

Status and Rights of Illegitimate Children

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Abstract

In Indonesia, there are differences in the inherent status and alimentation rights between legitimate and illegitimate children. Illegitimate children only have the civil relationship with their mothers and to ensure illegitimate children have a legal relationship with their biological father, a legal action is required as stated in the Constitutional Court Decision Number 46/PUU-VIII/2010, through DNA tests or other scientific methods. Concurrently, there is a case where a man recognized as the biological father of a child, without reference to DNA test or other scientific methods. This research aims to find about the status of illegitimate children in Indonesia and determine the impacts of their status on their entitlement to rights of alimony. This writing uses a normative juridical legal research method that is guided by legal rules or norms. The approach methods used are case approach and statutory approach. The source of this legal research material uses primary legal materials, secondary legal materials and tertiary legal materials. Data collection uses a qualitative data analysis method, namely by describing legal issues found through literature research using relevant regulations. The results of this study are to examine the status and alimentation rights that arise based on DNA test and other scientific evidence.

Keywords: Biological Children; Illegitimate Children; Marriage.

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Introduction

According to the legislation, children in Indonesia are divided into two groups: legitimate and illegitimate. "A legitimate child is a child born in or as a result of a legal marriage," states Article 42 of Law Number 1 Year 1974 on Marriage.¹ A legitimate child is defined as one born within a lawful marriage, resulting from a legal union between husband and wife, conceived outside the womb, and born to the wife, as outlined in Article 99 of the Compilation of Islamic Law (KHI).² Illegitimate children, on the other hand, are those born outside of a valid marriage.³ Therefore, the marriage is only deemed lawful based on criteria relating to religion and belief; it does not meet the standards for a "valid marriage" as stated in Article 2(2) of Law Number 1 Year 1974 regarding Marriage.⁴ This classification of children has implications for the status and rights of

¹ Law Number 1 of 1974 Concerning Marriage, Article 42.

² Islamic law compilation.

³ Umar Haris Sanjaya and Aunur Rahim Faqih *Hukum Perwakinan Islam Di Indonesia* (Seri Buku Ajar 2017).[170].

⁴ Witanto DY, *Hukum Keluarga Hak dan Kedudukan Anak Luar Kawin* (Cetak Pertama Prestasi Pustaka 2012).[37].

children. In this article, illegitimate children refers to a child born from unregistered marriage, despite, these children still have biological ties to both of their parents. In legal terms, legitimate children are at a distinct advantage, as they are entitled to all rights provided by law, such as inheriting property, receiving alimony, and having their father's name on their birth certificate, among other rights.⁵ In order to gain legal standing for a child as a legitimate child, it needs to be based on a legal marriage of their parents. In any case, illegitimate children have a bond with their mother, according to Article 100 KHI. So also, "Illegitimate children have a gracious tie with their mother and their mother's family," concurring to Article 43 (1) of Law Number 1 Year 1974 concerning Marriage.

The Constitutional Court was then asked to assess (material test) the provisions in Article 43 (1) of Law Number 1 Year 1974 respecting Marriage. According to the consideration, "...the relationship between a child and a man as a father can be founded on evidence of a blood relationship between the child and the man as a father, rather than only the presence of a marriage bond." Therefore, the child must be protected by the law, regardless of how the marriage was performed or administered. If this is not the case, then it is the child born outside of marriage who is harmed, even though the child is innocent because his birth was against his will...".⁶

Therefore, in the Constitutional Court Decision Number 46/PUU-VIII/2010, the phrase "illegitimate children" refers to children from an unregistered marriage or known as *nikah siri* in Indonesia (not administratively registered). Then in other considerations, Article 43 (1) of Law Number 1 Year 1974 which states, "Illegitimate children only have a civil relationship with their mother and their mother's family" should be read, "Illegitimate children have a civil relationship with their mother and their mother's family and with the man as their father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with the father's family".⁷

On the other hand, there is a case in court Decision Number 746/Pdt.G/2021/

⁵ Witanto DY.*Op.Cit.*[39]

⁶ Decision Number 46/PUU-VIII/2010.[35].

