

**CERAI GUGAT (DIVORCE LAWSUIT) OF INDONESIAN FEMALE
WORKER WITH ADVOCATE SERVE**

(Study at Tulungagung Religious Court)

Thesis

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MALANG

2018

STATEMENT OF THE AUTHENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**DIVORCE LAWSUIT (*CERAI GUGAT*) OF INDONESIAN FEMALE
WORKER WITH ADVOCATE SERVE
(Study at Tulungagung Religious Court)**

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 12th of April 2018

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LEGITIMATION SHEET

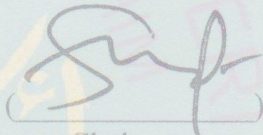
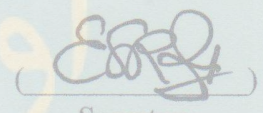
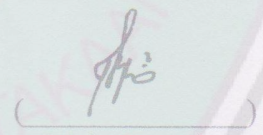
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(Study at Tulungagung Religious Court)

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MOTTO

....فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ.

..then if you fear that they cannot keep within the limits of Allah, there is no blame on them for what she gives up to become free thereby.

البقرة: ٢٢٩



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All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His grace and guidance, this thesis entitled “Divorce Lawsuit (*Cerai Gugat*) of Indonesian Female Worker With Advocate Serve (Study at Tulungagung Religious Court)” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (SAW) who had brought us from the darkness into the lightness, in this life. May we be together with those who believe and receive intercession from Him in the day in Judgement, Aamiin.

With all the supports and help, discussions, guidance and directions from all parties involved during the process of completing this thesis, the author wishes to express his utmost gratitude to the following:

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3. Dr. Sudirman, M.A., as the Head of Islamic Family Law (*Ahwal Syakhshiyah*) Department of the Sharia Faculty, Universitas Islam Negeri Maulana Malik Ibrahim Malang.
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6. All my teachers of Sharia Faculty of Universitas Islam Negeri Maulana Malik Ibrahim Malang for their flowing knowledge and valuable experiences.
7. My beloved Father and Mother, “Mr. Jamaluddin M. Tawil and Mrs. Jumjalia” who have given me chance to get adequate education, love,

material, and spiritual support, also endless praying until I am able to complete my study excellently.

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Hopefully, by imparting what has been learned during the course of study in the Sharia Faculty of Universitas Islam Negeri Maulana Malik Ibrahim Malang, it will benefit all readers and the researcher herself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive critics and suggestion for the improvement and betterment of this thesis.

Malang, 12th of April 2018

Author,

Annisa Fitri Amaliah
NIM 14210009

TRANSLITERATION GUIDANCE

A. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
خ	H	ق	Q
ح	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	هـ	H
ش	Sy	ء	'
ص	Sh	ي	Y
ض	Dl		

B. Vocal, Long-pronounce and Diphthong

Vocal *fathah* = A

Vocal *kasrah* = I

Vocal *dlommah* = U

Long-vocal (a) = Â e.g. قال became Qâla

Long-vocal (i) = Î e.g. قيل become Qîla

Long-vocal (u) = Û e.g. دون become Dûna

Diphthong (aw) = و e.g. قول become Qawlun

Diphthong (ay) = ي e.g. خير become Khayrun

C. Ta' Marbûthah

Ta' marbûthah transliterated as “t” in the middle of word, but if *Ta' marbûthah* in the end of word, it transliterated as “h” e.g. الرسالة للم دراسة become *al-risalat li al-mudarrisah*, or in the standing among two word that in the form of *mudlaf* and *mudlaf ilayh*, it transliterated as t and connected to the next word, e.g. في رحمة الله become *fi rahmatillâh*.

D. Auxiliary Verb and Lafdh al-Jalalah

Auxiliary verb “al” (ال) written with lowercase form, except if it located it the first position, and “al” in *lafadh jalâlah* which located in the middle of two word or being or become *idhâfah*, it remove from writing.

- a. Al-Imâm al-Bukhâriy said ...
- b. Al-Bukhâriy in muqaddimah of his book said ...
- c. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*

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ABSTRAK

Annisa Fitri Amaliah 14210009, 2018. **Divorce Lawsuit (*Cerai Gugat*) of Indonesian Female Worker With Advocate Serve (Study at Tulungagung Religious Court)**. Skripsi. Jurusan Hukum Keluarga Islam (Ahwal Syakhsiyyah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Erik Sabti Rahmawati, M.A., M.Ag.

Kata Kunci: Cerai gugat, tenaga kerja wanita, advokat.

Perceraian tenaga kerja wanita (TKW) pada Pengadilan Agama Tulungagung saat ini tampaknya telah menjadi suatu hal yang perlu untuk mendapat perhatian lebih. Setiap bulan terdapat 200-400 perkara yang masuk pada Pengadilan Agama Tulungagung. Dalam hal ini, perkara cerai gugat yang diajukan oleh TKW mendominasi. TKW yang sedang berada diluar negeri sebagian besar mengajukan cerai gugat melalui kuasa hukum advokat. Hal tersebut membuat peneliti tertarik untuk mengkaji lebih dalam mengenai sistem komunikasi yang terjalin selama advokat menjadi kuasa hukum TKW dan peran advokat selama proses beracara berlangsung.

Penelitian ini merupakan penelitian empiris atau yang dikenal pula dengan penelitian lapangan. Penelitian ini bersifat deskriptif dan menggunakan pendekatan kualitatif. Untuk mendapatkan data peneliti menggunakan tiga metode pengumpulan data, yaitu observasi, wawancara dan dokumentasi.

Dalam penelitian ini, ditemukan bahwa komunikasi antara advokat dan prinsipal selama proses perceraian berlangsung melalui media sosial. Saat merujuk pada teori komunikasi diketahui bahwa komunikasi yang terjalin diantara advokat dan TKW merupakan jenis komunikasi bisnis. Komunikasi tersebut merupakan komunikasi bisnis karena hanya terfokus pada laporan yang diberikan oleh advokat selaku pemegang kuasa. Adapun mengenai peran advokat saat menjadi kuasa hukum TKW dalam perceraian, diketahui bahwa advokat berperan dimulai dari pembuatan surat kuasa, pendaftaran, menghadiri tiap persidangan hingga proses mediasi, tanpa adanya campur tangan keluarga maupun prinsipal, kecuali dalam proses pembuktian untuk menghadirkan saksi. Dalam proses pendaftaran hingga persidangan tidak terdapat perbedaan saat penanganan kasus perceraian tenaga kerja wanita atau perceraian dengan penggugat lain. Hal tersebut dikarenakan tidak terdapat perbedaan yang diatur didalam perundang-undangan. Bahkan diketahui bahwa dalam proses mediasi, advokat berperan sebagai kuasa mediasi prinsipal tanpa ada perbedaan pelayanan dari mediator. Padahal, dalam proses mediasi selayaknya terdapat perbedaan dalam penanganan mediasi dengan menggunakan kuasa hukum dan mediasi yang dihadiri penggugat dan tergugat secara langsung. Dengan perkembangan dan kemajuan teknologi, seharusnya komunikasi visual antara mediator, penggugat dan tergugat dapat terjalin selama proses mediasi berlangsung. Hal tersebut sesuai dengan Pasal 5 ayat (3) Peraturan Mahkamah Agung No.1 Tahun 2016.

ABSTRACT

Annisa Fitri Amaliah 14210009, 2018. **Divorce Lawsuit (*Cerai Gugat*) of Indonesian Female Worker With Advocate Serve (Study at Tulungagung Religious Court)**. Thesis. Islamic Family Law (Ahwal Syakhshiyah) Department, Sharia Faculty, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Supervisor: Erik Sabti Rahmawati, M.A., M.Ag.

Keywords: Divorce Lawsuit (*Cerai gugat*), Indonesian Female Worker, Advocate.

The divorce of Indonesian female workers in Tulungagung Religious Court now seems to have become a necessary thing to get more attention. There are about 200-400 cases that go to Tulungagung Religious Court every month. In this case, the divorce case filed by the Indonesian female workers dominates. Indonesian female workers who are outside the country mostly filed for divorce through advocate. This makes the researcher interested to study more deeply about the communication system during the advocate becomes the attorney of Indonesian female workers and the role of advocate during divorce of the female worker's lawsuit.

This research is an empirical research or also known as field research. This research is descriptive and using qualitative approach. To obtain data of researcher use three method of data collecting, there are observation, interview and documentation.

In this study, it was found that communication between advocate and Indonesian female worker as long as divorces process by social media. The communication that exists between advocates and Indonesian female worker is a type of business communication. That business communication because the communication during divorce just a report from advocate. As for the role of advocate when being an attorney of Indonesian female worker in divorce, it is known that the advocate role starts from the making letter of attorney, registration, attending every trial until mediation process. All that process without family or principal intervention, except in proof process to present witness. In the process of registration until the trial there is no difference when handling cases of divorce of Indonesian female worker or divorce with other plaintiff. This is because there is no difference create in law. It is even known that in the mediation process, advocates act as the principal mediating attorney without differing service from the mediator. In fact, in the mediation process there should be differences in the handling of mediation by using legal counsel and mediation attended by the plaintiff and the defendant directly. With the development and advancement of technology, visual communication between mediators, plaintiffs and defendants can be established during the mediation process. This is in accordance with Article 5 verse (3) of Supreme Court Law No.1 Year 2016.

ملخص البحث

النساء فطرى أملية، ١٤٢١٠٠٩، ٢٠١٨. دعوي على الطلاق عند الإناث العمالية الإندونيسية بواسطة المحاماة (الدراسة في المحكمة الدينية تولونغونغ). كلية الشريعة قسم الأحوال الشخصية، جامعة الإسلامية الإندونيسية. إيريك سبت رحماواتي الماجستير.

كلمات البحث :- (دعوى - الإناث العمالية الإندونيسية - المحاميات) .

طلاق الإناث العمالية الإندونيسية في المحكمة الدينية هذا اليوم أصبح يرتفع بسبب ملحوظة، حيث تتراوح حالات الطلاق من ٢٠٠ الى ٤٠٠ حالة طلاق شهريا سواء النساء العاملات في داخل إندونيسيا او خارجها، و فتوكل المرأة المحامي ويقوم بتقديم دعوى الطلاق ، هذا جعل الباحثة مهتم إلى مراجعة أكثر في حول نظام يتم تأسيس اتصال خلال محام إلى قوة القانون قوة عاملامرأة و دور محام أثناء الإجراءات في طلاق رعشة الإناث العمالية الإندونيسية جارية.

هذا البحث بحث تجريبي والذي يعرف ايضا بإسم البحث الميداني وصفي ، ويستخدم في هذا البحث النهج النوعي للحصول على البيانات حيث استخدمت الباحثة ثلاث طرق لجمع البيانات ، وهي المقابلة والمراقبة و الوثائق.

في هذا البحث وجدت الباحثة ان هناك التواصل معهم عن طريق وسائل الإلكترونية والاتصالات بين المدعين ويقوم بذلك المحامي. عند الإشارة إلى نظرية الاتصالات ومن المعروف أن الاتصال الموجود بين المحامي و الإناث العمالية الإندونيسية هو نوع من الاتصالات التجارية لأنه يركز فقط على التقارير التي يقدمها المحامي. كداعية لدور العمال المهاجرين عندما أصبح المستشار القانوني في الطلاق، فمن المعروف أن دور الدعوة بدأ من صنع التوكيل والتسجيل وحضور كل محاكمة حتى عملية الوساطة، دون تدخل من الأسرة أو المدرسة، إلا لإثبات أن يحضر الشهود. أثناء عملية التسجيل حتى المحاكمة لم يكن هناك اختلاف عند التعامل مع حالة الطلاق أو الطلاق الإناث العمالية الإندونيسية مع المدعين الآخرين. ويرجع ذلك إلى عدم وجود فرق في التشريع. ومن المعروف أيضا أنه في عملية الوساطة، يقوم المدافعون بدور قوة الوساطة الرئيسية دون خدمة مختلفة من الوسيط. في الواقع، في عملية الوساطة يجب أن هناك فرق في التعامل مع الوساطة باستخدام قوة القانون والوساطة بحضور المدعي والمدعى عليه مباشرة. مع تطور وتقدم التكنولوجيا، ينبغي، يمكن إجراء الاتصال المرئي بين الوسيط المدعي والمدعى عليه أثناء عملية الوساطة الجارية. وهذا وفقا للفقرة (٣) من المادة ٥ من لائحة المحكمة العليا رقم ١ لسنة ٢٠١٦.



CHAPTER I

INTRODUCTION

A. Background of Research

Divorce is a matter of concern at this point. Proved that 84% of the cases were confronted by the Religious Courts is divorce. There are several reasons why the divorce occurred. Starting from a fight that happens continuously, a third party or infidelity, a different lifestyle, to economics problem. Some of these factors make divorce happen. Some provinces in Indonesia continues to increase in the divorce rate. The three provinces that occupy the highest position in the divorce are Central Java, East Java and West Java.¹

In 2016, High Religious Court Semarang is the highest position with 525 thousand grant the divorce. High Religious Court of Surabaya with 509 thousand of divorces. While the High Religious Court of Bandung granted about 437 thousand divorces.²

¹ Data of Religious Court in 2016.

