not fulfill their rights even though the judge has given a verdict with full justice. The absence of one of the parties in the trial is a form of violation of the law that allows their rights not to be accommodated. In contrast to the results of Lilik Andaryuni's¹⁶ research, which explains that verdicts tend to make judges more progressive and considerations of justice are more considered, especially the rights of women after divorce.

Some of these studies have focused on formal legal studies and aspects of justice in judicial decisions. In contrast to these studies, this research explores the various factors that influence court decisions in cases of divorce by way of *Verstek* in Medan City. By taking into account the relevant social, cultural, and legal contexts, this analysis aims to provide a deeper understanding of the dynamics that occur within the courtroom. Through a multidimensional approach, we will explore various aspects, including the legal process, the judge's reasoning, and the social impact of the decision. Thus, it is hoped that the results of this analysis can provide useful insights for the various parties involved, both directly and as outside observers. By outlining the context and significance of the *Verstek* divorce cases in Medan City, this research is expected to make a significant contribution to the understanding and handling of similar cases in the future.

¹¹ Aulia Alya and Zainuddin, "Analisis Putusan Pengadilan Agama Nomor 2429 / Pdt . G / 2023 / PA . Mdn Tentang Nafkah Iddah Dan Mut ' Ah Oleh Suami Kepada Isteri Dalam Perkara Cerai Talak," *Unes Law Review* 6, no. 3 (2024): 7792.

¹² Sudirman L. Sudirman L, Andi Bahri S, and Ahmad Faisal, "Peace Efforts in the Divorce Cases: An Analysis on *Verstek*'s Decision at the Religious Courts," *Al-Ulum* 23, no. 1 (June 25, 2023): 213–39, <https://doi.org/10.30603/au.v23i1.3735>.

¹³ Abdul Jamil and Muliadi Nur, "Perlindungan Hukum Dan Keadilan Para Pihak Melalui Ex Officio Hakim Dalam Putusan *Verstek* Perkara Perceraian," *Jurnal Hukum Ius Quia Iustum* 29, no. 2 (May 1, 2022): 439–60, <https://doi.org/10.20885/iustum.vol29.iss2.art10>.

¹⁴ Bustanul Arifien Rusydi, "Problem Kehadiran Dan Upaya Hukum Tergugat Dalam Putusan *Verstek* Perkara Perceraian Pada Pengadilan Agama Bandung," *Muslim Heritage* 5, no. 2 (December 26, 2020): 393–393, <https://doi.org/10.21154/muslimheritage.v5i2.2362>.

¹⁵ Fidya Rahma Insani et al., "The *Verstek* Law Implementation In Religious Courts In South Sumatera," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (June 8, 2023): 37–50, <https://doi.org/10.19109/nurani.v23i1.16030>.

¹⁶ Lilik Andar Yuni and Jati Kasuma, "The Fulfillment of Women's Rights in *Verstek* Decisions at Samarinda and Sangatta Religious Court," *Al-'Adalah* 20, no. 2 (December 25, 2023): 257–182, <https://doi.org/10.24042/adalah.v20i2.16119>.

The research is based on the normative¹⁷ method by focusing its research on religious court decisions and legislation relating to divorce law in Indonesia.¹⁸ Related to the problem being studied using a statute approach, which studies both all related regulations and laws.¹⁹ The conceptual approach is an approach that departs from doctrines and views that grow in legal science. This research utilizes primary and secondary legal materials. Primary legal sources include Verdict No. 2939/Pdt.G/2023 and Law Number 1 of 1974 concerning marriage law. The article that regulates verstek divorce is Article 116 of the Marriage Law and Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Courts, which regulates mediation procedures in divorce cases. Data analysis is carried out qualitatively by describing primary legal materials and secondary legal materials and linking them with relevant theories.