⁷ *Ibid.*

PN.Tng. *jo.* Decision Number 109/PDT/2022/PT Btn. *jo.* Decision Number 1055/K/PDT/2023 (*inckracht*) where a man is being asked to recognize himself as the biological father of a child. The man, who is believed to be the father of the child, has never been in a marital relationship with the child's mother, either under the marriage law or religiously. In addition, the argument is not grounded in scientific or technological evidence or any other proof, according to Constitutional Court Decision Number 46/PUU-VIII/2010, referenced in Decision Number 746/Pdt.G/2021/PN Tng, this case involves a lawsuit for child acknowledgment. The Plaintiff seeks recognition from the Defendant as the biological father of the child.⁸

In the first instance decision, the judge rejected the claim filed by the Plaintiff to determine that the child the Plaintiff gave birth was the biological child of the Defendant. For this decision, the Plaintiff filed an appeal which was then decided in Decision No. 109/PDT/2022/PT Btn. The decision at the appeal stage overturned the decision at first instance and essentially stated that the child born to the Plaintiff was the biological child of the Defendant, as mentioned in the ratio decidendi or legal reasoning that the Defendant could not prove otherwise.⁹ In this case, the judge applied one of the principles in Civil Procedure Law, namely the principle of *actori incumbit probatio, actori onus probandi*. This principle is contained in Article 1865 BW, states that both the Plaintiff and the Defendant bear the burden of proof. In this principle, it is stated that the burden of proof is borne by both parties Plaintiff, and the Defendant. Specifically, the plaintiff has the burden of proving the events it is proposing, and the Defendant has the burden of proving its rebuttal.¹⁰ In addition, the Defendant also filed a cassation which was decided in Decision Number 1055/K/PDT/2023 (*inckracht*). The decision at the cassation stage rejected the Defendant's appeal and upheld the decision at the appeal stage. Therefore, the Defendant was declared the biological father of the Plaintiff and the Plaintiff's child was declared the biological child of the Defendant.¹¹

⁸ Decision Number 746/Pdt.G/2021/PN Tng.

⁹ Decision Number 109/PDT/2022/PT Btn.

¹⁰ Risdiana Risdiana and Habibul Umam Taquiuddin, 'Implementasi Asas Batas Minimal Pembuktian pada Perkara Hukum Perdata (Studi Putusan Pengadilan Negeri Selong Nomor : 55/Pdt.G/2020/PN.Sel)' (2021) 7 Jurnal Ilmiah Mandala Education.

¹¹ Decision Number 1055/K/PDT/2023.

Based on this, the author is interested in the case above because there are many interesting aspects that can be discussed. First, the Plaintiff and Defendant in the first level examination until the cassation never mentioned and prove that there had been a marriage between them either legally or religiously. The Constitutional Court's Decision Number 46/PUU-VIII/2010 is irrelevant in this case since, the historical background from this court's decision is an unregistered marriage. This argument is also reinforced by the statement of Mahfud MD, chairman of the Constitutional Court at the time "that what the panel meant by the phrase children outside marriage was not children resulting from adultery, but children resulting from unregistered marriages".¹² Furthermore, a man's claim to be the father of a child must be proven by science, technology, and other data that can improve the child's bond with his biological father. This evidence was not taken into account in the aforementioned case, and neither the plaintiff nor the defendant agreed to employ DNA testing as a form of proof. Thus, this situation can lead to ambiguity due to the contradiction between the court and the law determining the status and rights of a illegitimate children with their biological father.

According to the background, the author formulates a problem in order to emphasize and identify the issues. This research will examine the status of illegitimate children in Indonesia and determine the impacts of their status on their entitlement to rights of alimony.

Method Research

This article uses normative juridical research as the method for gathering data and information. This method analyzes legal norms, focusing on positive law in Indonesia, to investigate the extent to which these laws correspond with societal realities. The method of approach that the author uses is to use a statutory and case approach by looking at legal theories, legal ideas, and legal principles that are relevant to the research's subject. In addition to the Civil Code, Decision Number 746/Pdt.G/2021/PN Tng, Decision

¹² Achmad Irwan Hamzani and others, 'Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi the Descendants of Children Outside of Marriage After Constitutional Court' (2015) 12 Jurnal Konstitusi.[67]

