

EXAMINATION BY DEOXYRIBONUCLEIC ACID (DNA) TEST OF CHILDREN PRIVILEGES AS LEGITIMATE EVIDENCE IN INDONESIA MARRIAGE LAW

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Abstract

This research aims to test the validity of the Deoxyribonucleic Acid (DNA) test for children born by the Indonesian state outside of legal marriages. The drawback of this work is that DNA testing can only measure children's biological rights, but does not provide legal authority in the Indonesian marriage process. While in Indonesia it adheres to the marriage law derived from the study of Islamic law, the practice of DNA testing that reinforces the father's biological rights to his child. A normative study of Law No. 1 of 1974 on marriage, the Compilation of Islamic Law, the Code of Criminal Procedure, the Civil Code and the Juvenile Justice Law is used in this study. The data collected were comprehensively analyzed using an analytical approach and maqashid sharia. The findings of this study are that the legality of DNA testing can determine the biological relationship between a father and his child and can be used as valid evidence for the offspring. However, there is legal controversy in the case of marital rights and succession rights. Children born outside legitimate and lawful marriages are considered to be incompatible with their father, but only with their mother.

keywords: legality, testing, DNA, offspring, child, marriage

INTRODUCTION

Most scholars analyze or abbreviate the Deoxyribonucleic Acid test as part of the application of legal proof in family relationships, violence, or murder (Boemer, 2000; Mays et al., 1992; Wilson et al., 2011). Several countries have indicated that DNA testing is part of legal certainty and can be justified medically (Mannucci et al., 1994). As valid and binding evidence in a legal case, the DNA results may also be additional supporting and supporting evidence. Although some reports suggest that DNA testing does not affect the status of a father's right to have children and inheritance rights, as is the case in

Commented [EN1]: What is the significance of using DNA tests in examining children's privileges as legitimate evidence in Indonesian marriage law? How effective is DNA testing in determining the legitimacy of children in marriage cases? What are the legal implications of using DNA testing in marriage cases in Indonesia? How does the use of DNA testing in marriage cases affect the rights and privileges of children in Indonesia? What ethical considerations should be taken into account when using DNA testing as evidence in marriage cases involving children?

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Commented [EN2]: What is the objective of the research, and what does it aim to validate regarding the use of DNA testing for children born outside of legal marriages in Indonesia? What are the limitations of DNA testing in the context of Indonesian marriage law, and how does it relate to the legal authority of the process? How does the use of DNA testing reinforce the father's biological rights to their child, and how does it align with the study of Islamic law? What legal frameworks were used in this study, and how were the data collected and analyzed? What are the key findings of the research, and how do they relate to the biological relationship between fathers and their children? What legal controversies arise in the context of marital and succession rights for children born outside of legal marriages, and how are they perceived in Indonesia?

Indonesia (Aziz & ul Hassan, 2017; de Freitas Schäfer et al., 2017). Children born out of wedlock in Islamic law can not be regarded as legitimate children in determining offspring, because they have no legal authority based on Law No. 1 of 1974 or the Compilation of Islamic Law in force in Indonesia.

Likewise, DNA testing is not controlled whether as evidence or not, because there is also no form of DNA test proof in the Civil Code, Criminal Procedure Code, and Child Protection Act (Ryan et al., 2018). In Indonesia, numerous cases involving DNA testing as the validity of offspring and legal relations in a marriage have been widely discussed. In 1993 we call that a bustling situation. Where there was an MM woman who had requested the 1974 Law No. 1 exam. MM had a marriage according to Islamic religious norms with all the pillars and conditions that Article 2 paragraph 1 of the Law Marriage had fulfilled. At that time, however, he did not register marriages before an agency appointed by the Government in that case, as provided for in Article 2(2) of Law No. 1 of 1974, the designated official was a religious affairs office (KUA) (Ghusairi, 2018; Utami, 2016).

This polemic became interesting when he gave birth to a boy and wanted his father, who was not yet registered on his birth certificate at the time, to get the name correct (Aziz & ul Hassan, 2017). Religious validity of judicial review is said to be valid even though normatively the legislation is not legally binding because it was not registered with the KUA institution. This case became important when the Constitutional Court granted MM 's request to appeal to the Constitutional Court the right of the child to decide the name of his father (call for a substantive examination of the provisions of

Article 43(1) of Law No. 1 of 1974 (Petitioner's Argument in Constitutional Court Decision No. 46 / PUU / VIII/2010) the use of the legal proposition. Contrary to Article 28B, paragraph 2, of the Constitution of 1945, which states that every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination, it has harmed the constitutional rights of the child (Hamzani, 2016).