The Phenomenon of Verstek Decisions in Divorce in Medan City

Statistics Indonesia reports that throughout 2023, there were 463,654 divorce cases in Indonesia, down 10.2% compared to 2022. This is the first decrease since the COVID-19 pandemic. Previously, in 2021 and 2022, the number of cases continued to increase. In 2023, the majority of divorces in Indonesia were contested divorces, which are divorces filed by the wife and have been decided by the court. The number reached 352,403 cases, or 76% of the total national divorce cases. Then 111,251 cases, or 24% of divorces, occurred due to divorce, which is a divorce filed by the husband and has been decided by the court. Based on the province, the most divorce cases in 2023 occurred in West Java, namely 102,280 cases. Next are East Java and Central Java, with 88,213 cases and 76,367 cases, respectively. Throughout last year, there were 4 provinces that did not have records of divorce cases, namely Southwest Papua, South Papua, Central Papua, and the Papua Mountains.²⁰

Although divorce is frowned upon and only permitted in extreme circumstances, it can be the wisest course of action when a husband and wife are not compatible. The divorce phenomena involves multiple fundamental principles:

- a. Marriage Unity: Islam teaches the importance of maintaining the unity of marriage and avoiding divorce as much as possible. The Quran mentions that divorce is disliked by Allah (QS. An-Nisa: 19), and the Prophet Muhammad also emphasized the importance of maintaining marriage.
- b. The Last Solution: Divorce is considered a last resort after all attempts to repair the relationship have failed. Islam encourages couples to try to resolve their

¹⁷ Ahamad Rosidi, M. Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (February 27, 2024): 46–58.

¹⁸ I. Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (December 31, 2013): 21–30, <https://doi.org/10.37637/kw.v1i1.419>.

¹⁹ Zulfadli Barus, "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan Penelitian Hukum Sosiologis," *Jurnal Dinamika Hukum* 13, no. 2 (May 15, 2013): 307–18, <https://doi.org/10.20884/1.jdh.2013.13.2.212>.

²⁰ Muhamad Syahrial, "Jumlah Perceraian Di Indonesia Tahun 2023 Capai 463.654," *Jumlah Perceraian Di Indonesia Tahun 2023 Capai 463.654 Kasus Artikel Ini Telah Tayang Di Kompas.Com Dengan Judul*, 2024.

- conflicts through dialog, mediation, and reconciliation efforts as much as possible before deciding to divorce.
- c. Divorce Procedures: Islam has a strictly regulated procedure for divorce, including the granting of divorce by the husband. This process should be done thoughtfully and not emotionally. There are certain conditions that must be met before a divorce is considered valid, such as the waiting period (iddah) for the wife after the divorce.
 - d. Protection of Women's Rights: Although divorce is granted by the husband, Islam establishes the rights of the wife that must be respected during the divorce process. For example, wives are entitled to maintenance and financial support during the iddah period, as well as the right to child custody in some cases.²¹
 - e. Attention to Social and Psychological Impact: Islam also emphasizes the need to pay attention to the impact of divorce on family members, especially children. Muslim communities are invited to provide moral and practical support to couples going through divorce to help them adjust to this change.

Divorce is a phenomenon that displays a blend of values to promote family unity while also allowing for divorce as a last resort in circumstances that cannot be resolved. Medan City's verstek divorce phenomenon is a result of a confluence of social, religious, cultural, and economic elements. These opinions can differ significantly based on an individual's background and social group in a varied environment like Medan City. Thus, there are a variety of cultural, religious, social, and economic elements that influence the phenomenon of verstek divorce in Medan City, making it non-monolithic. When examining the mechanics of divorce in this metropolis, it is crucial to recognize this range of opinions.

In Islam, a verstek divorce is one in which the husband conducts the divorce without the wife's presence, other than in court, or without her express agreement. This may occur when the husband files for divorce without the wife's knowledge or consent, or when there is no direct communication between the couple in front of the court. In Islam, virtuous divorce is guided by hadith and the opinions of experts rather than being specifically mentioned in the Quran. In Islam, a verstek divorce is legally recognized, particularly if all the requirements have been met. Scholars disagree about the situation's authenticity and suitable legal consequences.²² In a verstek divorce, the husband grants the divorce without the wife or anyone else being present in court. According to Islamic law, this process must, however, adhere to certain requirements, such as providing notification to the wife and allowing the wife to complete her waiting time (iddah).

