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COOPERATIVE AGREEMENT BETWEEN PARTNERS:

Negotiation And Domestic Conflict In Indonesian Islamic Law

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Abstract: This study aims to describe cooperative negotiation techniques in the mediation process in order to ensure the survival of the household. The results show that BP4 can mediate disputes between husband and wife in the household that lead to divorce through cooperative negotiation techniques. In its application, BP4 to do; 1) internal communication with each of the disputing parties; 2) using cooperative negotiation techniques by upholding the values of togetherness; 3) give the best answer to the problems faced by the dispute; distort competitive negotiation techniques and compromise negotiation techniques if they are deemed ineffective.

Keywords: *negotiation, mediation, indonesian law, islamic law*



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INTRODUCTION

Having a peaceful family, filled with love and affection is the dream of every couple. This is as mandated in QS. Al-Rūm: 21, that God has created humans on earth in pairs, to know each other and become a medium of human peace in pairs, so that a sense of love and affection arises between them (Shihab, 2001). The interpretation of this verse shows how the ultimate goal of marriage is the creation of a harmonious family based on love as a form of worshipping God.

Efforts to pursue a peaceful and happy family journey, or in other terms *Sakīnah Mawaddah wa Rahmah* certainly experience differences for every human being. In other words, every human or couple has a subjective way of creating a happy family. Several factors also have an impact on these efforts, such as economic, educational, and social. All cannot be beaten equally as the whole family must experience happiness (Afrianty, 2018; Febriandi et al., 2021; Madanah et al., 2018).

The journey to a family that is *Sakīnah Mawaddah wa Rahmah* will be experienced by married couples. They both became pioneers in the creation of the family, which was then followed by their children. It is not easy to follow the journey to achieve success. It requires the patience and piety of a trusted individual. As a result, a happy family will produce love and affection for all family members, life will be more orderly, economic needs will be met, worship will be orderly, and children will be educated. However, if an unhappy family is not realized, there will be a rift in the household (Hastings & Lindsay, 2013). The impact is the loss of trust between husband and wife, loss of love and affection for others, children who are not taken care of, children's education is not fulfilled, and social pressures that continue to exist. This is what is worried about in the household.

Not creating a harmonious family in family can lead to divorce (Hayati et al., 2011). This action is usually the final and best step in a household, if the household being built has a greater negative impact Ramlah, 2018). Islam strengthens this act if it is true that in the household there is a

continuous negative side (Afandi, 2014). If the household continues, it will have a more complex negative impact. The divorce rate in Indonesia is quite high. Research in 2018 shows that the divorce rate in Indonesia is increasing every year. This is motivated by several factors, ranging from economic factors, decreased trust in spouses, domestic violence, the intervention of other partners, to social media factors which are considered to be lacking in transparency. In addition to these factors, the effect of not implementing material law (RUU PA) as written law and the application of KHI as a binding principle (Ramlah, 2018). Research in 2013 explains that Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 regarding KHI are currently still in harmony and relevant, although in the process it must be evaluated to produce a valid law as the legal umbrella for the Indonesian people (Afandi, 2014).

The divorce rate will not decrease without the cooperation between the parties concerned, the community, and the government. Divorce is better avoided, therefore religion considers divorce steps to be tightened and is called an emergency measure if there is no conflict resolution (L & Bedong, nd). The government through the Ministry of Religion of the Republic of Indonesia in collaboration with the religious organization of the Marriage Advisory, Guidance and Preservation Agency or what is called BP4 can guide, educate, foster, and protect families throughout Indonesia to maintain a harmonious, planned, prosperous and happy family continuity under religious orders (Mukhlis, 2020). The role of the BP4 organization in providing household guidance is still ongoing. This means that this organization is still a community need as a medium for strengthening household integrity with various preventive and curative efforts (Rizkiya & Marhamah, 2017).

The 2016 study describes a survey of 127 respondents regarding the role of BP4 in handling household reconciliation mediation. The results show that the quantitative calculation T count is greater than T table ($5.309 > 1.979$) at df 126 and $\alpha = 0.05$, which means H_0 is rejected while H_a is accepted. The interpretation of this data shows differences in the results of household reconciliation after mediation has been carried

out by BP4 or not (Dinata, 2016). Further research in 2020 stated that the role of BP4 is still effective in providing education and guidance in the community. This is evident in the people of Majene district, West Sulawesi. Educational efforts were considered more effective, although in the end there was some mediation for household reconciliation. BP4 has conducted courses for prospective brides, established partner relations with the Sakinah Mawaddah wa Rahmah family program, and a da'wah safari (Azis et al., 2020). However, research in 2016 showed the ineffective role of BP4 in fostering and mediating the divorce process in Sukajadi District, Bandung City. This is due to the lack of socialization and counseling to the community, especially marriage development. Another factor that hinders the ineffectiveness of BP4 is the lack of funding from the government (Aulia & Purseyowati, 2016).