At that time, the Constitutional Court declared that 'Children born out of wedlock have only a civil relationship with their mother and the family of their mother, (Utami, 2016) as well as men as fathers who can be proved based on science and technology and/or other legal facts, have blood relationships, including civil ties with the family of their parent,' in response to Article 43(1) of the Act. Children are divided into three (three) according to Indonesian law, namely legal children and illegitimate children. Then, the details were clarified again: 1. Kids born into a civil union. 2. Children born out of wedlock. 3. Children born in unmarried (Hafidzi & Hayatunnisa, 2017) .

Children born out of wedlock vary from children born out of wedlock, the difference being that children born out of wedlock are children born out of marriages carried out according to their respective sects and values, the child in the eyes of religion being legitimate (Boemer, 2000). That is, significantly correct, but since it is not registered either in the Office of Religious Affairs (KUA) or in the Office of the Civil Registry (children of the marriage), it is not officially correct then. Although children born without marriage are children born without marriage ties from relationships between men and women, children born illegally are often illegally formal (Ramadhani, 2019).

The research alluded to as part of the proof is the use of DNA testing to figure out the relationship between children and fathers as facts of life to gain their rights as Indonesian citizens. So this research becomes interesting as I want to see the validity of DNA testing on the status of children born to mothers without any clarification of their father's status by looking at Indonesian normative law and Islamic law. At least this result is a good sign for the increase of DNA testing to identify the biological father and the effect on marriage and children's rights.

Research Methods The

The method used in this study is doctrinal law analysis with a normative approach, with Islamic law sources and sharia studies questioning the legitimacy of DNA testing to assess the validity of children's marriage rights.

The material used as a legal basis is the decision of the Constitutional Court No. 46 / PUU / VIII/2010, in the case of a Petition for Evaluation of Law No. 1 of 1974 concerning family, marriage law, and Islamic Law Compilation (KHI). In this legal research, the approach taken is the conceptual and maqashid approach to sharia (Bulmer, 2017). The results of this study's findings were analyzed using the Islamic legal and Sharia approach to see the legality of child custody of a child's DNA test to find out the state and Islam legally about their biological father.

RESULTS OF RESEARCH AND DISCUSSION

LEGALITY OF THE CONSTITUTIONAL COURT AND LAW NUMBER 1 OF 1974

With regards to the Decision No 46 / PUU-VIII/2010 of the Constitutional Court, which approved the material review, but rejected and did not accept a request for judicial review Article 43(1), of Law No 1 of 1974 concerning marriage to the constitutional court of 1945 Article 2(2) of Law no 1 of 1974 relating to marriages submitted by MM, becomes an application for judicial revision

Judgments of the Constitutional Court to review laws that contain the contents of declarative judgments, namely to clarify or affirm what is valid. It is done to improve the applicant 's status to gain his or her rights as an Indonesian citizen (Ghusairi, 2018). Based on the case presented, that MM's DNA testing for his child is very close to 98 percent identical or similar to that of his father who married MM in a series (not recorded by the state). And there is no legal strength and confidence in the DNA test as evidence since it was not registered.

While in the decision, the constitutional judge granted only a partial request and claimed that the child had only a personal partnership, not a legal one. The above question does not apply to any proof in the law, including the use of DNA testing (Imanullah, 2018). However, if we look at Law No. 1 of 1974 relating to marriage in the second paragraph, it states that a marriage is considered legal if it is conducted following their respective moral and civil laws and that each marriage must be registered by relevant laws.

The record checked by the Constitutional Court does not apply if a marriage in a sequence of marriages has been prohibited in practice by the State since 1974, but must be registered by the state. Of course, the state forbids marriage being permitted without

the government's legality regarding the prohibition of marriage activity. It is due to the consequences that arise such as not having his father's rights on birth certificates, inheritance rights, no legal security in the family if a crime happens, even the child's status is often challenged as he doesn't have his rights as a valid citizen (identity card) and the consequences of this marriage are also many again.

Children born out of wedlock based on the Constitutional Court Decision Number 46 / PUU-VIII / 2010 clarify the civil relationship with its biological father. The status of a child out of wedlock that is recognized is caused by a marriage. If the marriage is carried out following Article 2 of Law Number 1 of 1974 concerning Marriage only, then if the child is not born in the context of a legal marriage, such as adultery or otherwise, no solid legal basis can be given in the determination of the child and his rights as the son of his biological father.

Therefore, if a DNA test can be confirmed, a child born outside marriage after the enactment of Law No. 1 of 1974 on marriage can have a civil relationship with his parent. This polemic becomes an issue as it relates to Islamic law regarding the status of children born outside marriage without mentioning documented in the KUA.