Number 109/PDT/2022/PN BTN, and Decision Number 1055 K/Pdt/2023 are the primary legal materials for Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law, Constitutional Court Decision Number 46/PUU-VIII/2010, and Fatwa MUI Number 11 of 2012. Books, literature, journals, scientific publications, court's decision, interview transcripts, and so on are examples of secondary legal documents. Meanwhile, tools that improve comprehension of elementary and secondary legal documents are known as tertiary legal materials like legal dictionaries and Indonesian dictionaries. Data retrieval method using qualitative data analysis method, namely by describing legal issues found through literature research using regulations relevant to the case under study. The originality of this research is status of the illegitimate children and their right to alimantation according to paternity through DNA testing or scientific methods.

Status of Illegitimate Children

Legitimate children according to Djaren Saragis is children born in a legal marriage and have the position of legal children.¹³ Born in a legal marriage means that the child is born the woman who gave birth to him is in a legal marriage with a man. Due to the legal status of a child, a legal child has a status *putu* that is considered the highest and most perfect in the prespective of the law, when compared to illegitimate children. Legitimate children are often substantiated by official documentation, such as a birth certificate, which verifies the identities of both parents.¹⁴

In contrast to an illegitimate child, which is born from an invalid marriage and thus has only a civil relationship with the mother, children born outside of marriage are similarly regarded as having only a civil relationship with their mother and her family, according to Article 43 (1) of Law Number 1 Year 1974 concerning Marriage. In addition to Article 100 of the KHI, illegitimate children only have a *nasab* relationship with their mother and her family. Regarding offspring born outside of a valid marriage

¹³ Putu Eka Trisna Dewi 'Akibat Hukum Perkawinan Beda Agama Yang Dilangsungkan Di Luar Negeri' (2020) 14 Yustitia.[28-34].

¹⁴ Kusumayanti H, others 'The Justice For Illegitimate Children Of Indonesian Women Workers Through Constitutional Court Decision No. 46/PUU-VIII/2010' (2023) 11 Jurnal IUS Kajian Hukum dan Keadilan.[253-264].

or illegitimate children, their *nasab* status is attributed exclusively to their mother, rather than their father, as well as to their mother's family. In Islamic law, scholars concur that a child's relationship with his mother is established through pregnancy, which results from sexual intercourse with a man.¹⁵

Consequently, an illegitimate child is regarded as having solely a civil relationship with their mother and her family, because the relationship between mother and child occurs automatically as a result of the birth process.¹⁶ It is also stated that in relation to the mother of a child, it is not considered to be mistaken, because the woman who gave birth to him is definitely his mother and between a mother and a child a civil relationship automatically arises, is considered a logical principle.¹⁷ This relationship between the child and the parents is referred to as a "blood relationship. A blood-relationship is a relationship between two people, where one is a descendant of the other, or where both are of the same descent. Thus, blood-relationships arise solely because of the causation of biological descent. Blood relationship is based on the understanding that if two people of different sexes have intercourse and a child is born from that intercourse, then there is some blood from the man and the woman whose relationship resulted in the birth of a child.¹⁸

Thus, Article 43 (1) of Law Number 1 Year 1974 on Marriage was then submitted for judicial review to the Constitutional Court through Case Number 46/PUU-VIII/2010 by Hj. Aisyah Mochtar as known as Machica and Muhammad Iqbal Ramadhan (Machica's son). Aisyah Mochtar had entered a marriage with Drs. Moerdiono, who was a married man and remarried Hj. Aisyah Mochtar as his second wife. The marriage between Hj. Aisyah Mochtar and Drs. Moerdiono was carried out with an Islamic marriage contract, but not before the KUA, so it was not registered in the marriage certificate book and did not have a marriage certificate citation. From that marriage Hj. Aisyah Mochtar and Drs. Moerdiono were blessed with a son named Muhammad Iqbal Ramadhan. Because

¹⁵ Sari Pusvita 'Anak Diluar Nikah in Putusan Mahkamah Konstitusi dan Implikasinya Terhadap Harta Warisan' (2018) 1 Ulul Albab: Journal of Studies and Research on Islamic Law.[43].

¹⁶ Rosnidar Sembiring, *Hukum Keluarga (Harta dalam Perkawinan)* (First, RajaGrafindo Persada 2016). [123].