² <https://www.google.co.id/amp/s/m.liputan6.com/amp/2654865/3-provinsi-ini-sumbang-angka-perceraian-tertinggi-di-indonesia>, accessed Saturday, October 21, 2017 at 07:56.

There are two types of divorce that can be filed with the Religious Courts. Divorce named by divorce *talak* and divorce lawsuit (*cerai gugat*). Divorce named by divorce *talak* is a divorce filed by the husband.³ The divorce by divorce lawsuit (*cerai gugat*) is a divorce filed by the wife.⁴

The interesting is of the data 2016 there are 224.240 divorce cases. Divorce by divorce *talak* filed by the husband there are only 90 thousand cases. The percentage of cases received about 60 thousand cases. From these facts it can be seen that the divorce is dominated by divorce lawsuit (*cerai gugat*).⁵

For example on the Tulungagung Religious Court, receive about 200 to 400 divorce requests in a month⁶. In this case, Indonesian female worker out of Indonesia Country dominates. Indonesian female worker out of Indonesia country is part of Indonesian blue-collar workers and craftsman employed overseas.

As we discuss before, one of reasons divorce is economical problem. Indonesian female worker decide to work overseas for her family. But what doing on reality is many of them decide to divorce from her husband. In general, Indonesian female workers who work outside the country, aiming to obtain a better life for family. However, over time, there is a shift in lifestyle between Indonesian female worker and their husbands. Thus, a different life style became one of the factors of disharmony in the household.

³ Article 64 Law No. 7 year 1989.

⁴ Article 77 Law No. 7 year 1989.

⁵ <https://www.google.co.id/amp/s/m.liputan6.com/amp/2654865/3-provinsi-ini-sumbang-angka-perceraian-tertinggi-di-indonesia>, accessed Saturday, October 21, 2017 at 07:56.

⁶ Data from internship on Tulungagung Religious Court, July 9 2017- August 9 2017.

In Indonesia, however Indonesian female worker in overseas or out of country divorce lawsuit can do. Indonesian female workers can still file for divorce by legal counselor or called by legal counselor. Some of them using a legal counselor advocate to handle a divorce case while they are still working overseas.

Some cases of divorce lawsuit by Indonesian female worker become interesting, because many of the defendants (husband) who claimed to have not long communicated with their wives who were working outside the country. However, suddenly got a call to attend a trial before the Religious Courts. Most of husband feel like a victim for this case.

It becomes interesting to study. Regarding the ongoing communication between plaintiff (Indonesian female worker) who was outside the country and an advocate. In addition, with limited distance and communication that can be said is not easy anyway, interesting to do review about the role of advocate at the time of the law as an advocate from the plaintiff (Indonesian female worker).

B. Research Question

Based on the background that has been described the author, then the questions in this research are:

1. How have the advocates communicated with Indonesian female worker as legal counselor on divorce case?
2. How do the advocates play the role as legal counselor of Indonesian female worker on divorce case?

C. Objective of Research

Based on the research question of the problems above, the purpose of this study are as follows:

1. To explain the communication method of advocate as legal counselor to Indonesian female worker on a divorce case.
2. To explain the play role of advocate as legal counselor of Indonesian female worker in divorce in the Tulungagung Religious Court.

D. Significant of Research

In part of the significant of research will be explained theoretically and practically.

1. Theoretical Benefits

Theoretically, the results of this study is expected to be a positive contribution in the field of law. Especially the Islamic civil law in Indonesia related to the procession in the Religious Courts.

2. Practical Benefits

Practically, the results of this study are expected to provide information to the public in general and the readers of this research as a contribution from the mind for the progress of Islamic civil law in Indonesia and also for correction to divorces which process through on advocate.

E. Operational Definition

1. Divorce Lawsuit

Divorce lawsuit is a divorce filed by the wife.⁷

2. Indonesian female worker

Indonesian female worker is female Indonesian workers who work outside of the State of Indonesia.

3. Advocate

Advocate is a person who has a legal profession inside or outside the court.⁸

F. Discussion Structure

Purposes this part is to get a clear in writing this thesis as well as make it easier for readers and other authors in learn sequences of research above, authors make discussion structure as follows:

Chapter I Introduction, present introduction that explain about background, research question, objective of research, significant of research, operational definition and discussion structure.

Chapter II Theoretical Framework that explain about previous research and overview about divorces, overview of divorces lawsuit, divorce procedure through legal counselor and communication theory.

⁷ Adib Bahari, *Prosedur Gugatan Cerai dan Pembagian Harta Gono-Gini dan Hak Asuh Anak* (Yogyakarta: Pustaka Yustisia, 2012), 48.

⁸ Law No. 18 year 2003 about advocate.

Chapter III Research Method, explain about research methodology. On the sub chapter contain the type of research, research site, data sources, data collection techniques and data processing method.

Chapter IV Findings and Discussion, explain about the result. On the sub chapter contain objective condition of research, data exposure and data analysis.

Chapter V Conclusion and suggestion. On the sub chapter contain conclusion and suggestion. Conclusion explain about communication system of advocate as legal counselor to Indonesian female worker on a divorce case and the role of advocate as legal counselor of Indonesian female worker. Then, continue with bibliography and appendix of research documentation.

CHAPTER II

REVIEW OF RELATED LITERATURE

A. Previous Research

Authors describe some previous research that has relevance to this research. Studies of previous research are important. The previous study was intended to make some differences and look for differences between the researches to be conducted by the research that has been done on the same theme. In addition, this previous research is also to confirm that this research is really new and has never been research before.

Previous research is very useful for comparison. Thus the research has done original by author. To avoid any repetition of the same study of things and for consideration, the author describes some the results of previous studies, such as:

1. Divorce Due to Wife's Lawsuit (*Perceraian Karena Gugatan Istri*) Case Study of Divorce Number: 0597/ Pdt.G/ 2011/ PA.Sal and Number: 0740/ Pdt.G/ 2011/ PA.Sal in Salatiga Religious Court. This study was written by

Himatul Aliyah, Sharia Faculty, Al-Ahwal Al-Syakhsiyyah, 2013 at the State Islamic University in Salatiga. Similarities exist in this study with that author's researched was equally discussed the divorce lawsuit filed by the wife. The difference that exists between this researches by author's research to be studied is the focus of research. In this study, focused on divorce, ranging from causes to the judge's decision in the case. While in the research that will be researched is the Indonesian female worker contested divorce filed by the legal counselor, especially advocate.

2. Analysis of Juridical Divorce Lawsuit to Husband in Sidoarjo Religious Court (*Analisis Yuridis Cerai Gugat terhadap Suami di Pengadilan Agama Sidoarjo*)⁹. This study was written by Fredy Wahyu Suharyanto, Law Faculty, Law Studies program, in 2013, the National Development University "Veteran". Similarities exist in study with this research is equally discuss the divorce to lawsuit filed by the wife against the husband. Differences were found in this study with research is in the focus of research, this study examines the reasons the wife filed for divorce lawsuit and consideration of the judge in deciding contested divorce cases. As for the research that author focused on communication method and the play role of advocate in the law under the legal counselor of Indonesian female worker who are not located in the Indonesia.

⁹ Fredy Wahyu Suharyanto, *Analisis Yuridis Cerai Gugat terhadap Suami di Pengadilan Agama Sidoarjo*, Skripsi (Surabaya: UPN "Veteran", 2013).

3. The Divorce Phenomenon of Indonesian female workers (TKW) of Hong Kong and Taiwan (*Fenomena Perceraian Tenaga Kerja Wanita (TKW) Hongkong dan Taiwan*)¹⁰, 2006. This research was written by Janeko, Sharia Faculty, Study Program Al-Ahwal Al-Syakhsyiyah, State Islamic University Maulana Malik Ibrahim Malang. Similarities exist in this study with the research is equally discuss the divorce conducted by Indonesian female worker. Differences were found in this study with research is in this study discusses the factors that lead to divorce by Indonesian female worker (TKW) occurs. As the authors research focus on the divorce process performed by the Indonesian female workers with advocate serve.
4. Analysis Factors "Divorce Lawsuit" of Indonesian female workers in Kendal Religious Court (*Analisis Faktor "Cerai Gugat" Tenaga Kerja Wanita (TKW) di Kabupaten Kendal*) Case Study of Kendal Religious Court of 2011.¹¹ This study was written by Muhammad Basir, Sharia Faculty, Al-Ahwal Al-Syakhsyiyah, Walisongo Institute State for Islamic Studies, Semarang. Equation contained in this research with author's research are discussing a divorce contested conducted by Indonesian female worker. The difference that exists between this studies with author's research is this research focuses on the factor analysis of the contested divorce. While this research focus on the procession

¹⁰ Janeko, *Fenomena Perceraian Tenaga Kerja Wanita (TKW) Hongkong dan Taiwan*, Skripsi (Malang: UIN Maulana Malik Ibrahim, 2006).

¹¹ Muhammad Basir, *Analisis Faktor "Cerai Gugat" Tenaga Kerja Wanita (TKW) di Kabupaten Kendal*, Skripsi (Semarang: IAIN Walisongo, 2011).

in the divorce proceedings to lawsuit filed by Indonesian female workers with advocate serve.

Clearly, previous research is presented in the table I as follows:

Table I
Previous Research

No.	Name	Title	Equation	Difference
1.	Himatul Aliyah ¹²	Divorce Due to Wife's Lawsuit (Case Study of Divorce Number: 0597/Pdt.G/2011/PA.Sal and Number: 0740/Pdt.G/2011/PA.Sal In Salatiga Religious Court)	Discussion about the divorce filed by the wife.	In the focus of the discussion, this study examines the divorce in general. Starting from reason of divorces until the judge's decision in the case. While the research will be the author carefully about the communication method of Indonesian female workers who are outside of Indonesia with advocate, as well as the role of advocate in representing the Indonesian female worker during the procession of the law.
2.	Fredy Wahyu Suharyanto ¹³	Analysis of Juridical Divorce Lawsuit Against Husband in Religious Court of Sidoarjo	Discussion about the divorce filed by the wife to the husband.	This study examines the reasons the wife filed for divorce lawsuit and consideration of the judge in deciding contested divorce cases. As for the author's research focused on communication method and the play role of advocate in the law under the advocate of Indonesian female worker who are not

¹² Himatul Aliyah, *Perceraian Karena Gugatan Istri*, Skripsi (Salatiga: IAIN Salatiga, 2013).

¹³ Fredy Wahyu Suharyanto, *Analisis Yuridis Cerai Gugat terhadap Suami di Pengadilan Agama Sidoarjo*, Skripsi (Surabaya: UPN "Veteran", 2013).

				located in Indonesia.
3.	Janeko ¹⁴	The Divorce Phenomenon of Indonesian female workers of Hong Kong and Taiwan.	Discuss on divorce conducted by Indonesian female worker	Discuss about the factors that lead to divorce by Indonesian female workers. As for the research that wants the author thoroughly focused on communication systems and the role of advocate in the law under the legal counselor of Indonesian female worker who are not located in the Republic of Indonesia.
4.	Muhammad Basir ¹⁵	Analysis Factors "Divorce Lawsuit" of Indonesian female worker in Kendal Religious Court (Case Study of Kendal Religious Courts).	Discuss contested divorce conducted by Indonesian female workers.	In this study focuses on the factor analysis of the contested divorce. As for the author's research focused on communication method and the play role of advocate in the law under the legal counselor of Indonesian female worker who are not located in Indonesia.

¹⁴ Janeko, *Fenomena Perceraian Tenaga Kerja Wanita (TKW) Hongkong dan Taiwan*, Skripsi (Malang: UIN Maulana Malik Ibrahim, 2006).

¹⁵ Muhammad Basir, *Analisis Faktor "Cerai Gugat" Tenaga Kerja Wanita (TKW) di Kabupaten Kendal*, Skripsi (Semarang: IAIN Walisongo, 2011).

B. Theoretical Framework

1. Divorce

a. Definition of Divorce

Divorce comes from split. Divorce interpreted as separate, disconnected as husband and wife or detachment of wedlock. In Indonesia, divorce has regulatory arrangements ranging from litigation proceedings to divorce to the cause of the divorce. Divorce does not just happen without going through the sequence of legal procedures by the judiciary, through the religious court for the moeslem and State Court for non- moeslem.¹⁶

There are essentially doing the marriage was intended to forever, but sometimes there are specific reasons that lead to marriage cannot be continued and should be decided in the middle path or forced to break up with, or in other words being divorce.¹⁷

b. Factors of Divorce

It is known that marriage is an emotional and physical bond between a woman and a man with the aim of forming a happy family, prosperous, eternally based on belief in one God, the marriage can be broken off because of the death and the decision in court.¹⁸

¹⁶ Adib Bahari, *Prosedur Gugatan Cerai*, 12.

¹⁷ Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan*, Cetakan Keenam (Yogyakarta: Liberty, 2007), 8.