DNA TESTS IN BIOLOGICAL PATHOLOGY DETERMINATION

Currently, in many countries, DNA testing is used to classify biological mothers, injury victims, falsification of family records, or others. This test is conducted as an effort to prove it in the court realm. While other evidence must be shown to support the case for the DNA study. DNA testing is considered part of the law since it is one piece of

proof. While several experts doubt the validity of this DNA test because just one piece of proof in the court of the claimant is inadequate (Wilson et al., 2011). Especially if the marriage is performed lawfully in compliance with Islamic law and the Republic of Indonesia.

Meanwhile, if a child is born as a result of adultery, then the child is immediately included in his birth certificate with his mother's name because, despite being tested for DNA, it is contrary to Law No. 1 of 1974 Under the status and rights of children born under Article 42 the marriage law explains: "Legitimate children are children born in or as a result of legal marriage." If a child born as a result of incest or out of a legitimate marriage so the father may argue that the born child has no civil relationship. If this occurs due to adultery. Even though Indonesia has not regulated children born outside legal marriages until now.

What is regulated is only a matter of civil status in respect of the right of the child as a citizen whose parents are his mother's name, under Article 43(1) of the Law. As a result of civil relations with the mother and the family of her mother, the child will only receive rights of inheritance from the mother and the family of the mother, including all forms of care until the child is an adult who is the responsibility of the mother. What about Checking for DNA? This is where the drawback of DNA testing is due to the women's inability to know who the people who impregnated her because of promiscuity or adultery.

According to the Islamic Law Compilation Act, the testing of DNA results in the determination of biological fathers is not explained in detail. The compilation of Islamic

Law allows a legal marriage to be conducted in compliance with Law No. 1 of 1974 and based on the provisions of Article 99 KHI which states that a legitimate child is a child born as a result of a legal marriage and is conducted by a husband and wife approved by the State (Susanto, 2017). Therefore, DNA testing is not limited in Law Number 1 of 1974 or the Compilation of Islamic Law (KHI), whether as evidence or not as part of the law deciding children's rights against their families. This is because there are no tools available at the time such as DNA testing.

Based on the cases that have been submitted, it appears that DNA testing can be used as a tool to determine someone's nose. Determination of the origin of children is very important, because the presence or absence of offspring will affect the presence or absence of inheritance relationships, maintenance, and guardianship of DNA testing, as indicated by these experts, can accurately prove one 's nose (Mays et al., 1992). Determination of the offspring through the DNA bag itself is certainly done if there are cases of negation of the offspring. For this reason, DNA testing is only needed to determine the rights of biological fathers.

CHILD'S RIGHT TO BIOLOGICAL FATHERS

In Islamic law, DNA testing is not prohibited or recommended, but in the Sharia approach, including the maintenance of nurture. This pattern is used as a tool to determine the ability to use the DNA test theory to assess the validity of biological fathers. This approach is used as a reference in Islamic law as evidence to determine the passage for

the sake of knowing his biological father. If someone with very diverse reasons wants to know their identity, one way to do this is to identify themselves through DNA testing.

This process is a development of medical science that was not discovered during the time of the apostles and the days of friends, although there are some parallels, namely by matching the body and matching the individual, this technique is used as evidence to evaluate the relationship of offspring if there is a dispute among families. Technology and DNA can, therefore, be used as the wrong proof to strengthen the offspring in the event of a marriage dispute (Hamzani, 2016). If DNA testing is carried out by experts, it can be said that technology can respond to the relationship of the offspring in a marriage. Although it needs to be discussed how his rights came to life when his biological father died.

In Islamic studies, if a person has a child and his parents die, then a child born outside of marriage cannot inherit what is left by his biological father. Because it is contrary to the arguments of Islamic law and Law No. 1 of 1974 concerning marriage. There is a narration from Ad-Darimi in As-Sunan (3106) that Sulaiman bin Yasar said,

"Any man comes to a child then he says that it is his child before he had committed adultery with the child's mother, then there was no one else claiming to be his child, that child may be given an inheritance. "

If the child is the result of adultery, then he should be kept to his mother. Based on the argument from Umm al-mu'minin 'Aisyah Ra., the Prophet SAW said,

"The child is leaning on the bed owner, while the adulterer only gets stones only (meaning: not getting any rights from the child)." (Narrated by Bukhari, no. 6749 and Muslim, no. 1457)

DNA testing can be used as legal proof in the sense of Islamic law, but it has to be understood by its intent, if the intent is for legitimate purposes, then it is acceptable.

And if the purpose of the DNA test deviates from the provisions of Islamic law it is prohibited to exist. The proof was classified as very reliable evidence by DNA testing.