These two studies explain the irrelevance of the role and function of BP4 as a socio-religious organization in mediating and reconciling household divorces. The first study stated that BP4 was successful in handling community mediation in Majene Regency, West Sulawesi, while the second study stated that BP4 was less effective in handling household divorce mediation in Sukajadi District, Bandung City. From these two reductions, BP4 is not always able to work effectively to mediate a household divorce. Then how does BP4 carry out effective mediation, then what negotiation technique is used? Such research questions are the focus of the research discussion.

This research is a qualitative research which is Library Research. In the sense of research that explains the phenomenon of Islamic family law events in Indonesia (Arfa & Marpaung, 2018). Procedurally, this study explains the procedures for cooperative negotiation techniques in the mediation process carried out by the Marriage Advisory, Development and Preservation Agency or BP4 for household divorce reconciliation. The primary data of the study were pieces of literature related to cooperative negotiation techniques in the household mediation process, while secondary data were in the form of BP4 pieces of literature related to the implementation of fostering and mediating a household divorce.

Data collection techniques using documentation. Researchers document the literature on cooperative negotiation techniques in the household mediation process which is then processed in the data analysis stage. Data analysis was carried out by data reduction, data presentation, and data analysis. The steps taken by the researcher are to reduce data related to the literature on cooperative negotiation techniques in the household mediation process. The data are then presented according to their respective terms and constellations, then comprehensive data analysis is carried out. The results of such data analysis become the results and discussion of the research.

THE MEDIATOR

The existence of a Marriage Advisory, Guidance, and Preservation Agency or what is called BP4 is a socio-religious institution that collaborates with the Ministry of Religion of the Republic of Indonesia to improve the marriage quality of Indonesian Muslim communities with the role of fostering, guiding, and protecting them throughout Indonesia. (BP4 Formulating Team, 1961). This institution was established on January 3, 1961, in Jakarta, Indonesia based on the Decree of the Minister of Religion of the Republic of Indonesia No. 85 of 1961 by establishing BP4 (Advisory Board for the Development and Preservation of Marriage, 2017). The birth of BP4 as stated in Article 5 of the Articles of Association BP4 has the aim of improving the quality of marriage in order to create a household or family that is *sakinah* according to Islam and to achieve an advanced, independent, and prosperous Indonesian society and nation both materially and spiritually by: (1) Improving the quality (1) Improving the quality of marriage and family life that is *sakinah mawaddah warahmah*; (2) Reducing the divorce rate by improving services to troubled families through counseling, mediation and advocacy activities; (3) Strengthening the institutional and HR capacities of BP4 in order to optimize programs and achieve goals; (4) Provide counseling on laws and regulations relating to families; (5) Develop partnership networks with agencies/institutions

that have a marriage and family mission, books, brochures, mass media and electronic media as deemed necessary; (8) Organizing pre-marital courses, upgrading/training, discussions, seminars and similar activities related to marriage and family; (9) Organizing family education to increase appreciation and practice of the values of faith, piety and morality in the context of fostering a sakinah family; (10) Take an active role in cross-sectoral activities aimed at fostering a sakinah family; (11) Increasing efforts to empower the family economy and entrepreneurship; and (12) Efforts and other endeavors deemed beneficial for the benefit of the organization as well as for the happiness and welfare of the family (Dinata, 2016).

RECONCILIATION AND MEDIATION

The Household Advisory, Guidance, and Preservation Agency, or what is called BP4 normatively has the role and duty to form a family that is Sakinah Mawaddah wa Rahmah. This is as mandated in BP4's Articles of Association (BP4 Formulating Team, 1961). The interpretation of that is that BP4 can make preventive and accurate efforts. Preventive efforts can be carried out by BP4 before the prospective husband and wife get married (Rizkiya & Marhamah, 2017). This effort is considered more effective and hits the target object because it provides education on Islamic marriage law. BP4 can carry out this effort by partnering with community organizations, KUA, youth organizations, and regional leaders. In addition, BP4 can also collaborate with non-formal educational institutions such as PKBM and Islamic boarding schools, where the two institutions have a common point in community empowerment in the socio-religious field (Hanafi, nd). Curative efforts are efforts made by BP4 in mediating disputes between husband and wife that can result in divorce (Marsella, 2019). This effort is carried out by BP4 using a psychological and religious approach by adjusting the client's situation (husband and wife). BP4 with all its partners provides psychological guidance and strengthening for clients. Provide an overview of the risks that will occur after the divorce. BP4 also provides an overview of religious normativity regarding divorce from a