Perceraian verstek sering kali dipandang sebagai tindakan yang kurang diinginkan dalam Islam karena tidak memberikan kesempatan bagi istri/sumai untuk menyatakan pendapatnya atau berpartisipasi dalam proses tersebut. Oleh karena itu, dalam beberapa mazhab, perceraian verstek dianggap sebagai tindakan yang kurang bermoral. Meskipun

²¹ Baby Suryani Fithri, Windy Sri Wahyuni, and Ariman Sitompul, "Implementation Of The Child Protection Act As A Positive Law In Eradicating Child Marriage In Indonesia," *Legal Brief* 11, no. 5 (2022): 2808–17, <https://doi.org/10.35335/legal>.

²² Maswandi Maswandi, "Hak Asuh Anak Yang Belum Dewasa Setelah Perceraian," *JPPUMA: Jurnal Ilmu Pemerintahan Dan Sosial Politik Universitas Medan Area* 5, no. 1 (2017): 25, <https://doi.org/10.31289/jppuma.v5i1.1143>.

talak bisa diberikan oleh suami secara verstek, Islam memberikan hak-hak istri yang harus dihormati selama proses perceraian, termasuk hak atas nafkah selama masa iddah dan hak atas harta warisan. Meskipun Islam mengakui perceraian sebagai hal yang dapat dilakukan dalam beberapa situasi tertentu, prinsip keadilan, kemanusiaan, dan perlindungan terhadap hak-hak perempuan harus senantiasa dipertimbangkan dalam setiap proses perceraian, termasuk dalam kasus perceraian verstek.²³

Fiqh and the State: Examining the Legal Status of Divorce in Verstek Decision Number 2939/Pdt.G/2023/PA.Mdn

Divorce cases are regulated in Article 66(1) of Law No. 1 of 1974 concerning marriage, which states that "*A Muslim husband who will divorce his wife submits an application to the court to hold a hearing to witness the pledge of divorce.*" In the compilation of Islamic Law Article 117, "*Talak is a husband's pledge before a religious court session, which is one of the reasons for the dissolution of marriage in the manner referred to in articles 129, 130, and 131.*" The Compilation of Islamic Law (KHI) explains from Article 118 to Article 122 that the types of divorce are as follows:²⁴

- a. Talak raj'i: a divorce in which the husband has the right of reconciliation during the iddah period (ps. 118).
- b. Talak bain sughro: may not be reconciled but must be with a new contract (ps. 119).
- c. Talak ba'in kubra: divorce cannot be reconciled or a new contract, unless the former wife marries someone else, then divorces ba'da dukhul and the iddah period (ps. 120).
- d. Sunni divorce: permissible divorce; divorce that is imposed; the wife is chaste and not interfered with during the chaste period (ps. 121).
- e. Talak bid'i: a prohibited divorce, divorced when the wife is in a state of menstruation or in a state of chastity but has been divorced during the chastity period.

The divorce case is one type of divorce, and it is the relative authority of the Religious Court to examine it, especially for people who are Muslims. In the examination process, several stages are carried out and end with a decision, which is in fact a legal product of the court, or "jurisprudence," as stipulated in Article 2(1) of Law Number 14 of 1970, that the main task of the court is to accept, examine, try, resolve, or decide every case submitted to it. In connection with the duties and functions of the judge, the forms of decisions can be diverse; maybe it can be an interlocutory decision or a final decision, as well as the final decision can also vary; maybe a dismissal decision, a decision not to accept, a statement of no authority to examine, or a decision by verstek. The variety and type of decisions must be