CONCLUSION

Based on the work submitted, testing a person's rights by DNA testing can be considered as one of the valid evidence for evaluating his biological father's rights, whether performed in a legal marriage or not. However, if used to obtain inheritance rights and the right to marry his daughter if the child is born outside of legal marriage, DNA testing can not be used as a legal base. DNA research is acceptable in an unbiased approach to the fairness of Islamic law if only to protect the welfare of the born child. The validity of this evidence is based on expert findings on testing children's DNA against their fathers in the laboratory.

If proved, then the child-father relationship continues, only the duties specified in Islam do not apply. Like the right to accept foster children, guardianship, if the child is a female, a wedlock-born child has a civil relationship with his mother and the family of his mother, and with people, because his father is just a biological parent.

REFERENCE

- Aziz, A., & ul Hassan, K. H. (2017). FINDING PARENTS WITH DEOXYRIBONUCLEIC ACID (DNA) DATABASE. *International Journal of Computer Science and Information Security*, 15(1), 664.
- Boemer, J. (2000). In the Interest of Justice: Granting Post-Conviction Deoxyribonucleic Acid (DNA) Testing to Inmates. *Wm. Mitchell L. Rev.*, 27, 1971.

Commented [EN3]: How can DNA testing be used as evidence to evaluate a person's biological father's rights, and in what contexts is it considered valid evidence? Can DNA testing be used as a legal basis for inheritance rights or the right to marry a daughter if the child is born outside of legal marriage? How does the use of DNA testing align with the principles of Islamic law, and what role does it play in protecting the welfare of the child? What is the basis for the validity of DNA testing as evidence, and how is it obtained through expert findings in the laboratory? How does the use of DNA testing in this context relate to the fairness and impartiality of the Islamic legal system?

- Bulmer, M. (2017). *Sociological research methods*. Routledge.
- de Freitas Schäfer, F., da Cruz, E. J. S., Bucher-Maluschke, J. S. N. F., & da Silva Pedroso, J. (2017). Emotional repercussions in fathers triggered by paternity testing. *Psychology*, 8(06), 815.
- Ghusairi, G. (2018). PENGARUH KEPUTUSAN KASUS MACHICA MOCHTAR terhadap STATUS NASAB ANAK LUAR NIKAH di INDONESIA. *Madania: Jurnal Ilmu-Ilmu Keislaman*, 4(1), 01–13.
- Hafidzi, A., & Hayatunnisa, E. (2017). Kriteria Poligami serta Dampaknya melalui Pendekatan Alla Tuqsitu Fi al-Yatama dalam Kitab Fikih Islam Wa Adillatuhu. *Syariah: Jurnal Hukum Dan Pemikiran*, 17(1).
- Hamzani, A. I. (2016). Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *Jurnal Konstitusi*, 12(1), 57–74.
- Imanullah, A. (2018). *Metode Al-Qāfah dan Relevansinya dengan Tes DNA dalam Penetapan Nasab: Studi terhadap Pemikiran Ibnu Qayyim al-Jauziyyah* [PhD Thesis]. UIN Ar-Raniry Banda Aceh.
- Mannucci, A., Sullivan, K. M., Ivanov, P. L., & Gill, P. (1994). Forensic application of a rapid and quantitative DNA sex test by amplification of the XY homologous gene amelogenin. *International Journal of Legal Medicine*, 106(4), 190–193.
- Mays, G. L., Purcell, N., & Winfree Jr, L. T. (1992). *Review Essay: DNA (Deoxyribonucleic Acid) Evidence, Criminal Law, and Felony Prosecutions: Issues and Prospects*. JSTOR.
- Ramadhani, C. F. (2019). *Kekuatan Hukum Hasil Tes Deoxyribonucleic Acid (DNA) Terhadap Status Anak Luar Kawin yang Tidak Diakui oleh Ayah Biologisnya Pasca Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010*.
- Ryan, A., Sigurjonsson, S., Banjevic, M., Gemelos, G., Hill, M., Baner, J., Rabinowitz, M., & Demko, Z. (2018). *Methods for non-invasive prenatal paternity testing*. Google Patents.
- Susanto, L. A. (2017). *Perlindungan Hukum Terhadap Anak Yang Lahir Dari Perkawinan Perempuan Hamil Di Luar Nikah*.
- Utami, I. (2016). Eksistensi Tes Deoxyribo Nucleic Acid dalam Menentukan Nasab. *Medina-Te: Jurnal Studi Islam*, 12(2), 143–160.
- Wilson, D. B., Weisburd, D., & McClure, D. (2011). Use of DNA testing in police investigative work for increasing offender identification, arrest, conviction and case clearance. *Campbell Systematic Reviews*, 7(1), 1–53.