¹⁸ Article 38 of Law No. 1 year 1974

As for several factors causing divorce in Article 19 of Government Law no. 9 year 1975 in conjunction with Article 116 Islamic Compilation Law:¹⁹

- 1) Either party commits adultery or become drunks, compactor, gamblers and others are difficult to cure.
- 2) One party leaves the other party for two (2) consecutive years without the permission of the other party and without valid reason or because of anything other than its ability.
- 3) One party received jail terms of five (5) years or a more severe punishment after the marriage took place.
- 4) One party commits atrocities or severe persecution that endangers the other party.
- 5) One party gets a disability or illness with the consequences of not being able to perform his duties as a husband and wife.
- 6) Between husband and wife continuous disputes and quarrels and there are no hope to live in harmony in the household.

There are additional reasons for divorce can occur within the Islamic Compilation Law, namely:

- 1) The husband violated *taklik talak*.
- 2) Religious transfers or apostates that cause disharmony in the household.

¹⁹ Zainuddin Ali, *Hukum Perdata Islam di Indonesia* (Jakarta: Sinar Grafika, 2006), 74.

c. Divorce Procedures.

Divorce occurs due to the divorce *talak* from the husband. *Talak* is some word in Islam that can make separated of relation between husband and wife. *Talak* is the pledge of a husband before a trial of the Religious Courts which is one of the reasons for the breakup of marriage.²⁰ There are four types of *talak* are regulated under Islamic Compilation Law.

In Article 18 KHI, explained about the *talak raj'i*. *Talak raj'i* is unity or second divorce, where the husband is allowed to refer to during the wife is still in the waiting period (*'iddah* period). As for Article 119 Islamic Compilation Law, explained about the *talak ba'in sughra*. *Talak Ba'in sughra* is not to be referred to, but may with a new marriage contract with former husbands, although the waiting period (*'iddah* period).

Divorces are included in the *talak ba'in sughra* happening *qabla dukhul* (before intercourse) divorce, divorce by redemption or *khulu'*, divorce imposed by the Religious Courts. *Khulu'* is separated or divorce between wife and husband by pay an agreed ransom.²¹ On Article 120 Islamic Compilation Law, described the *talak ba'in kubro* divorce is a divorce that happened for the third time. Divorces of this type cannot be referenced and cannot be married again, unless the marriage occurred when ex-wife married another man and then divorce *ba'da dukhul* (after intercourse) and finished from her waiting period.

²⁰ Article 117 Compilation of Islamic Law.

²¹ Farid Wajdi Ibrahim, *Hukum Islam Kontemporer Praktek Masyarakat Malaysia dan Indonesia* (Aceh: Bandar Publishing, 2015), 107.

On Article 121 Islamic Compilation Law, described the *talak sunni*. *Talak sunni* may be imposed against the wife who was holy and not interfered with in this holy period. By contrast, in Article 122 of the *talak bid'i* described. This type of divorce is a prohibited *talak*, the divorce thrown when the wife is in a state of menstruation or wife in a holy state, but is interfered with in the sacred time.

Divorce within Islam is permissible. With provisions have been made in various ways to be harmony, peace and happiness. However, expectations in marriage cannot be achieved resulting in divorce.²²

Divorce is regulated in Law no. 7 year 1989. Divorce can be divided into two aspects. Divorce with divorce *talak* and divorce lawsuit (*cerai gugat*). Divorce *talak* is a divorce filed by the husband. Divorce lawsuit (*cerai gugat*) is a divorce filed by the wife.

1) Divorce *Talak*²³

In article 66 of Law no. 7 year 1989, explained that if the husband came to the Religious Court and begged for divorce, then the wife agreed, then included in divorce *talak*.

2) Divorce Lawsuit (*cerai gugat*)²⁴

In Article 74 of Law no. 7 year 1989, it is explained that when his wife came to the Religious Court and pleads for a divorce, then the husband agrees, then included in a divorce lawsuit (*cerai gugat*).

²² Zainuddin Ali, *Hukum Perdata Islam*, 80.

²³ Article 66 Law No. 7 year 1989.

²⁴ Article 74 Law No. 7 year 1989.

d. Divorce Procedure Law

The law of civil procedure regulated in the *Herzien Inlandsch Reglement (HIR)* and *Rechtreglment voor de Buitengewesten (RBg)* as the procedural law applicable to the environment of the General and Religious Courts as set forth in Article 54 of Law no. 3 of 2006 on the Religious Courts. According to the provisions of article 207 BW, the event of divorce filed through lawsuit must be submitted to *RvJ (Raad van Justite)*, which is now replaced by the Religious Courts for Muslims and the Court State for non-Muslims and are in the territory residence of the wife or husband.

There are step to do divorce on court:²⁵

- 1) First trial court.
- 2) Mediation process.
- 3) Changes or revocation of the lawsuit.
- 4) The reading of the lawsuit.
- 5) Answer of the lawsuit.
- 6) *Replik*.
- 7) *Duplik*.
- 8) Proof.
- 9) Conclusion.
- 10) Verdict.
- 11) Legal effort.

²⁵ Budi Susilo, *Prosedur Gugatan Cerai*, (Yogyakarta: Pustaka Yustisia, 2008), 44.

12) Execution.

2. Overview of Divorce Lawsuit

a. Definition of Divorce Lawsuit

Divorce lawsuit is divorce filed by the wife.²⁶ Article 73 paragraph 1 has been set permanently that in contested divorce cases, which acts as the plaintiff is the wife. On the other hand, the husband is placed as a defendant. Thus each has a certain path in an effort to demand a divorce. The path of the husband through divorce *talak* and wife through divorce lawsuit.

A divorce lawsuit may be committed by a wife who marries according to Islam and by a husband or a wife who marries according to her religion and beliefs other than Islam.

In accordance with the provisions of Article 40 Law No. 7 year 1989, contested divorce investigative procedures have been determined and further stipulated in Article 20 through Article 36 of Government Law No. 9 year 1975. Meanwhile contested divorce examination procedure submitted to the Religious Court further stipulated in Article 73 to Article 86 of Law number 7 year 1989 and Article 132 to Article 148 of the Islamic Compilation Law.

If the attempt to contested divorce is associated with procedural rules set out in the procedural law, contested divorce really purely *contentinosa*. There is a dispute that is a marriage dispute concerning divorce. Apart from asserting

²⁶ Adib Bahari, *Prosedur Gugatan Cerai*, 48.

contested divorce is *contentinosa* and is *contradiktoir*, but in the form of *khulu'* contested divorce, legal completion will end with divorce lawsuit procedure.

As if both the form of divorce attempts. The process initially follow a plan to lawsuit for divorce, but solution ended with divorce lawsuit procedure. The case containing the dispute between the husband as the defendant and the wife as the plaintiff, the provisions allowed for procedural law in the case on a party basis, are fully applicable in the formulation of a divorce lawsuit.

In the case of divorce, the lawsuit concerning child control, child livelihood, wife's living, and joint property of husband and wife can be filed together with divorce lawsuit or after the divorce verdict obtains a permanent legal force.

b. Requirements for Divorce Filing

If you are a wife feeling that your marriage is beyond belief and deciding to divorce, the first step thing to do is know the process of divorce. So this divorce initiative can be done by wife and husband or advocate.

The family's wife or husband's family cannot register a divorce lawsuit for a woman or man in her family. For those who are Muslims then the lawsuit was filed in the Court of religion (Article 1 Chapter I on Government Law No. 9 year 1975).

c. Terms of Documents in Filing a Divorce

There are some files that must be prepared when they want to file a lawsuit is filed in the Religious Court. Copied the lawsuit as much as six times that will be

for the judge assemblies (three files), clerks (one file), defendant (one file), that file, as follows:

- 1) A marriage certificate / marriage book original and copies of two pieces, each affixed with the stamp of Rp.6000, - in the big Post Office in your city.
- 2) Village head certificate for divorce.
- 3) Identity Card (*KTP*) and *KTP* one sheet of folio one face (not to be cut) stamped Rp.6000, - at the Post Office.
- 4) Family Card and Photocopy.
- 5) Child birth certificates (if having children) and photocopies of deeds to children's emblem, stamped with seal, are also legalized at the Civil Registry Office.
- 6) License of superior (for civil servants/ military/ police).
- 7) When the divorce is in conjunction with a lawsuit against also joint property it is necessary to put the evidence of property ownership such as: 1) Certificate of land (if on behalf of the plaintiff/ applicant). 2) *BPKB* (Proof of Vehicle Ownership) / *STNK* (Letter of Vehicle Identity Number) for motor vehicles. 3) A book of savings. 4) Receipts, letters of sale, and others.²⁷

d. Divorce Procedure against the Religious Courts

As for layout the way of this divorce law is stipulated in the Implementation Regulation namely Government Law no. 9 year 1975 provides in Article 20 to Article 36 which basically is as follows:

²⁷ Adib Bahari, *Prosedur Gugatan Cerai*, 30.

1) Claim filing:

- a) Divorce is filed by a husband or wife or legal counselor to the court whose jurisdiction covers the defendant.
- b) In the case of the residence of the defendant is unclear or unknown or has no fixed residence, as well as the residence of the defendant located outside the country, the lawsuit filed with the court at the plaintiff's residence.
- c) Similarly, a divorce lawsuit on the grounds that one party leaves the other for two consecutive years without the permission of the other party and for no legitimate reason or anything other than his or her ability, the lawsuit shall be filed with the Religious Court at the plaintiff.

2) Call:

- a) Callings should be communicated to the individual concerned that if it cannot be found, the call is delivered by mail or equalized with it. And this is done every time the call will be held the hearing.
- b) Who perform the call is a bailiff.
- c) The call should be done in a way that is appropriate and has been accepted by the parties or their proxies no later than 3 days before the trial opened.
- d) Call the parties of case on Religious Court rules on Law No. 7 year 1989 *juncto* Government Law No. 9 year 1975. This special regulated for divorce *talak* and divorce lawsuit.²⁸

²⁸ Erfaniah Zuhriah, *Peradilan Agama di Indonesia* (Malang: Setara Press, 2014), 157.

3) Trial:

- a) The trial to examine the divorce is to be done by the Court no later than 30 days after receipt of the lawsuit at the registrar.
- b) Examination of contested divorce cases is done in a closed session.

4) Mediation:

- a) Mediation aims is to resolve the dispute through the excavation and tracking of the interest and needs of parties.²⁹
- b) The court must attempt to reconcile the two parties both before and during the proceedings before the suit is decided.
- c) In an attempt to reconcile both sides the Court may request assistance to another person or other entity deemed necessary.
- d) Length of mediation is determined by the dispute of both parties.³⁰

5) Verdict:

- a) Pronunciation of court decisions must be made in open court.
- b) The verdict may be imposed even if the defendant is not present, provided that the claim is based on a prescribed reason.

²⁹ Nurnaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan* (Jakarta: PT. Raja Grafindo, 2012), 33.

³⁰ Muhammad Saifullah, *Mediasi dalam Tinjauan Hukum Islam dan Hukum Positif Indonesia* (Semarang: Walisongo Press, 2009), 92.

3. Divorce Procedure With Legal Counselor Serve

The legal counselor who can act as the legal counselor/ representative of the plaintiff/ defendant or the applicant/ petitioned in court shall be:³¹

- a. Advocate (in accordance with Article 32 of Law No.18 Year 2003 About Advocates).
- b. Prosecutor with special authority as legal counselor/ representatives of State/ Government in accordance with Article 30 paragraph (2) of Law Number 16 Year 2004 on the judiciary.
- c. The law firm government/ military/ prosecutor Republic of Indonesia.
- d. Directors/ Management or a designated employee of a legal entity.
- e. Those who get the power of incidental set by the chairman of the court, such as legal aid, the law firm military/ Police of Indonesian for cases about member/ military family/ Police of Indonesia, family relations (required between the authorizing by proxy shall have any family relationship within the meaning of wife and husband (not ex-husband or ex-wife), children whose parents are not married and the husband and wife.

In the case of divorce with legal counselor is an optional. Said to be optional because there is no obligation to use a legal representative in the proceedings. In general, the use of legal counselor in conducting a lawful procession in accordance with the procedures described. The thing that

³¹ *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama*, 70.

distinguishes the power of legal counselor is needed in terms of procedural law powers.

As for the presence of parties in the trial, may be represented by legal counselor, but not in mediation process. Mediation or a peace effort is an obligation. In the Supreme Court Law No. 1 Year 2016, explained that the mediation procession must be attended by the parties.³²

Mediation is a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. That definition from legal literately Black's Law Dictionary.³³ Mediation lead by mediator. When lead the communication proses during mediation help to direct between parties to discuss gradually attempts that may be taken both in order to end the dispute. Mediators facilitate communication so that the parties gain a thorough understanding of the issues they are disputing.³⁴

For those who are unable to attend with a note outside the Republic of Indonesia, may be represented by a legal representative. However, stick with visual communication tools that can connect the parties with the mediator and the defendant or the defendant. In the Supreme Court Law No. 1 year 2016, are described in the fourth section, Article 6 paragraph (1) that the parties are required to attend mediation with or without legal counselor.