²³ Happy Pian, "Pertimbangan Hakim Terhadap Putusan Verstek Pada Perkara Perceraian Perspektif Hukum Islam Dan Hukum Positif Indonesia". Tesis Institut Agama Islam Negeri Bengkulu, 2021, h. 103-123

²⁴ Ainun Mardiah, "Hak Waris Bagi Istri Yang Ditalak Bain Oleh Suami Yang Sedang Sekarat Perspektif Mazhab Maliki Dan Syafi'i", *Al-Qadha* 5, no. 2 (2018): 39-48, <https://doi.org/10.32505/qadha.v5i2.1276>.

used by judges as a juridical basis for ending an examination. Therefore, it is part of the civil procedural law that is used by lawyers both in the General Court and in the jurisdiction of the Religious Court.

Divorce is initiated by the husband, whether or not the wife is aware of it. Divorce is a man's right. As a result, it can be enforced whenever desired, negating any potential legal objections. However, a spouse is not permitted to enforce a divorce in certain situations;

- a. When the wife is menstruating
- b. A divorce pronounced after intercourse without knowing whether the wife is pregnant or not
- c. When the husband is ill
- d. so that the wife does not get an inheritance from the husband
- e. Three divorces that are imposed at the same time

The wife is sometimes taken aback when her husband files for divorce in a religious court because their relationship was previously amicable and there were no repercussions when the wife received a summons to the divorce hearing. As a result, it is likely that she will be unable to attend the trial due to ongoing psychological effects. The judge decides the divorce case by vertex, thus this is what the judge might not take into account because the judge only looks at the actual facts presented at the trial.

The argument submitted by the Petitioner in case No. 2939/Pdt.G/2023/PA.Mdn is in principle due to disputes and quarrels expressed in the decision which reads: "That because the inner bond between the Petitioner and the Respondent has been fragile, and has even reached a state of rupture, then by not considering again from which party the cause of the dispute and quarrel a quo came, then the Petitioner has resolved to divorce the Respondent, the Panel of Judges is of the opinion that in these conditions it has been very difficult for the Petitioner and the Respondent to reunite in a good household, so that it is no longer possible to realize the purpose of marriage, namely to form a happy and lasting family or household based on God Almighty (Article 1 of Law Number 1 of 1974) and or a family that is *sakinah, mawaddah and rahmah* as the implementation of the Word of Allah SWT in the Al-Quran letter Ar-Rum verse 21 and Article 3 of the Compilation of Islamic Law.²⁵ According to the Supreme Court of the Republic of Indonesia's Jurisprudence Number 1354 K/Pdt/2000, dated September 8, 2003, "husband and wife who have separated their residence and one or both parties no longer care about each other is a fact of quarrel and can be a reason for divorce," this condition is in line with that intention.

In its decision, the panel of judges realized that divorce is an act that is disliked by Allah SWT which is avoided as much as possible by every married couple, but if the marriage is no longer able to provide physical and mental peace because it is no longer in line and in line and there are continuous disputes and arguments, as happened in the household of the Petitioner and Respondent, then maintaining the marriage bond is futile and even tends to cause greater *mafsadat*, so that for this reason, divorce is an emergency door which is considered more *maslahat* for the Petitioner and Respondent to get out of

²⁵ Fikri Fikri et al., "Kontekstualisasi Cerai Talak Dalam Fikih Dan Hukum Nasional Di Indonesia," *Al-Ulum* 19, no. 1 (2019): 151-70, <https://doi.org/10.30603/au.v19i1.643>.

prolonged difficulties for the possibility of finding a better and more profitable life for the Petitioner and Respondent in the future.²⁶

In the judge's consideration of decision No. 2939/Pdt.G/2023/PA.Mdn in Marriage Law Number 1 of 1974 and its implementing regulations, namely Government Regulation Number 9 of 1975, according to Article 39 paragraph (1) of Marriage Law Number 1 of 1974, it is stated that divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties. The Panel of Judges has reviewed the aquo case file and determined that the Medan Religious Court is entitled to examine and hear this matter in accordance with the intent of Article 49 of Law Number 7 of 1989, as amended for the second time by Law Number 50 of 2009.