legal perspective, impact, and complexity of other matters concerning divorce. BP4 does not need to use a juridical approach, because this can encourage clients to divorce (Nugroho, 2019). Such curative efforts can be carried out with various techniques, where the techniques used by the mediator can hit the client so that it becomes the client's consideration to continue the divorce process in the religious court.

To carry out curative efforts, BP4 can mediate. Mediation is a peaceful dispute process that involves the assistance of a third party to provide an acceptable solution to the disputing parties, the participation of a third party in dispute resolution between two parties (Marwan, 2009). The dispute resolution by mediation is very useful because both parties to the dispute (husband and wife) can end the dispute in a fair, peaceful, and mutually beneficial way. Some say that if mediation fails, it will still be beneficial because both parties to the dispute (husband and wife) can meet each other in a mediation process. In the meeting, they were able to express and clarify the root of the problem that had been driving the divorce, to narrow down the root of the problem and the dispute between the two. This shows that the two disputing parties want to end the dispute but have not found the right format (Darmawati, 2014). In the mediation process, more dispute resolution problems arise from the disputing parties, so the mediator only acts as an assistant to mediate issues disputed by both parties (Salamah, 2013).

The purpose and function of mediation are to resolve disputes between the two parties by involving a third party, namely a mediator who is objective, rational, and impartial (Darmawati, 2014). Mediation can lead the two disputing parties to meet a point of dispute which ends with a decision that is considered good according to both. Dispute resolution using mediation can place both parties to the dispute with the same status, in the sense that neither is won or lost (Abbas, 2017).

Mediation in the household divorce reconciliation process is very important. This effort was made to prevent the parties involved from continuing their intention to divorce in the Religious Courts. Although in the final step, it was found that many couples chose to divorce after

mediation was carried out. They tend to avoid the mediation process and register directly with the Religious Courts with the help of advocates to continue to carry out divorce acts. However, mediation still has a significant impact. Its role is at least able to bridge the two parties to determine the best way for household reconciliation.

NEGOTIATION

In dealing with disputes between husband and wife, mediators can use certain techniques to make the mediation process successful. The following techniques are used so that couples do not demand the religious court to carry out a divorce (Darmawati, 2014). BP4 members as mediators for both parties can use the following techniques:

First, Competitive Negotiation. This technique is a negotiation technique that focuses on the attitude of competition between two parties. A competitive negotiator can do the following; 1) Make very high demands early in the negotiation process; 2) Keeping demands high throughout the negotiation process; 3) The concession granted is very limited; 4) From a psychological point of view, negotiators consider others as opponents; 5) Often uses harsh words and even threats to the opposing party (Mamudji, 2017).

Second, Negotiation (Cooperative Negotiation). This technique is the opposite of the competitive negotiation technique (Saragih, 2000). In its implementation, this technique considers the position of the opponent (opposing party) not as an enemy, but as a partner seeking common ground. Both parties always maintain shared interests and values by using common sense without any pressure from any party, so that problem solving can be carried out objectively as a medium to build and increase trust (Nugroho, 2019).

Third, Negotiation Compromising (Compromising Negotiation). This technique can be called "soft bargaining" or "soft negotiation". In the sense that one of the disputing parties must replace some desired things to get something. The principle is that one of the related parties must be willing

to sacrifice something to find an agreement (Widyastuti, 2017). Negotiators cannot get everything they want, but only some of them (Nugroho, 2019).

From these three techniques, the mediator from BP4 can do it by adjusting the complexity of the problems of each party. The mediator can examine the problem objectively before deciding to use any of the above techniques. The mediator must be balanced, not taking sides with certain parties because there are interests or conflicts of interest.