³² Supreme Court No.1 year 2016.

³³ Dwi Rezki Sri Astarini, *Mediasi Pengadilan*, (Bandung: PT. Alumni, 2013), 87.

³⁴ Syahrizal Abbas, *Mediasi dalam Prespektif Hukum Syariah, Hukum Adat dan Hukum Nasional* (Jakarta: Kencana Prenada Grup, 2009), 79.

At the point Supreme Court Law known that in essence, the legal representative only act as a companion at the time of the mediation process underway. However, described in point thereafter in paragraph (3) that the absence of the parties can be a valid reason. Employment of women as workers outside the State of Indonesia led to the absence of Indonesian female workers in the mediation process is considered to be a valid reason. In accordance with a written explanation of Article 6 paragraph (4).

To support the presence of the parties directly, described in Article 5 (3) of the meeting of visual communication. With advances in technology, the application of that article is easy to do and can be one of the solutions is done on Indonesian female workers to lawsuit for divorce with legal counselor serve.

4. Communication Theory³⁵

According to Himstreet and Baty, communication is a process of exchange information between individual through a system of regular, well with symbols, signals as well behavior and action. As for according to Bovee, communication is a delivery process and reception message. In world business, there are some type communication. As for type communication there are communication business, communications interpersonal and communication inter culture.

Interpersonal communication is communication between two people or more that tends to be use language that is easy understood second split party and tend

³⁵ Djoko Purwanto, *Komunikasi Bisnis*, (Surakarta: Erlangga, 2010), 4.

flexible and supple and informal.³⁶ Communication interpersonal often encountered in life every day. Example communication interpersonal frequently happen is communication between family, communication between neighbors, communications between employees and other communications that it has aim certain.

There is some the destination to be achieved in communication between private. As for aim there are:³⁷

a. Telling information.

In communicate, someone certain having aim and hope. One of them among others is for give information to others, so that the person knowing something.

b. Sharing experience.

Besides deliver information, communication too have aim for share experience personal to others. About the sad experience and fun.

c. Growing sympathy.

Sympathy is character positive that appears from someone from innermost heart for come along feel load suffered, disaster, sadness and anguish felt by others. Communication too could do for foster a sense of sympathy to others.

d. Cooperation.

The other aim of communication is do cooperation. Something that give rise benefits for second split parties.

e. Telling disappointment or pique.

³⁶ Djoko, *Komunikasi Bisnis*, 5.

³⁷ Djoko, *Komunikasi Bisnis*, 27.

Another purpose of communication is revealed disappointment and pique. Communication is done for revealed disappointment and pique on no directly could reduce load someone.

f. Growing motivation.

Through communication between personally, someone could cause something a positive thing. Motivation is something encouragement strong from in someone for do something.

As for inter culture communication is communications made between two people or more of each respectively have different cultures because difference place.³⁸ Inter culture communication happen moment two people or more that do communication inter-regional, inter- region as well interstate.

In communication known two form communication. Form communication there are verbal communication and nonverbal communication. Verbal communication is communications which common use in world business for deliver message to other parties. On written as well oral. Form this verbal communication have good regular structure and organized.

In world business there some example verbal communication, namely:

- a. Make and send letter introduction goods to something company.
- b. Make and send letter reprimand to customers who are in arrears payment.
- c. Make and send letter confirmation to customers.
- d. Make and send letter offer work.

³⁸ Djoko, *Komunikasi Bisnis*, 5.

- e. Give information to customer about new product.

In verbal communication is known that effective communication very depends on skills someone in send and receive message. There is some type verbal communication on world business, namely:

- a. Speaking and writing

In communication business, on generally someone more exciting talking then write. It is because of oral communication more easy and efficient and fast in delivery messages business. Delivery message on written more rarely done. It is not means delivery on written no important. Messages are important and complex more right if be delivered on written.

- b. Hearing and reading

Good communication is established on two direction. Not only could give something information, but too could receive information. For that skills read and listen are so needed. Results studies prove that someone tends experience weakness in read and listening. Although there difference between read and listen, both need similar approach. First step is noted information. As for second step is interpret information. So, someone who reads or listens at least must understand principal information and record it, after that interpret has recorded.³⁹

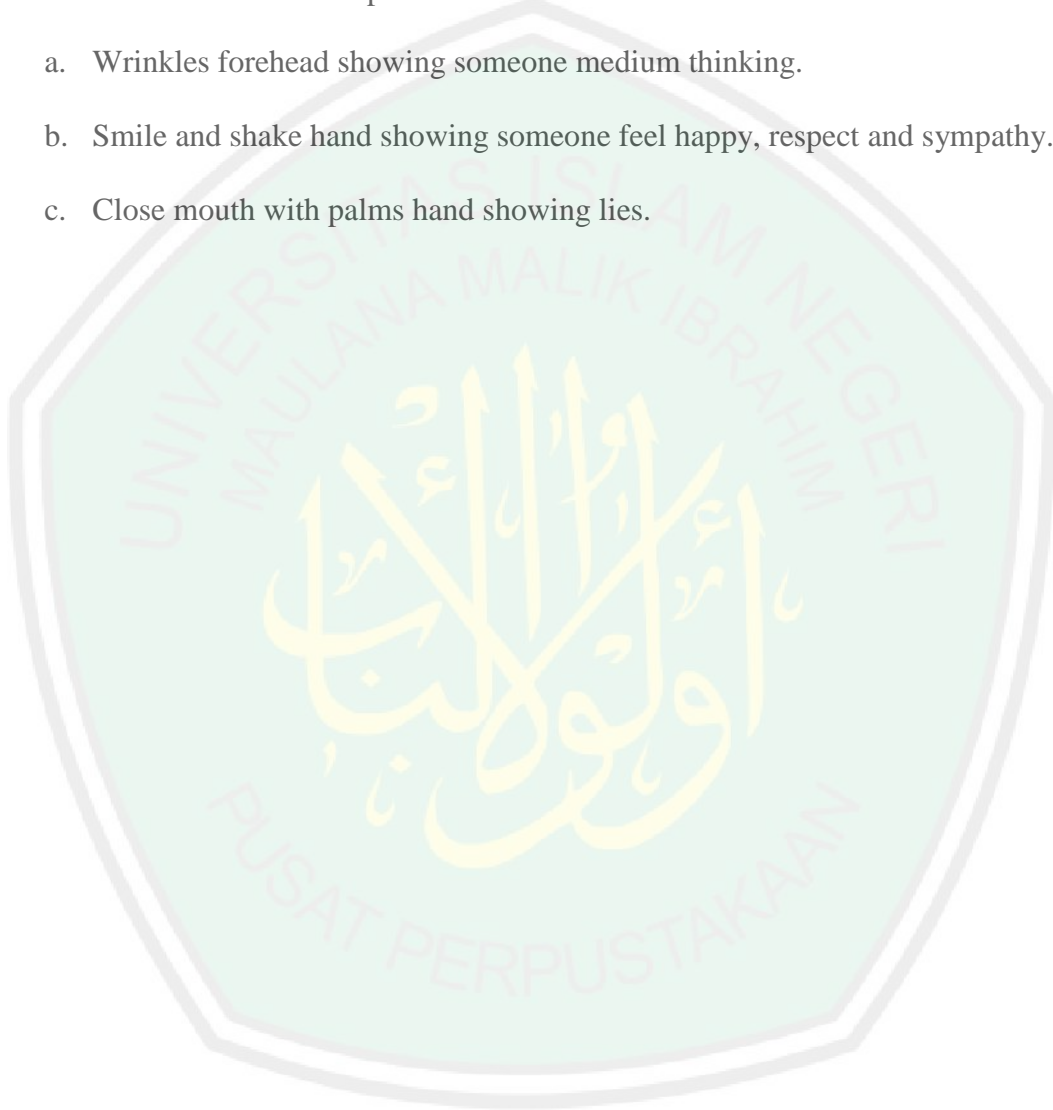
Then next communication is nonverbal communication. In communication, not only a verbal communication. Communication no limited on something that

³⁹ Djoko, *Komunikasi Bisnis*, 8.

came or written. In science anthropology, before use words for communicate, human use body language for communicate.

There are some example from nonverbal communication:⁴⁰

- a. Wrinkles forehead showing someone medium thinking.
- b. Smile and shake hand showing someone feel happy, respect and sympathy.
- c. Close mouth with palms hand showing lies.



⁴⁰ Djoko, *Komunikasi Bisnis*, 8.



CHAPTER III

RESEARCH METHODS

A. Types of research

This study uses the type of empirical research, namely research on the perception of society, the development of a law in a society, the development of an institution, such as marriage, divorce, or professional or community organizations and others. In addition it is also called field research is the research emphasis on data collection of informants who have been determined.⁴¹

Empirical studies with qualitative approach on the pattern on human behavior based on frame reference the perpetrator. Individual as central actor needs to be understood and is the unit of analysis and puts it as the unit of the whole.⁴² The characteristic of qualitative approach there are descriptive, limited theoretical use,

⁴¹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: PT. Remaja Rosdakarya, 2005), 135.

⁴² Burhan Asshoha, *Metode Penelitian Hukum* (Jakarta: PT. Asdi Mahasatya, 2010), 15.

not relying on measurements, variables can appear later, uncritical, limited sample determination and use of interview guidelines.⁴³

Empirical studies also known as sociological research. Sociological law research means law is conceptualized as a social order that is in real terms associated with other social variables. The usefulness of sociological law research is to know how the law is implemented including law enforcement processes.⁴⁴ Because of this kind of research can reveal the problems that lie behind the implementation and enforcement.

Sociological law research in the use of data sources later with two materials namely literary materials as secondary data, and continued with primary data or field data. As a result of this data type, then the data collection tool consists of the study of observation.⁴⁵ And another data needed are interview and documentation. All of which are described in the following explanation.

One of theory on sociological law used on this research is structuralism. This theory used the three step of analysis. There are:⁴⁶

1. Structure of norms. There are three structure of norms description about situation, disposition or recommendation and sanctions.
2. The normative scheme of legal system than question why the substance of law takes the form like today.
3. The last is how the law applicable works on sociology.

⁴³ Burhan Asshofa, *Metode Penelitian Hukum*, 15.

⁴⁴ Amiruddin, Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT RajaGrafindo Persada, 2004), 133.

⁴⁵ Amiruddin, Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 214.

⁴⁶ Amiruddin, Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 215.

B. Research site

The location of the study is the place used to obtain data from respondents. The location of this research is Tulungagung Religious Court. Tulungagung Religious Court is a IA Class Religious Court. The author chose the object of this study for consideration when doing observation at Tulungagung Religious Court, many cases of divorce accounted by Indonesian female worker handled by advocate.⁴⁷

C. Data sources

Author used the primary data source, the data in the form of verbal or spoken words orally, gestures or behavior by subjects who can be trusted, in this case is the subject of research (the informant) with respect to the variables studied.⁴⁸ Because of this kind of research is empirical research, materials research use, namely:

1. Primary sources (primary literature) extracted from the object data obtained directly from the respondents and informants research with structured interviews to obtain data associated with the communication system in proceedings between advocates and Indonesian female worker. As well as the opinion of the vice of *Panitera* regarding the proceedings of advocates who hold divorce lawsuit and the last is the opinion of the mediator about the role of advocate at the time of mediation.

⁴⁷ Data of Tulungagung Religious Court of 2016.

⁴⁸ Suharsimi Arikunt, *Prosedur Penelitian Suatu Pendekatan Praktik*, (Jakarta: Rineka Cipta, 2014), 22.

In this primary data source, the author interviewed several informants, such as:

- a. Vice of *Panitera*.
- b. 2 Mediators.
- c. 2 Advocates.

2. Secondary sources (secondary libraries) are derived from the literature that provides information about the role of advocates and court proceedings, as well as other literature materials relevant to the issues discussed as supporting and comparing the data.

D. Data Collection Techniques

1. Observation

Observation is an activity carried out by directly to the field in order to determine incidence directly. Bright and disguised observation. Observations carried out by the environment at Tulungagung Religious Court. By observing field facts about the advocate in carrying out duties as an advocate of Indonesian female worker who is not in jurisdiction.

2. Interview

Interview techniques that get information by asking questions directly to the respondent.⁴⁹ Semi-structured is in-depth interviews and free. Interviews with advocates conducted to find out how the system of communication with migrant workers, in addition to interviews with vice of *Panitera* and mediators is required

⁴⁹ Lembaga Penelitian, Pendidikan, dan Penerangan Ekonomi dan Sosial, *Metode Penelitian Survei*, (Jakarta: Pustaka LP3ES Indonesia, 2006), 192.

in order to know the facts on the ground regarding the role of advocates when acting as the legal counselor of an Indonesian female worker.

3. Documentation

Library research also known as a document study which is a complement of the use of observation and interview methods in qualitative research. For empirical research, literature study is a method of collecting data in use together other methods such as interviews, observation and questionnaires.