The process of reconciling the two parties carried out by the Panel of Judges was carried out at the first hearing. As stated in the Law of the Republic of Indonesia Number 7 of 1989, Article 82, Paragraph (82) states that at the first hearing of the examination of a divorce suit, the judge tries to reconcile the two parties, and mediation is carried out in accordance with peaceful efforts through mediation. In accordance with Supreme Court Regulation No. 1 of 2016, it was not implemented in this case because the respondent never attended the trial.²⁷

A person filing for divorce must include arguments and supporting documentation to support the proposed divorce, as stated in Law Number 1 of 1974, Article 39, paragraph (2), which states that in order to implement a divorce, there must be a good reason why the husband and wife will not be able to cohabitate. The justifications or contentions made by the petitioner in divorce case No. 2939/Pdt.G/2023/PA.Mdn.

The panel of judges found in their verdict that the Petitioner's claim for divorce from the Respondent was primarily grounded in the fact that, since June 2012, the Petitioner and the Respondent had been embroiled in constant arguments and disagreements over the fact that they were childless. Additionally, the Petitioner and the Respondent frequently disagreed over seemingly insignificant issues, which caused their relationship to become strained. Due to their constant conflicts regarding the presence of a kid, the Petitioner and Respondent had decided to part ways. The petitioner decided to vacate the joint dwelling because he was fed up with their constant arguments.

The judges on the Medan Religious Court panel reviewed and deliberated over the divorce case in light of the aforementioned arguments and justifications. The applicant must not only provide justifications or arguments but also document supporting documentation and witness testimony to bolster their claims. The following criteria were used by the judge in determining the outcome of divorce case number 2939/Pdt.G/2023/PA.Mdn:

- a. Article 49 of Law Number 7 of 1989, which has been amended for the second time by Law Number 50 of 2009, states that the Medan Religious Court has the authority to examine and try this case.

²⁶ Masniari Munthe and Heri Firmansyah, "Analisis Penyebab Meningkatnya Angka Perkara Cerai Gugat Tahun 2020-2022 Di Pengadilan Agama Medan Kelas IA," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 687, <https://doi.org/10.37680/almanhaj.v4i2.2198>.

²⁷ Wira Purwadi, "Analisis Efektivitas Mediasi Pada Cerai Talak Dan Cerai Gugat Di Pengadilan Agama Manado," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2006): 39.

- b. Article 66, paragraph (2) of Law Number 7 of 1989, which has been amended for the second time by Law Number 50 of 2009, states that based on the identity card, application letter, and summons, it turns out that the respondent resides in the jurisdiction of the Medan Religious Court, hence the case. This is relatively within the competence of the Medan Religious Court.
- c. Article 39, paragraph (1), Law Number 1 of 1974, jo. Article 82 of Law Number 7 of 1989, and Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 state that the Assembly has tried to reconcile the petitioner and respondent to reunite to build a household but was unsuccessful because both parties remained in their respective positions.
- d. The Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 states that mediation efforts have been made for the petitioner and respondent, but in their report, the mediator stated that the mediation was unsuccessful.
- e. Articles 171–172 of the HIR state that the statements submitted by witnesses from both parties can be accepted as evidence in this case.
- f. Article 73, paragraph (1), of Law Number 7 of 1989 states that the petitioner and respondent are a legal married couple who have never divorced; thus, the petitioner and respondent have legal qualifications as parties in this case, and the petitioner has the right to file a lawsuit against the respondent with the Religious Court.
- g. Article 19 (f), Government Regulation Number 9 of 1975, and Article 116 (f), Compilation of Islamic Law, state that the household of the petitioner and respondent has no longer been harmonious since 2017 due to frequent quarrels and disputes between the two parties and the attitude of both parties at the trial, which shows their desire to reunite. When linked to the facts points (3), (4), and (5), where the applicant and respondent have separated from their shared residence since February 2018 and are no longer able to respond to peace advice from the family, it is proven that in the petitioner and respondent's household there has been a dispute. and the quarrel escalated, which resulted in a rift in the household, and the rift was difficult to reconcile, it must be stated that the applicant's claim has fulfilled one of the alternative reasons for divorce as intended by Article 19(f) of Government Regulation Number 9 of 1975, jo. Article 116(f) Compilation of Islamic Law in Indonesia.²⁸
- h. Husband and wife are obliged to love each other and provide physical and spiritual assistance in any circumstances, as Allah says in the Qur'an, Surah Ar Rum verse 21.
- i. Article 1 of Law Number 1 of 1974 states that marriage is a spiritual and physical 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 the Almighty God.
- j. In Ushuliyah Rules, rejecting harm is preferred over taking maslahah.