The negotiation techniques as mentioned above have their respective strengths and weaknesses. A mediator from BP4 should consider choosing these three techniques in mediating between disputing husband and wife couples so that no one partner is harmed. In carrying out a mediation, BP4 can do it unilaterally without the intervention of an Advocate. For example, it was found that a married couple was currently experiencing domestic conflict and on the verge of divorce. Following the principle of this technique, this technique considers the position of the opponent (opposing party) not as an enemy, but as a partner seeking common ground. The wife insists on demanding a divorce from her husband in the Religious Court. In the same position, the husband feels aggrieved. He felt that the blame that ignited the household did not fall completely on him. There is a dispute now. Arguing, arguing, and blaming each other. In this position, BP4 can be a mediator to handle disputes that occur in each client. The mediator must adhere to the principle of shared interests and values. Not taking sides with either of them, but providing a comprehensive understanding of the impact of the steps to be taken by both of them. Another example is a husband who wants to divorce his wife on the verge of a domestic conflict. So BP4 was present during the conflict with a mission of peace. Mr.4 can ensure that the behavior that will be carried out by the husband does not come under pressure from any party. BP4 can mediate with a reconciliation process between the two by considering various points of view.

From the two cases, it was found that the steps for implementing cooperative negotiation techniques in the process of problem-solving between husband and wife were found to be appropriate;

First, BP4 as a mediator must communicate intensively to each client (husband or wife) regarding family problems that lead to divorce. The meeting can be held on a different day or time so that the arguments built by each party can be authentic. At this stage, the mediator should listen more to the complaints of each related party. It is not allowed to provide solutions in the middle of the ongoing mediation process.

Second, use cooperative negotiation techniques so that neither party is harmed. The consideration of using this technique is to realize the values of togetherness without bringing down one party. In its implementation, the mediator from BP4 tries to provide normative explanations based on divorce law in terms of positive law and religion, psychological impacts, child care, economy, education, and other impacts that can damage the sustainability of family life if a divorce is carried out. The mediator must be rational and objective by considering the complaints of each party. Make each other's arguments to decide conflict resolution to be better. The mediator must be free from pressure from any party.

Third, give the best answer. This step is the most important step to be taken by BP4 after the mediation process has passed. The mediator can give the best answer, namely avoiding domestic divorce, although the final implementation remains in the hands of the parties concerned. If necessary, the mediator can provide complex administrative, juridical, and financial problems if the divorce is brought to court.

Fourth, distort competitive negotiation techniques and compromise negotiation techniques if possible. Mediator not to be influenced by each party's argument. Try to avoid these two negotiation techniques so that each party does not feel aggrieved, such as one party being harmed materially by having to pay compensation to win a lawsuit in the Religious Courts. Or the mediator is more subjective to one party because of the interest factor, as a result, the mediator considers one party as an opponent and provides reinforcing arguments that lead to winning the lawsuit.

The four steps of this cooperative negotiation technique can be taken procedurally to mediate the problems of a husband and wife who are about to divorce. According to the researcher, this technique is very

appropriate to be carried out by mediators from BP4 members as a form of implementing household development programs.

CONCLUSION

BP4 as a socio-religious organization has the duty and authority to foster a harmonious, happy, and prosperous household following religious teachings. His role is also as a mediator for household disputes faced by husband and wife. As a form of curative effort, BP4 can carry out its duties by mediating both parties using cooperative negotiation techniques. In the sense that BP4 carries out mediation by upholding the values of togetherness. Complete the mediation process rationally, objectively, and without pressure from any party. This cooperative negotiation technique is carried out so that both parties to the dispute can find an answer to the problem that benefits both of them so that there is no divorce in the household.

REFERENCES

Abbas, P. D. R. S. 2017. *Mediasi: Dalam Hukum Syariah, Hukum Adat, dan Hukum Nasional*. Prenada Media.

Afandi, M. 2014. Hukum Perceraian Di Indonesia: Studi Komparatif antara Fikih Konvensional, UU Kontemporer di Indonesia dan Negaranegara Muslim Perspektif HAM Dan CEDAW. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 7(2), 191–201.

Afrianty, D. 2018. Agents for change: Local Women's organizations and domestic violence in Indonesia. *Bijdragen Tot de Taal-, Land- En Volkenkunde*, 174(1), 24–46.

Aulia, N. R., & Purseyowati, S. 2016. Efektivitas Fungsi Mediasi dalam Proses Perceraian. *Wacana Paramarta: Jurnal Ilmu Hukum*, 15(2).

AZIS, M. N., ALANG, H. M. S., & SYAMSIDAR, S. 2020. Peranan Badan Penasehat Pembinaan, Pelestarian Perkawinan Dalam Meningkatkan Keluarga Sakinah. *Washiyah: Jurnal Kajian Dakwah Dan Komunikasi*,

1(2).