A library research is undertaken to derive a theoretical basis of scholar or jurist opinion and from several books, either from the personal of the author or from the library which is the work of the jurists, as well as various scientific papers related to the object of research. That's means every data on documentation is inanimate objects.⁵⁰ In addition, the authors also requested some data to the informants who felt very necessary in assisting the implementation of this research.

E. Data Processing Method

Data processing method is a process that needs to be taken to present data. In the data processing techniques that are already in get based on the data collection methods already mentioned above, can be done in the following way:

1. Edit Stage

Phase edit a phase that is meant to re-examine the data. The data that was obtained primarily in terms of completeness, clarity of meaning, appropriateness and relevance to the group of other data with the aim of whether the data is

⁵⁰ Suharsimi Arikunto, *Prosedur Penelitian*, 227.

sufficient to solve the problems studied and to reduce errors and lack of data in research and to improve data quality.

Before the data is processed, the processing data needs to be edited first. Data or information that has been collected in the record book, the list of questions arise or at your interview needs to be read again and repaired, if there are still the things that make some underestimate and need to improve data quality and eliminate doubts about the data called edit data.⁵¹

All data relating to the divorce of the Indonesian female worker through a legal counselor, taken as an empirical truth. This empirical truth is logical and theoretical. This is done to provide meaningful intellectual. The emphasis on the significance of the results of this study can be an indicator of the validity and predictive data to be justified scientifically.

2. Clarification Stage

Reduce the existing data by arranging and clarify the data obtained into specific patterns or specific issues that facilitate the reading and discussion in accordance with the needs of research.⁵²

Data reduction is part of a sharpening analysis. Classify, deploy, discard unnecessary, and organize data in a way such that the all conclusions can be drawn and verified.

⁵¹ Moh Nasir, *Metode Penelitian*, (Jakarta: Bumi Aksara, 2003), 111.

⁵² Lexy J. Moleong, *Metode Penelitian Kualitatif*, 290.

3. Verification Stage

Verification is the verification of the data to ensure the validity of the data that has been collected. Verification needed for the check validity of the data.⁵³ This verification is done in a way to meet the subject of data sources and provide the results of interviews with him to be taken whether the data is in accordance with which to inform him or not. In addition, for some of the data in a way verification writer triangulation, matching (cross-check) between the results of interviews with the subjects that the income of other subjects, so that it can be concluded proportionately.

4. Analysis Stage

In this part is analysis. Author will relate between what on find of this research and focus on main point of research.⁵⁴ The analysis stage is the stage of sociological authors began to provide an overview relating to the contested divorce Indonesian female worker performed by the legal counselor. Regarding the system of communication between the legal counselor and Indonesian female worker who are outside Indonesia. Authors will examine the top to adjust the rules written in the regulation.

5. Conclusion Stage

In this final stage is the conclusion. The conclusions in this qualitative research is a new finding that had not been there, however, the conclusions expressed are temporary and will be changed if it is found the evidence is

⁵³ Joko Subagyo, *Metode Penelitian Dalam Teori dan Praktik*, (Jakarta: PT. Rineka Cipta, 2004), 99.

⁵⁴ Cik Hasan Bisri, *Model Penelitian Fiqh*, (Jakarta: Prenada Media, 2003), 336.

authentic and more support. At this conclusion as an answer to the above problem formulation.



CHAPTER IV

FINDINGS AND DISCUSSION

A. Objective Condition of Research

1. Profile and Establishment History of Tulungagung Religious Court⁵⁵

The existence of Tulungagung Religious Courts before independence ranged from 1882 to 1945 under the auspices of the Van Justitie Department in which the trial was held in the mosque porch, after independence of Indonesia was under the auspices of the Ministry of Religion based on Government Law No.5 of 1946 which up to the year 1947 the practice of his trial is still on the porch of the Great Mosque. Later in the beginning of 1948 to 1970 was in the building owned by Ma'arif NU, 1971 up to 1979 in BKM Tulungagung building. Only in 1980 until January 2010 Tulungagung Religious Court has its own building located at Hero III 01, street on the basis of the APBN project from 1979 to 1980, then in 2008 the Tulungagung Religious Court obtained funds from DIPA FY 2007 for the procurement of land of nearly 1 Ha.

⁵⁵ File of Profile Tulungagung Religious Court.

Consecutively starting from 2008 to 2009, funding from DIPA for the physical construction of buildings, environments, facilities and infrastructure, only in February 2010 Tulungagung Religious Court moved to a new building on Ir.Soekarno-Hatta Street number 117. Legal basis for the founding of the Tulungagung Religious Court refers to Law No.7 of 1989 *juncto* Law No. 50 Year 2009.

Chairman of Tulungagung Religious Court from the first period until now as follows Table II:⁵⁶

Table II
Chairman of Tulungagung Religious Court from 1967- 2018

No.	Chairman of Tulungagung Religious Court	Period
1.	KH. Fadhol	1967
2.	KH. M. Thooyib	1967 until 1979
3.	Drs. HM. Husain ELM, S.H	1979 until 1990
4.	Drs. HM. Mukayyad, S.H	1990 until 1999
5.	Drs. H. Haryono Sunaryo, S.H	1999 until 2002
6.	Drs. H. Ahmad Rifa'I, S.H	2003 until 2004
7.	Drs. H. Zubair Masruri, S.H	2004 until 2006
8.	Drs. H. Mustanjid Aziz, S.H	2006 until 2008
9.	H. Moch. Tha'if AS, S.H	2008 until 2010
10.	H. Supangkat, S.H, M. Hum	2010 until 2012
11.	Drs. H. Hidayat, S.H	2012 until now

Jurisdiction Tulungagung Religious Court has 19 districts, among them as listed below:⁵⁷

- a. Sub-district Ngantru.
- b. Sub-district Karangrejo.

⁵⁶ Chart of Chairman of Tulungagung Religious Court.

⁵⁷ File of jurisdiction Tulungagung Religious Court.

- c. Sub-district Sendang.
- d. Sub-district Kedungwaru.
- e. Sub-district Tulungagung.
- f. Sub-district Rejotangan.
- g. Sub-district Ngunut.
- h. Sub-district Kalidawir.
- i. Sub-district Tanggunggunung.
- j. Sub-district Campurdarat.
- k. Sub-district Besuki.
- l. Sub-district Pakel.
- m. Sub-district Gondang.
- n. Sub-district Kauman (Tulungagung Religious Court Site).
- o. Sub-district Pagerwojo.
- p. Sub-district Pucanglaban.
- q. Sub-district Sumbergempol.
- r. Sub-district Boyolangu.
- s. Sub-district Bandung.

2. Vision, Mission, and Purpose.⁵⁸

The vision, mission, and goals raised by the Tulungagung religious court are:

a. Vision

“Realization of Legal Unity and Professional Judicial Body in Tulungagung Religious Court”

b. Mission

- 1) Maintain independence of the apparatus of the judiciary.
- 2) Providing excellent public services and legal information disclosure to the public.
- 3) Improving supervision and guidance as an effort to create the human resources quality of the Tulungagung Religious Court.
- 4) Realizing the unity of the pattern of action and work patterns so that obtained legal certainty for the community

c. Aim

- 1) Improving professional human resources and high integrity.
- 2) Increase the settlement of simple, timely, transparent and accountable case administration.
- 3) Improving the implementation of effective and efficient supervision.
- 4) Improving management support and technical tasks in the administration of judicial functions.

⁵⁸ Chart of vision, mission and purpose of Tulungagung Religious Court.

3. Organizational Structure of Religious Courts Tulungagung.⁵⁹

Chairman : Drs. Hidayat, SH

Vice Chairman : Drs. Iskhaq, SH

Judge : a. Drs. H. Sudjarwanto, SH, MH

b. Drs. H. Muh. Yusuf, HS, SH

c. Drs. H. Misbachul Munir, MH

d. Drs. H. Nuril Huda, MH

e. Drs. H. Muhammad Khairul, M. Hum.

f. Dra. Siti Rohmah, M. Hum.

g. Drs. HM Ghofar Rasmin, MH

h. Drs. H. Imam Asmu'i, SH, MH

i. Dr. H. Tamat Zaifudin., Drs., MH

j. Dra. Hj. Enik Faridaturrohmah, MH

k. Hj. Nurul Hikmah, S. Ag., MH

Panitera : Hj. Herlinawaty, SH, MH

Vice of *Panitera* : Drs. Suyono

Secretary : Maftuhin, SH

Panitera Muda of Lawsuit : Misbah, SH, MH

Staff : a. Nurul Kamilatin

b. SE Avicenna, SH

c. Afwan Puji P., ST

⁵⁹ Chart of structure on Tulungagung Religious Court

Panitera Muda of Lawsuit : Suhartiningsih, SH

Staff : a. Tomi Lustoro

b. Nur Khoiriyah H., SH

c. Ariningtyas HS, S. H

Panitera Muda of Law : -

Staff : a. Sunarji, S. H

b. Hari Mulyono

c. Pristiana, S. E

Panitera of Substitute : a. Abdul Rachman, SH

b. Mokhammad Lutfi, SH, M. Sy., MH

c. Marsuaidah, SH

d. Mu'tamidaroham, SH

e. Dra. Noor Inayati

f. Dra. Siti Aminah

g. Dra. Sugeng Supriadi

h. Suyono, SH

i. Ahmad Faruq Setiawan, SH

Head. Personnel Division: Lilik Insiyati, S. Ag.

Head of Subdivision. General and Finance: Hj. Umi Nasucha

Head of Subdivision. Planning, IT and Reporting: Riky Yohana, S.E., M.H

B. Data Exposure

1. The communication method of advocate as legal counselor to Indonesian female worker on divorce case.

a. Divorce Lawsuit of Indonesian Female Worker at Tulungagung Religious Court.

Divorce for Indonesian female worker at Tulungagung Religious Court today seems to have become commonplace. Divorce lawsuit is caused by several things. According to Mrs. FR as an advocate who handles women divorce cases several times, divorce is 90% caused by economic factors, after which different lifestyles and quarrels that often arise because of the problem. Mrs. FR said,

*“Sebagian besar perceraian karena ekonomi mbak. Ya wajarya, istri itu jauh-jauh ke Taiwan, Hongkong, niatnya mau bantu perekonomian, di Tulungagung sini suaminya malah nganggur. Banyak tenaga kerja wanita yang tidak terima. Jadi memang sebagian besar itu mbak alasannya. Karena perekonomian.”*⁶⁰

(“Most divorce because financials problem. The reason is when the wife all the way to Taiwan, Hong Kong, her intention to help the financial, in Tulungagung here her husband just be unemployment. Many Indonesian female workers are not accepted. So indeed the reason most of it. Because of the economy problem”).

Meanwhile, according to Mr. HR, who also handled several cases of Indonesian female workers, divorce in Indonesian female workers is mostly caused by unmet biological needs. So much of the affair happens. This is because of the distance that exists between the husband and the wife. Infidelity happens not only by the husband, but also by the wife. Another reason is the differences on a lifestyle. Mr. HR said,

⁶⁰ FR, *Interview* (Tulungagung, November 27 2017).

“Selain ekonomi, sebenarnya yang menjadi penyebab perceraian itu kebutuhan biologis yang tidak terpenuhi mbak. Karena tidak terpenuhi tersebut, terjadi perceraian. Ya selingkuh itu penyebabnya. Dari pihak suami atau istri, bisa keduanya. Ya, yang sudah banyak itu pasti perekonomian. Walaupun banyak juga karena alasan sakit dan ada pula yang pihak suami sakit, jadi meminta istri untuk menceraikan.”⁶¹

(“In addition to the economy, the real cause of divorce is the unmet biological needs. Due to the unfulfilled, there is divorce. Infidelity is the cause. From the husband or wife, can both. Yes, that's a lot of it's definitely the economy. Although there are also many reasons for illness and some are sick husbands, so (husband) asks the wife to divorce”).

b. Advocates Communication Methods with Indonesian Female Worker as Legal Counselor on Divorce Case.

Most of divorce lawsuits are represented on the advocate's, the case filed when the Indonesian female worker is not in Tulungagung. Precisely, the wife as the principal of the case is being abroad.

The interesting thing is presented by Mr. SY as Vice of *Panitera* of Tulungagung Religious Court is most of the divorce lawsuit case by Indonesian female workers who entered at Tulungagung Religious Court conducted by advocate. The result of observation is according to advocate who handle cases in the Tulungagung Religious Court, every month at least each holding 3-6 cases divorces of Indonesian female workers.⁶² Mr. SY said,

*“Disini itu ya sebagian besar kalo udah kasusnya cerai gugat tenaga kerja wanita, itu ya dikuasakan oleh advokat”.*⁶³

⁶¹ HR, *Interview* (Tulungagung, November 27 2017).

⁶² HR, *Interview* (Tulungagung, November 27 2017).

⁶³ SY, *Interview* (Tulungagung November 27 2017).

(“Here it is most of the cases have been divorced accounting Indonesian female worker, it is authorized by advocate”).

1) Information about Advocates on Tulungagung Religious Court for Indonesian Female Worker.

The question that arises from the statement is how an Indonesian female worker who is outside the State of Indonesia, know the information about the advocate and entrust the case to be authorized by advocate. Although, with parents or siblings can be made legal legal counselor, in other words do not need to use an advocate when you want to file a divorce.