²⁸ Ahmad Muntadzhar, "Analisis Terhadap Tingkat Cerai Talak Di Pengadilan Agama Sungguminasa Tahun 2022 Perspektif Khi" 1, no. 1 (2024): 133.

Based on the explanations above, the author can state that the judge's considerations have met the requirements for making a decision in case number 2939/Pdt.G/2023/PA.Mdn because the judge's considerations above already contain the basics or reasons formulated by the judge. According to the theory, the judge's considerations must contain the basics or reasons formulated by the judge that support the decision as a responsibility to society as to why the judge made such a decision, so that the decision has objective value and authority and has been fulfilled.

As for the judge's considerations, which were not strong enough to make a related decision, there had been continuous disputes and quarrels because they had not been blessed with children, and the respondent and the petitioner often had disagreements over small matters, which made the household relationship between the petitioner and the respondent no longer harmonious. For witness evidence, the only witnesses present at the trial were witnesses from the petitioner's side, while witnesses from the respondent's side were not present, as was the respondent, who was only present at the first trial. Meanwhile, at the next hearing, the respondent did not attend.

Then, looking at the reasons, the actual root of the problem with the divorce petition number 2939/Pdt.G/2023/PA.Mdn is that they have not been blessed with children, and the respondent and the petitioner often have disagreements over small matters, so the decision states that the household situation that has become like this is no longer appropriate to maintain because it will cause negative excesses for both parties. Also, the harm is greater than the benefit, and this must be avoided. So this legal basis is used as the basis for granting the petitioner's divorce petition number: 2939/Pdt.G/2023/PA.Mdn. So the judge's consideration for the reason for divorce Number: 2939/Pdt.G/2023/PA.Mdn, which is more emphasized, is that he has not been blessed with children; it is not a dispute, and according to the author, this is actually not appropriate, especially since the wife was not present.

In the context of marriage law in Indonesia, especially in civil procedural law, it also accommodates *Verstek* decisions regulated in Article 125 Paragraph 1 of the Criminal Procedure Code, which explains that judges have the authority to decide cases for defendants who are not present, meaning that even if the husband does not give divorce to his wife, the religious court judge can give divorce even without the presence of the husband. However, this debate continues because, in *fiqh munakahat*, the husband has the right to impose divorce. However, if seen from the benefit aspect, court decisions play an important role in providing protection and rights for wives, although there are still those who consider that in terms of *fiqh*, the *verstek* decision is different from the law in *fiqh munakahat*.

Conclusion

Decision Number: 2939/Pdt.G/2023/PA. Mdn is a divorce verdict that the judge imposes when the requirements of Article 125 HIR/149 RBg are met. The decision's content is largely based on the plaintiff's evidence, and the factual examination of the case leads to a quicker decision-making process. Although the desired outcome is not achieved in terms of marital law as material law, the effect on the husband and wife is highly favorable because the divorce is finalized faster and can stop actions that can harm the bonds of family life in a

legal state based on Pancasila. However, the desired outcome is not achieved by looking at marital law as material law. In religious courts, judges have the wise law-enforcer duty of upholding both substantive and procedural justice in compliance with the relevant procedural law.

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