Badan Penasihat dan Pembinaan dan Pelestarian Perkawinan. 2017. Wikipedia Bahasa Indonesia.

Darmawati, D. 2014. Fungsi Mediasi dalam Perkara Perceraian. Sulesana: Jurnal Wawasan Keislaman, 9(2), 88–92.

Dinata, W. S. W. 2016. Optimalisasi Peran Badan Penasehatan, Pembinaan dan Pelestarian Perkawinan (BP4) dalam Rangka Pembentukan Keluarga Sakinah di Kabupaten Jember. *Journal de Jure*, 7(1), 78. <https://doi.org/10.18860/j-fsh.v7i1.3508>

Faisal Ananda Arfa, M. A., & Dr. Watni Marpaung, M. A. 2018. Metodologi Penelitian Hukum Islam: Edisi Revisi. Prenada Media.

Susanti Adi Nugroho, S. H. M. H. 2019. Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa. Kencana.

Febriandi, Y., Ansor, M., & Nursiti. 2021. Seeking Justice Through Qanun Jinayat: The Narratives Of Female Victims Of Sexual Violence In Aceh, Indonesia. *QIJIS: Qudus International Journal of Islamic Studies*, 9(1), 103–140.

Hanafi, W. PERGESERAN EPISTEMOLOGI PENDIDIKAN ISLAM.

Hastings, O. P., & Lindsay, D. M. 2013. Rethinking Religious Gender Differences : The Case of Elite Women. August, 471–495. <https://doi.org/10.1093/socrel/srt048>

Hayati, E. N., Höglberg, U., Hakimi, M., Ellsberg, M. C., & Emmelin, M. 2011. Behind the silence of harmony: Risk factors for physical and sexual violence among women in rural Indonesia. *BMC Women's Health*, 11. <https://doi.org/10.1186/1472-6874-11-52>

Madanah, D., Siddiq, I. M., Juari, L., Susanti, N., Nursiti, Rasyidah, Darwin, R. L., Ruwaida, Rahayu, S., & Febriandi, Y. 2018. Menyusuri Jalan Keadilan: Upaya Peningkatan Layanan Bagi Perempuan Berhadapan dengan Hukum di Aceh (A. Yentriani (Ed.)). Mahara Publishing, BSUIA, JMSPS, RPuK.

Mamudji, S. 2017. Mediasi Sebagai Alternatif Penyelesaian Sengketa di

Luar Pengadilan. *Jurnal Hukum & Pembangunan*, 34(3), 194–209.

Marsella, M. 2019. Mediasi penal dalam penyelesaian perkara kekerasan dalam rumah tangga (KDRT) perspektif filsafat hukum. UIN Sunan Ampel Surabaya.

Marwan, J. P. 2009. *Kamus Hukum*. Reality Publishe.

Mukhlis, S. 2020. Peran Mediasi Dalam Rekonsiliasi Rumah Tangga Dari Perspektif Gender. *KRTHA BHAYANGKARA*, 14(2), 221–235. <https://doi.org/10.31599/krtha.v14i2.282>

Ramlah, R. 2018. Faktor-Faktor Yang Mempengaruhi Tingginya Tingkat Perceraian di Indonesia (Tinjauan Terhadap Hukum Acara Peradilan Agama). *Al-Risalah*, 14(02), 350. <https://doi.org/10.30631/al-risalah.v14i02.455>

Rizkiya, M., & Marhamah, S. 2017. Upaya Badan Penasehatan, Pembinaan Dan Pelestarian Perkawinan (BP4) Dalam Pembinaan Dan Pelestarian Perkawinan. *Al-Mursalah*, 3(2).

Salamah, Y. Y. 2013. Urgensi Mediasi dalam Perkara Perceraian di Pengadilan Agama. *AHKAM: Jurnal Ilmu Syariah*, 13(1). <https://doi.org/10.15408/ajis.v13i1.953>

Saragih, R. F. 2000. Fungsionalisasi ADR dan Penyelesaian Sengketa Lingkungan Hidup. *Jurnal Hukum IUS QUA IUSTUM*, 7(13), 138–147.

Shihab, Q. 2001. *Tafsīr Al-Miṣbāh*. In XI. Lentera Hati.

Tim Perumus BP4. 1961. *Anggaran Dasar Badan Penasihat, Pembinaan, dan Pelestarian Perkawinan*.

Widyastuti, T. 2017. Pengaruh Komunikasi Asertif Terhadap Pengelolaan Konflik.