Mrs. FR as advocate of Tulungagung Religious Court said that clients who decide to use advocate services know the advocate information from many things. Starting from the habit of divorce is rampant, so that between Indonesian female workers can exchange the information.

Another thing that adds information about Indonesian female worker about advocate is Mrs. FR has acquaintance of embassy there. Mrs. FR also said that Indonesian female workers who wish to be enrolled in divorce cases also often contact through the social media *facebook*. In addition, what makes it possible for Indonesian female workers to obtain information about advocates is the family that helps to find the environment of the Religious Courts. Mrs. FR explain that,

“Kalo mereka tau darimana, kan biasanya ada klien saya yang sudah selesai perkaranya, nah memberi tau ke teman mereka (yang ingin bercerai). Istilahnya saling tukar informasi. Ada juga yang tanya ke orang kedutaan,

*dihubungi lewat facebook juga saya pernah. Biasanya juga, anggota keluarga yang mencarikan di Pengadilan Agama”.*⁶⁴

(“If ask about where can they know, usually there are my clients who have finished the case, than tell to their friends (who want to divorce). The term exchange information. There is also question to the embassy, also I ever contacted via *facebook*. Usually, family members who seek in Religious Courts”).

While the explanation given by Mr. HR, many of the Indonesian female workers who became his client get information through *facebook* and by conversation with another Indonesian female worker. Mr. HR said,

*“Kan saya ada facebook, mbak. Jadi ya banyak juga yang menghubungi via facebook. Tapi ya, saya tidak menawarkan. Kan kami (para advokat) tidak boleh promosi. Biasanya juga ya dari mulut ke mulut, dari klien yang perkaranya sudah selesai”.*⁶⁵

(“I have *facebook*. So many of my clients also contact via *facebook*. But, I do not promoted myself. We (advocates) cannot be promoted. Usually also by conversation, from clients whose case is done”).

Technological progress cannot be denied as one of the supporting factors that facilitate the divorce of Indonesian female workers. Indonesian female workers who are outside the country of Indonesia can easily find information on divorce procedures. Thus, divorce by Indonesian female workers seems to be a very common occurrence.

⁶⁴ FR, *Interview* (Tulungagung, November 27 2017).

⁶⁵ HR, *Interview* (Tulungagung, November 27 2017).

2) Method and Media for Communication between Advocate and Indonesian Female Worker.

Indonesian female workers who have filed a divorce lawsuit with advocate serve in the Religious Courts and continue to monitor the progress of the case through social media. Social media used to connect advocates and principals (Indonesian female worker) also diverse. That is because the first relationship build between advocates and principals are not the same.

Some of the principals use *facebook* when communicating, some others use *whatsapp* application and *blackberry messenger*, another application used is *imo*.⁶⁶ However, it is certain that a large proportion of the Indonesian female worker domiciled as the principal does not know that a divorce also can be represented by a parent or sibling.

This was evident during interviews with two advocates, Mrs. FR and Mr. HR, both informants said the role of the family when assisting the divorce process is minimal. It can be proved by an advocate to only contact the family when requiring a witness in the proceedings. Witnesses can be presented from the principal's family. Witnesses are only required if the trial continues until the proof process.

One of the facts contained in the trial of the divorce lawsuit of Indonesian female worker and also divorce by other principals, most cases of divorce in

⁶⁶ FR and HR, *Interview* (Tulungagung, November 27 2017).

Tulungagung Religious Court ended with *verstek* verdict.⁶⁷ *Verstek* verdict was caused by the defendant not attending the court despite having been properly summoned by the religious court.⁶⁸

In the divorce process, Mr. HR explained that the advocates will try to defend what the principal wants. Communication made after the date of the trial is issued by the Religious Courts is to connect or notify the principal. In addition, routine communication is also done every one of the trial process is solved. As stated by Mr. HR, as follows,

*“Setiap selesai persidangan mbak, kita laporkan, kita beri tahu perkembangan sampai mana. Sampai putusan keluar.”*⁶⁹

(“Every time the trial is finished, we report it, we will notify the progress to which. Until the verdict comes out”).

The same thing is also tells by Mrs. FR, that usually Mrs. FR to report to the principal in every one of the trial process is resolved. Mrs. FR said,

*“Setiap selesai persidangan, kami hubungi prinsipalnya”.*⁷⁰

(“After every trial, we connect to the principal”).

As an advocate two informants interviewed admitted to always make connections and provide information on the development of cases to the principal. Although in the interview Mrs. FR and Mr. HR confess, sometimes there are principal who do not ask or respond to the development of the advocate. Mrs. FR and Mr HR said,

⁶⁷ SY, *Interview* (Tulungagung, November 27 2017).

⁶⁸ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty Yogyakarta, 2002), 109.

⁶⁹ HR, *Interview* (Tulungagung, November 27 2017).

⁷⁰ FR, *Interview* (Tulungagung, November 27 2017).

“Ya walaupun tidak ditanyakan, tidak terdapat respon, tetap kami laporkan”.⁷¹
 (“Yes, although not asked, there is no response, we keep reporting”).

When the initial introduction and filing of the case and agreed to use the services of advocate, then the next step is to make a lawsuit. The letter of the lawsuit, which is studied and properly understood by an advocate as a provision during the trial process in the Religious Courts. Both in the trial process and in the mediation process.

So after filing a lawsuit and understanding about the lawsuit, there was no discussion after that regarding the lawsuit. This causes communication that occurs when the case runs, only limited to report after trial and other processes that have been done. It would be very different if the case of divorce with the principal directly present at the time of the proceedings. Thus, is still possible for make a change of principal’s mind.

2. Advocates play role as legal counselor to Indonesian female worker in divorce case on Tulungagung Religious Court.
 - a. Procedures on Divorce Lawsuit of Indonesian Female Worker.

In contrast to divorce with principal residing in Indonesia, divorce of Indonesian female workers who are outside the country, have special procedures. This is as described by Mrs. FR, as an advocate. Mrs. FR said,

“Terdapat perbedaan prosedur saat menangani kasus perceraian tenaga kerja wanita, saat TKW tersebut tidak berada di Indonesia, ada beberapa prosedur di kedutaan dulu. Biasanya setelah klien kita sepakat menggunakan kita sebagai kuasa hukum, kita langsung bikin surat. Nah ini surat kuasa dulu.

⁷¹ FR dan HR, *Interview* (Tulungagung, November 27 2017).

Suratnya ada dua, surat kuasa sama surat kuasa mediasi. Walaupun kita nggak tau nantinya surat kuasa mediasi kepake atau nggak. Kan kebanyakan kasus perceraian disini verstek mbak. Jadi, sebenarnya biasanya surat kuasa mediasi belum tentu dibutuhin sih. Tapi tetep, akan kita urus. Setelah itu, kita kirim via EMS (express mail service) ke principal kita. Kadang ke Hongkong, kadang Taiwan. Nanti mereka tanda tangan. Setelah itu mereka bawa ke kedutaan. Dimintai leges darisana. Baru, kita pergunakan untuk mengajukan gugatan.”⁷²

(“There are differences in procedures when dealing with Indonesian female worker divorce cases, when the *TKW* is not in Indonesia, there are some procedures at the embassy first. Usually after our clients agree to use us as an advocate, we immediately make a letter. Well this is a letter of legal counselor first. There are two letters, the same letter of legal counselor letter of mediation. Although we do not know the letter of mediation will be use or not. Most cases of divorce here are *verstek*. So, in fact usually the letter of legal counselor mediation is certainly needed. But still, we will take care of it. After that, we send via EMS (express mail service) to our principal. Sometimes to Hong Kong, sometimes Taiwan. Later they sign. After that they take it to the embassy. Asked validation from embassy. Then, we use to file a lawsuit”).

The same interview, regarding the procedure of lettering Indonesian female workers to advocate as legal counselor, was also conducted with an advocate named Mr. HR. The explanation given by Mr. HR is similar to Mrs. FR. Mr HR explained that,

*“Harus ada leges dari kedutaan Mbak, itu kita yang urus. Mulai dari deal sama *TKW* nya, trus bikin surat kuasa sama surat kuasa mediasi. Nah itu dikirim ke *TKW*, pakai EMS (express mail service), setelah itu kita minta dia (*TKW*) untuk tanda tangan. Nanti, dia yang minta leges ke kedutaan sana.”⁷³*

(“There must be validation from the embassy, that's what we care about. Starting from the same deal with *TKW*, then make a letter of legal counselor with the letter of legal counselor. Well it is sent to *TKW*, use EMS (express mail service), after that we ask her (*TKW*) for signature. Later, he'll be the one to get the embassy there”).

⁷² FR, *Interview* (Tulungagung, November 27 2017).

⁷³ HR, *Interview* (Tulungagung, November 27 2017).

- b. Advocates play the role as legal counselor of Indonesian female worker on divorce case.

As explained in the previous discussion, there are procedures for authorizing and registering the lawsuit, it is known that there is no family interference when filing a lawsuit. In fact, without advocates, Indonesian female worker who was outside the State of Indonesia, can still file a divorce. Through her father or mother or siblings.

Mr. SY, as Vice of *Panitera*, said that in his opinion and the staff of the Tulungagung Religious Court, the use of advocate legal counselor is a loss. Mr. SY explained,

*“Tidak terdapat perbedaan pelayanan. Baik menggunakan advokat atau menggunakan kuasa hukum lain, pihak keluarga contohnya. Ya kalo menurut pendapat saya dan orang-orang Pengadilan Agama sini, penggunaan jasa advokat dalam kasus perceraian, cerai gugat TKW, itu rugi. Mereka berpikir bahwa penggunaan jasa advokat dapat lebih mempermudah, padahal sama saja. Pengadilan Agama sini, juga banyaknya putusan verstek.”*⁷⁴

(“There is no difference of service here. Whether using an advocate or using another legal counselor, a family member for example. If in my opinion and the Religious Courts here, the use of advocate services in the case of divorce, the divorce lawsuit of *TKW*, is a loss. They think that the use of advocate services can make things easier, but the same. Religious Court here, too many *verstek* decisions”).

However, as presented by Mr. SY as Vice of *Panitera* of the Tulungagung Religious Court, perception of Indonesian female worker that the use of advocates will facilitates the process of divorce. An advocate or legal counselor who filed for divorce and acts as a legal representative can directly represent the Indonesian

⁷⁴ SY, *Interview* (Tulungagung, November 27 2017).

female worker to attend the trial and all of ceremonies at Tulungagung Religious Court. According to Mr. HR as an advocate who several times handling divorce cases of Indonesian female workers, there is no difference in handling divorce cases with principal is outside the State of Indonesia, and that is in Tulungagung.

Mr. HR said,

*“Tidak terdapat perbedaan mbak, sama saja. Perlakuan hakim, mediator, semuanya sama. Sebelum mengajukan gugatan, kitakan juga udah ngobrol banyak dengan principal, maunya apa. Jadi ya, kita pertahanin. Kalo principal maunya tetap bercerai, ya disetiap proses beracara, kita jelaskan.”*⁷⁵

(“There is no difference, just the same. The treatment of judges, mediators, are all the same. Before filing a lawsuit, we also have a lot of chat with the principal, what she wants. So, we holding all. If the principal wants to keep divorced, yes in every process of law, we explain”).

The same statement presented by Mrs. FR, there is no difference when dealing with divorce cases with principals who are outside the State of Indonesia, or another one in Tulungagung. Mrs. FR said,

*“Tidak, tidak terdapat perbedaan mbak, sama saja.”*⁷⁶

(“No, there is no difference, just the same”).

In the process of registration of the lawsuit, until the trial process there is no fundamental difference or rules made to differentiate. Both in service and judicial

⁷⁵ HR, *Interview* (Tulungagung, November 27 2017).

⁷⁶ FR, *Interview* (Tulungagung, November 27 2017).

process of the case. As the Vice of *Panitera* explained, that the whole service is undifferentiated. Its means that the play role of advocate is the same as another plaintiff of defendant.

When being an advocate of Indonesian female worker, the advocates also make a letter of legal counselor mediation. The same statement stated by Mrs. FR and Mr. HR as advocates, that there is no difference when undergoing the process of legal counselor, including the mediation process. Mrs. FR said that the treatment of mediators is the same. Mrs. FR said,

*“Tidak, perlakuan mediator sama saja.”*⁷⁷

(“No, the mediator treatment is the same”).

When asked Ms. FR about the effort to connect principal and defendant or husband from Indonesian female worker, Mrs. FR said that during this time Mrs. FR has never experienced at the moment become legal counselor of mediation and connect with principal. This is because there is no demand from the mediator to connect.

The same thing said by Mr. HR. That as long as he is a mediating legal counselor, he never connects or makes visual communication to the Indonesian female worker and the mediator or the principal's husbands who at that time are the defendant. Mr. HR said,

“Tidak, tidak pernah ada komunikasi visual. Tapi jika mediator meminta, kami siap menghubungkan. Tapi kan tidak ada permintaan. Jadi ya, kami

⁷⁷ FR dan HR, *Interview* (Tulungagung, November 27 2017)

pertahankan keinginan klien untuk bercerai. Baik didepan mediator maupun didepan hakim.”⁷⁸

“No, there is never any visual communication. But if the mediator asks, we are ready to connect. But there is no request. So, we keep the client's desire to get divorced. Both in front of the mediator and in front of the judge”.)

Mr. HR added that in dealing with the case of female or principal employment divorce who is not in the State of Indonesia, most cases are *verstek*, so do not take the mediation legal counselor. Mr. HR said,

*“Tapi, kebanyakan juga verstek mbak, ga pake mediasi. Jadi tergugat sudah dipanggil secara layak, tanda tangan surat pemanggilan, tapi tidak datang.”*⁷⁹

(“But, most of them are also *verstek*, not using mediation. So the defendant was properly summoned, the signature of the summoning letter, but did not come”).

The same thing also explained by Mr. SY. Mr. SY said,

*“Disinikan banyaknya kasus verstek, makanya yang pakai kuasa hukum advokat untuk perceraian itu menurut saya rugi. Terutama rugi secara finansial.”*⁸⁰

(“As for the number of cases of *verstek*, so that use the legal counselor for the divorce advocate is in my loss. Especially loss financially”).

⁷⁸ HR, *Interview* (Tulungagung, November 27 2017).

⁷⁹ HR, *Interview* (Tulungagung, November 27 2017).

⁸⁰ SY, *Interview* (Tulungagung, November 27 2017).

When clarified with the mediator who served at the Tulungagung Religious Court, namely Mr. AY and Mr. BY. Interviews were conducted to obtain the exact data of the mediation process with the principal mediation legal counselor of Indonesian female workers who were abroad.

According to Mr. AY, the mediation process is done the same. Between mediation by using the mediating legal counselor or in the presence of the advocate and the defendant directly. There is no difference in the existing mediation process. This is because it is attended directly or not, treated as the parties. Mr. AY said,

*“Sebenarnya sama saja ya, memang seharusnya mediasi inikan dihadiri langsung oleh prinsipalnya, tapi saat principal tidak dapat menghadiri secara langsung, dapat diwakilkan dengan kuasa mediasi. Tapi sama saja, kami perlakukan sebagai para pihak”.*⁸¹

(“Actually it's the same, it should be mediation attended by the principal directly, but when the principal cannot attend directly, can be represented by the legal counselor of mediation. But just the same, we treat as the parties”).

As according to Mr. BY as mediator also at the Religious Court of Tulungagung, there is a difference between the mediation process by using the legal counselor of mediation and by not using the legal counselor of mediation. Mr. BY said,

⁸¹ AY, *Interview* (Tulungagung, November 27 2017).

*“Ya jelas ada perbedaan, sebab advokat selaku kuasa mediasi pada waktu mediasi berlangsung tidak bisa memutuskan, namun hasil mediasi akan disampaikan kepada prinsipal/client. Tapi kalau P & T hadir bisa leluasa berunding untuk menyelesaikan sengketa dalam urusan rumah tangga”.*⁸²

(“Yes there is a difference, because advocate as mediation authority during the mediation process cannot decide, but the result of mediation will be submitted to the principal/ client. But if principals & defender is present it can freely negotiate to resolve disputes in domestic affairs”).

The effort by the mediator in the mediation process is ordered to the mediation legal counselor to be bridge the relationship between the principal and the defendant. Mr. BY said,

*“Saya minta kpd advokat untuk membantu menjembatani antara prinsipalnya dengan tergugat, untuk kembali memperbaiki rumah tangganya agar kembali harmonis”.*⁸³

(“I ask the advocate to help be a bridge between the principals and the defendant, to restore the household to re-harmonize”).

These efforts are conducted outside the mediation process. On the grounds that Indonesian female workers are not located in Indonesia. As said by Mr. BY when asked about where the effort is done. He said,

⁸² BY, *Interview* (Tulungagung, Desember 7 2017).

⁸³ BY, *Interview* (Tulungagung, Desember 7 2017).

“Di luar mediasi sebab prinsipalnya ada di luar negeri karena sebagai TKW.”⁸⁴

(“Outside of mediation because the principals (plaintiff) work overseas as Indonesian female worker”).

According to information obtained from informant advocates and mediator there is no difference during the process of legal counselor at the Tulungagung Religious Court. The difference is also not encountered during the mediation process by using an advocate without the presence of principal and mediation with the principal directly attended.

The difference between them is only in the efforts of the mediator. The effort is in the form of advice given to legal counselor and conducted outside of process of mediation. Not during mediation.

This causes, at the time of mediation did not occur communication between the principal and the defendant. Communication that occurs only between advocate and the defendant with the mediator as mediator of the communication. Whereas the mediation process is one of the important legal counselor process that is found in the Religious Courts. This is because with the mediation process, before the trial can continue to allow for peace.

C. Data Analysis

In this chapter will be presented data analysis of two problem formulations that have been described in the previous chapter, namely the advocate

⁸⁴ BY, *Interview* (Tulungagung November 27 2017).

communication method as the legal counselor of Indonesian female workers in the case of divorce and play role of advocate as legal counselor during the process of divorce in the Tulungagung Religious Court.

1. The communication method of advocate as legal counselor to Indonesian female worker on a divorce case.

A divorce filed by a *petitum* requesting that the Religious Courts/ Court of *Syar'iyah* decide the marriage of the plaintiff and the defendant.⁸⁵ Divorce lawsuit can be filed directly by the wife, or with a legal counselor serve. The legal counselor may be a professional advocate or lawyer, biological parent or sibling.

Divorce at the Tulungagung Religious Court continues to increase. Within one month there are 200 to 400 divorce cases included in the register registration of cases.⁸⁶ With such a small amount, most divorces are dominated by Indonesian female workers.⁸⁷ Indonesian female workers outside of the State of Indonesia may still file for divorce by divorce cases with legal legal counselor serve.

From the data explanation above, it is known that Indonesian female workers who mostly do not know about advocates in the Religious Courts, most entrust advocates. Communication is done through social media. Whether through *whatsapp* application, *blackberry messenger*, or *imo*.

Indonesian female workers outside of Indonesia know information about advocates from others workers, social media, or families who have come to the

⁸⁵ *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama*, 2013, (Jakarta: Mahkamah Agung RI), 149.

⁸⁶ SY, *Interview* (Tulungagung, November 27 2017).

⁸⁷ SY, *Interview* (Tulungagung, November 27 2017).

Religious Courts to find advocates as legal legal counselor. This is easy to do because in the Tulungagung Religious Court there is a list of advocates and telephone numbers that can be contacted.

The process of granting advocate by Indonesian female workers, in general is different with the authorization by the principal residing in Indonesia. In the principal residing in Indonesia, the process of authorization is limited to the creation of a letter of legal counselor and the signature of approval.

For the granting legal counselor of Indonesian female workers, letters of legal counselor is made by advocate. Such letter of legal counselor are included in the letter of legal counselor and the legal counselor letter of mediation. After that, the letter of legal counselor is sent by express mail service (EMS). EMS is a service from Indonesia's Pos to send mail to another country. The letter of legal counselor is sent to the State where the Indonesian female worker site.

After the letter was received by the Indonesian female worker, the letter was signed and given the validation obtained from the embassy where the Indonesian female workers worked. After that the letter of legal counselor is sent back to Indonesia, where the advocate will run the letter of the principal.



Once a letter of legal counselor has been received, an advocate may file a divorce as legal counselor of the Indonesian female workers. Advocates may also represent the proceedings in the process of divorce. During the proceedings, after

one of the series of events completed by the advocate, the report is given to the Indonesian female worker through social media used since the beginning of communicating.

As previously described, communication between an advocate and Indonesian female worker is performed at the start of a letter of legal counselor and a lawsuit is drawn up at the end of each proceeding. Advocates interviewed as informants claimed to be active in reporting after the ceremony was over. Both in terms of trial and mediation.

In communication theory, communication that exists between advocates and principals in the form of Indonesian female workers is called interpersonal communication. Interpersonal communication is communication between a person and another person in a community or an organization (business or non-business), with certain media and easily understood language.⁸⁸

There are several goals that can be obtained through interpersonal communication. The goal is to telling information, share experiences, cultivate sympathy, cooperate, tell disappointment and resentment and grow communication.⁸⁹

In this case, communication between the advocate and the Indonesian female worker contains two elements of the objects of telling information and cooperating. Advocates provide information obtained during the proceedings and cooperate. Cooperation is intended to benefit from two parties. The

⁸⁸ Djoko Purwanto, *Komunikasi Bisnis*, 26.

⁸⁹ Djoko, *Komunikasi Bisnis*, 27.

relationship between an advocate and Indonesian female worker is a relationship that brings benefits to both parties. Advocates in this case serve as one of the subjects in interpersonal communication, namely as a holder of power and a liaison.

In this case, the medium used is a tool that can connect with social media. As these communications include informal communication, reports given to the principal can be provided at any time and use any language that makes it easy for them to communicate.

According to the results of data exposure after the interview, communication between advocates and Indonesian female workers with writing communications. It is known from some media liaison between advocate and principal is messaging media. Although some of these apps have been equipped with phone features, reports are more often done using text via messaging.⁹⁰

After analyzing with several communication theories, it is known that the communication that exists between advocate and female worker is similar to business communication. This can be seen from several communication stages between advocate and Indonesian female worker. From the beginning decided to use advocate serve, then advocate will act in accordance with the wishes of the principal.

⁹⁰ FR, *Interview* (Tulunagung, November 27 2017).

After that, the legal counselor will also provide a report on each one of the proceedings. Of course it is a natural thing. The reports given during the process took place indicating a sense of responsibility for advocate.

However, things to note further after the interview conducted to advocates about the communication made, it is known that this communication is limited to reports. Another thing that is known is in doing the report is not the entire principal to respond. Although without a response from the principal, the report still be performed as a form of responsibility advocate.⁹¹

The thing that happens when the advocate is only a report, it is just become business communication. Not communication between advocate as the legal counselor and principal. Advocate will continue to advance in accordance with the wishes of the principal. Without discussion, the case should be continued or revoked. What it does is ask instead of discuss.

Some of these factors cause when using an advocate, divorce will be easier than principals who directly attend the process of advocate. This is because, as can be confirmed during court proceedings and other proceedings, advocates will be actively defending the lawsuit and it will be difficult to create new things that may allow divorce to occur.

This communication is supposed to be a correction in the case of divorce of Indonesian female workers through an advocate. This is because it can facilitate

⁹¹ HR, *Interview* (Tulungagung, November 27 2017).

divorce against the principle of complicating divorce, which is written in the general explanation of Law no. 1 Year 1974 about Marriage, number 4 letter e.

When viewed from the lifestyle of Indonesian female workers who in Tulungagung Regency mostly work in Taiwan and Hong Kong, certainly very contrary to the lifestyle of Indonesian female workers before. Thus, the few existing problems cause divorce to occur easily. This is supported by the simplification of filing of divorce by using advocate.

2. Advocate Play Role as Legal Counselor of Indonesian female worker in divorce in the Tulungagung Religious Court.

In the case of divorce, if the plaintiff is not in jurisdiction, the divorce proceedings can be made by a prescribed legal counselor and hold a power of legal counselor on the case. Neither is the other process of law and mediation. The legal counselor who can act as the legal counselor / representative of the plaintiff / defendant or the applicant / petitioned in court shall be:⁹²

- a. Advocate (in accordance with Article 32 of Law No.18 Year 2003 About Advocates).
- b. Prosecutor with special authority as legal counselor/ representatives of State/ Government in accordance with Article 30 paragraph (2) of Law Number 16 Year 2004 on the judiciary.
- c. The law firm government / military / prosecutor RI.

⁹² *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama*, 70.

- d. Directors / Management or a designated employee of a legal entity.
- e. Those who get the power of incidental set by the chairman of the court, such as legal aid, the law firm military/ Police of Indonesian for cases about member/ military family/ Police of Indonesia, family relations (required between the authorizing by proxy shall have any family relationship within the meaning of wife and husband (not ex-husband or ex-wife), children whose parents are not married and the husband and wife.

In accordance with the explanation, an advocate can be legal counselor for Indonesian female workers who are outside the State of Indonesia. Moreover, it can also empowered by the power of the chairman of the Tulungagung Religious Court named by incidental the biological parents and siblings. Advocate or legal counselor appointed to perform duties as legal counselor Indonesian female workers, have two letters of legal counselor. The authorization letter is the letter of the legal counselor and the legal counselor of mediation.

The power of legal counselor serves as the identity represents the principal authority at the time that cannot be present at the proceedings. Starting from filing for divorce to lawsuit to attend the verdict in court. According to data obtained after conducting interviews with advocates, mediators and vice of *panitera* in charge of part of Tulungagung Religious Court case, obtained a conclusion. The conclusion is either of an advocate, mediator and vice of *panitera* say that there is no difference between the process of Indonesian female worker who used advocate and usually principal without legal counselor or advocate.

Basically, it is in terms of the trial there was no difference between the trial between the advocate and attended immediately. In fact, in the trial when the plaintiff or the defendant is unable to attend, do not become a problem if they have to be represented by legal counselor. It becomes invalid if the advocate is holding a letter legal counselor.

Therefore, when the Indonesian female workers had advocates in the case of contested divorce, advocate can optimally be a legal counselor for Indonesian female workers during the trial. However, being different from the power of mediation. In the Supreme Court Law No. 1 year 2016, are described in the fourth section, Article 6 paragraph (1) that the parties are required to attend mediation with or without legal counselor.

At the point Supreme Court Law known that in essence, the only legal representative to act as a companion at the time of the mediation process underway. However, described in point thereafter in paragraph (3) that the absence of the parties can be a valid reason. Employment of women as workers outside the State of Indonesia led to the absence of Indonesian female workers in the mediation process is considered to be a valid reason. In accordance with a written explanation of Article 6 paragraph (4).

To support the presence of the parties directly, described in Article 5 (3) the meeting of visual communication. With advances in technology, the application of that article is easy to do and can be one of the solutions is done on Indonesian female workers to lawsuit for divorce with advocate serve.

According to the data obtained, one of the mediators seek to established communication between the principal who are outside the country and the defendant has her legal counselor.⁹³ Communication pursued by the mediator is performed outside the mediation room. In fact, would be more effective if the visual communication occurs in the mediation process.

Although located outside the city, is one of the reasons deemed valid for not attending mediation, this time with the progress of existing communications and many supporting applications that can be used, making it is very possible to do. With the visual communication at the time of the mediation process underway, it is expected the possibility of peace will occur.

It would be different if at the time of mediation between the defendant and the legal counselor of mediation advocate and does not involve any communication with the principal. Basically, the mediator will ask, regarding divorce whether to proceed or revoked. When using the power of mediation advocates, will tend to respond in accordance with the principal demand as the plaintiff. However, when there is engagement between the plaintiff and the defendant, will be interwoven communication to support the peace process.

Communication between the plaintiff and the defendant at the time of the mediation process underway must needs be done. This is because at the time of the mediation process, in some cases, the defendant admitted that he had not communicated with the plaintiff. So with the visual communication can be

⁹³ BY, *Interview* (Tulungagung, November 27 2017).

clarified statements made by advocate as the legal counselor of the plaintiff and her husband as a defendant.



CHAPTER V

CONCLUSION AND SUGGESTION

A. Conclusion

Based on the exposure data and the results of research and discussion, which refers to the formulation of the problem in earlier chapters, it can be concluded as follows:

1. Communication method between advocate and Indonesian female workers included in interpersonal communication. Interpersonal communication has several objects. There are telling information, sharing experience, growing sympathy and cooperation. Two of these objects in accordance with the communication that exists among advocates and Indonesian female workers, which is the purpose of telling information and cooperation. This is because the system that exists is an advocate of giving a report after one of the proceedings in the case of contested divorce is complete. Communication is dominated by the written communications made through social media or media liaison support applications.

This communication is classified as a business communication. That is because at the time the agreement was made to use legal counselor advocates, advocates will do everything in accordance with the wishes of the principal that Indonesian female workers who are outside the State of Indonesia. After that, the communication that exists only in the form of a report on the progress of cases. This report does not demand a response from the principal. This is make divorce easy to do and violated the principle of divorce complicates described in the general section of Law No. 1 of 1974 on Marriage.

2. The role of advocate at the time of the proceedings in the case lasted for no difference with other plaintiffs in Tulungagung Religious Courts. Any process of beginning to the administration's decision, made the same case with the plaintiffs who filed the lawsuit without legal counselor. Basically in the lawsuit and trial registration process, there is indeed no specific rules that differentiate between divorce to lawsuit carried out by advocate or legal counselor conducted directly by the principal. So that the play role advocate as legal legal counselor as same as the other plaintiffs.

Also on mediation take place there are not special role on mediator. However, it must be difference when mediation process. It should be written on the efforts of Supreme Court Law No. 1 2016, Article 5 on verse 3 which is about the visual communication that exists at the time the mediation

occurred. This will further simplify the process and allow peace mediating between the two sides occurred.

B. Suggestion

Based on the terms described above, there are a few things to the author to convey suggestions, among others:

1. For the people of Tulungagung, in this particular case all people who work as Indonesian female workers outside the State of Indonesia, for increased awareness in understanding the meaning of the household. So it does not always take a shortcut that divorce when a problem occurs.
2. For professional services, in this case the advocate who is at Tulungagung Religious Court and handle the divorce case Indonesian female workers to improve their existing communications and always discuss and engage for peace and avoid divorce.
3. For mediators, important role as mediator in the peace process in the Religious Court, in this particular Tulungagung Religious Court in order to enhance peace efforts there. Can be supplemented by making visual communication that connects between the plaintiff and the defendant in the mediation process.

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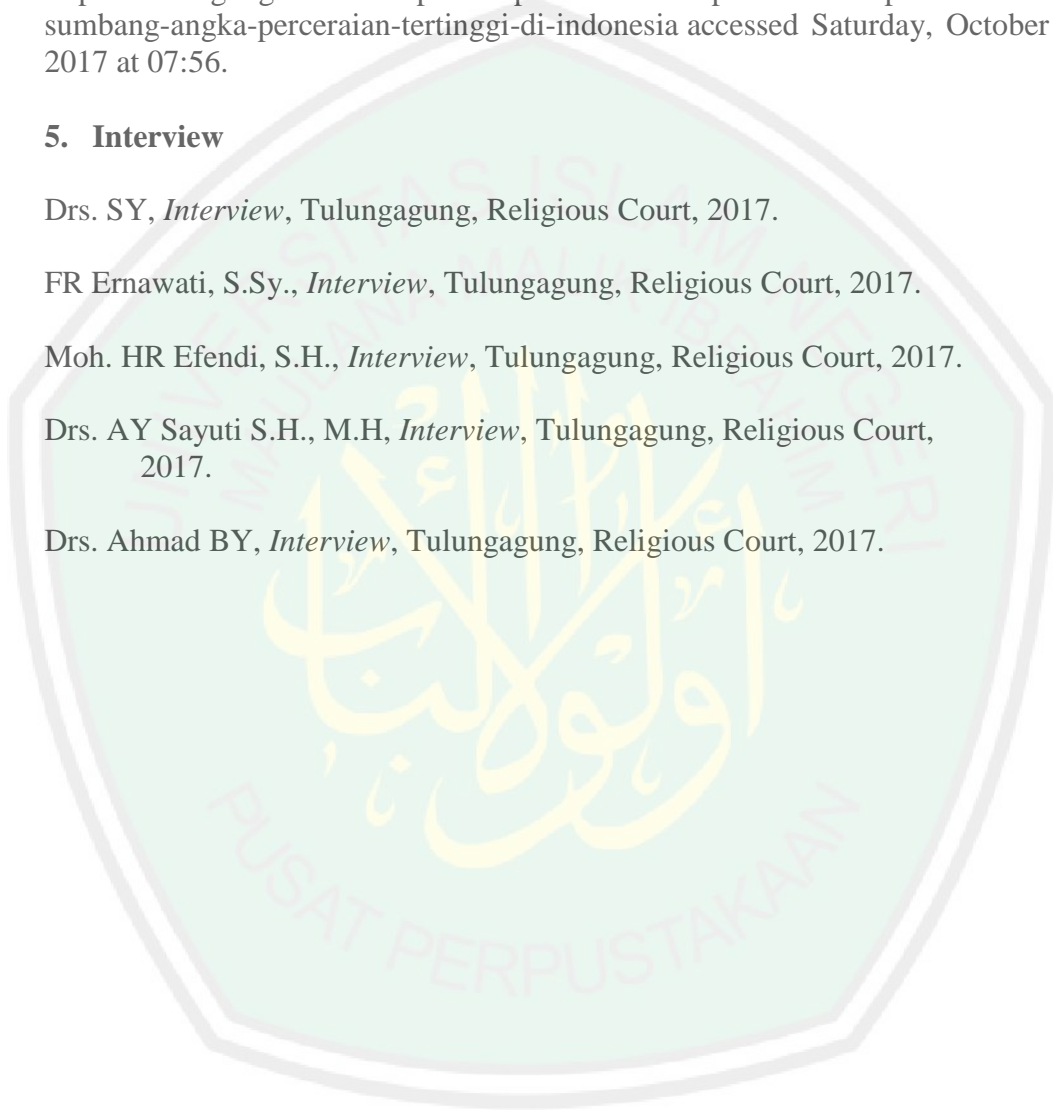
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Moh. HR Efendi, S.H., *Interview*, Tulungagung, Religious Court, 2017.

Drs. AY Sayuti S.H., M.H, *Interview*, Tulungagung, Religious Court, 2017.

Drs. Ahmad BY, *Interview*, Tulungagung, Religious Court, 2017.



APPENDIX



Interview Guideline For Vice of *Panitera* Tulungagung Religious Court

1. *Bagaimana pendapat Bapak mengenai perceraian TKW di Pengadilan Agama Tulungagung? (What is your opinion about divorce of Indonesian female worker on Tulungagung Religious Court?).*
2. *Bagaimana pendapat Bapak mengenai perceraian TKW melalui kuasa hukum? (What is your opinion about Indonesian female worker's divorce use legal counselor?).*
3. *Seberapa banyak perceraian TKW di Pengadilan Agama Tulungagung dengan melalui kuasa hukum? (How much divorces of Indonesian female worker on Tulungagung Religious Court through legal counselor?)*
4. *Dalam proses beracara, apakah terdapat perbedaan dalam menangani kasus cerai gugat dengan pengajuan oleh kuasa hukum dan non kuasa hukum? (On procedures of divorce's law. Is that a differences between case on legal counselor and without legal counselor?).*
5. *Apa alasan terbesar banyaknya perceraian TKW di Tulungagung? (What is the biggest reasons divorces of Indonesian female worker?).*

Interview Guideline For Advocate of Tulungagung Religious Court

1. *Bagaimana pendapat saudara mengenai perceraian TKW selaku pemegang kuasa? (What is your opinion about Indonesian female worker's divorces as legal counselor?).*
2. *Apakah terdapat perbedaan prosedur saat menjadi kuasa hukum dalam perceraian TKW dan principal lain? (Is that the differences on divorce's procedure as legal counselor of Indonesian female worker and usual principals?).*
3. *Melalui media apa komunikasi antara saudara dan TKW berlangsung? (What a kind of media using for communication between legal counselor and Indonesian female worker?).*
4. *Darimana TKW mendapatkan informasi mengenai kuasa hukum? (Where is the sources of information about legal counselor for Indonesian female worker?).*
5. *Bagaimana komunikasi selama perceraian berlangsung? (What is the communication as long divorces?).*
6. *Apakah terdapat perbedaan saat proses mediasi berlangsung? (Is that a differences as long as mediation court?).*
7. *Apakah terdapat perbedaan saat proses persidangan berlangsung? ((Is that a differences as long as trial court?).*

Interview Guideline For Mediator of Tulungagung Religious Court

1. *Apakah terdapat perbedaan saat proses mediasi dengan kuasa hukum dan non kuasa? (Is that a differences between mediation process with legal counselor and without legal counselor?).*
2. *Apakah terdapat upaya khusus saat mediasi perkara perceraian TKW melalui kuasa hukum? (Is that a special effort for Indonesian female worker's divorces through legal counselor?).*
3. *Apakah terdapat upaya menghubungkan melalui komunikasi visual selama proses mediasi?(Is that a effort about visual communication as long as mediation process?).*
4. *Bagaimana tingkat keberhasilan mediasi pada perkara perceraian TKW melalui kuasa hukum? (How is the success rate of mediation in Indonesian female worker's divorce cases through legal counselor?).*

List of Interview

No.	Name	Position
1.	Drs. Suyono, S.H	Vice of <i>Panitera</i>
2.	Fitri Ernawati, S.Sy	Advocate
3.	Moh. Hufron Efendi, S.H	Advocate
4.	Drs. Ahmad Yani Sayuti., S.H., M.H	Mediator
5.	Drs. Ahmad Budiyono	Mediator



Pictures

Interview with Vice of *Panitera* Tulungagung Religious Court



Interview with Advocate/ Legal counselor of Indonesian Indonesian female worker



Interview with Mediator of Tulungagung Religious Court



Interview with Advocate of Indonesian Indonesian female worker



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No.	Day/Date	Subject of Consultation	Sign
1.	October, 11 2017	Proposal	
2.	October, 23 2017	Review Proposal	
3.	November, 14 2017	Chapter 1,2,3 and Layout	
4.	December, 15 2017	Review Chapter 1, 2 and 3	
5.	December, 27 2017	Chapter 4 and 5	
6.	January, 29 2018	Review Chapter 4 and 5	
7.	February, 08 2018	Abstract	
8.	February, 09 2018	Review Abstract	
9.	February, 12 2018	Accepting All Chapter	
10.	February, 13 2018	Accepting All Chapter + Abstract	

Malang, 13th of February 2018

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