¹⁷ Juswito Satrio, *Hukum Keluarga Mengenai Status Anak dalam Menantu* (Citra Aditya Bakti 2000).[161].

¹⁸ *Ibid.*

the Applicant's marriage was not administratively registered, their child, Muhammad Iqbal Ramadhan, did not get the name Drs. Moerdiono on his birth certificate and before the law is considered an illegitimate child. In fact, the Applicant's marriage is valid in Islamic law.¹⁹ Then in other considerations, Article 43 (1) of Law Number 1 Year 1974 which states, "Illegitimate children only have a civil relationship with their mother and their mother's family" should be read, "Illegitimate children have a civil relationship with their mother and their mother's family and with the man as their father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with the father's family".²⁰

As a result, the implication applies to the same case as this case and cannot be applied to children resulting from adultery and other categories of children with different cases. This argument is also reinforced by the statement of Mahfud MD, the chairman of the Constitutional Court stated that the panel's reference to "children outside of marriage" did not pertain to children born from adultery, but rather to those resulting from unregistered marriages.²¹ Then, when tracing the origins of the decision *a quo* departed and began with a married couple who had entered into a religious marriage before the birth of their biological child.

If a biological relationship can be established through science, technology, or other legally recognized evidence, then children born outside of marriage have a recognized civil relationship with both their mother and her family and the man designated as their father. A cordial relationship with the father's family is part of this. Law Number 1 of 1974's Article 43(1), which formerly said that these children solely had a civil relationship with their mother and her family, is being reinterpreted in this way.²² It is then required to clarify that, in accordance with the provisions of Constitutional Court Decision Number 46/PUU-VIII/2010, a man as a father may be considered to have a civil relationship with the child as long as it can be demonstrated by science, technology, or other legally recognized proof.

¹⁹ Decision Number 46/PUU-VIII/2010.[96].

²⁰ *Ibid.*

²¹ Achmad Irwan Hamzani. *Op.cit.*[67].

²² Decision Number 46/PUU-VIII/2010.[35].

Science consists of two syllables, namely science and knowledge. In the Indonesian Dictionary, "science" is defined as knowledge in a specific field that is systematically organized according to particular methods, enabling the explanation of certain phenomena within that area of study. Meanwhile, knowledge in the Indonesian Dictionary can be interpreted as everything that is known, intelligence, and everything that is known regarding a matter. According to Endang Saefuddin Anshari, science is an effort of human understanding that is organized in a system regarding reality, structure, parts and laws about the things being investigated (nature, humans, and religion) as far as it can be reached by the power of thought assisted by sensing whose truth is tested empirically, research and experimentation.²³ Science consists of empirical facts or rational ideas created by individuals through experiments and experiences that have undergone rigorous testing.²⁴ Thus, if it is associated with Constitutional Court Decision Number 46/PUU-VIII/2010, one of the relevant and sustainable sciences as an effort to prove the validity of the biological relationship between a man as a father and a child is the family of medical sciences, especially in Forensic Medicine. Forensic Medicine consists of various branches, namely, Forensic DNA, Forensic Toxicology, Forensic Odontology, Forensic Psychiatry, and various other branches of forensic science. However, only Forensic DNA can be used to identify the origin of a child.

Then, the technology used in supporting the identification of a person is based on science in Forensic Codecter Science such as Fingerprints and Teeth, DNA, Property, and Medical. However, what can be used to determine a person's blood relationship is through the DNA method. DNA stands for Deoxyribo Nucleic Acid, which is a nucleotide polymer molecule that contains genetic information contained in cells. Each cell of an individual can be said to have identical DNA. Thus, a DNA test is an examination carried out by a doctor or laboratory officer to find out a person's DNA. The various DNA tests consist of Fingerprint, Maternity tests, and Paternity tests. Fingerprint test is a test used to identify a person's characteristics either through fingerprints, tooth structure

²³ Ahmadi Ahmadi, Afroh Nailil Hikmah and Agus Yudiawan, 'Ilmu Dan Agama Dalam Perspektif Filsafat Ilmu' (2021) 7 Al-Fikr: Jurnal Pendidikan Islam.[14].

²⁴ Izzatur Rusuli, Dan Zakiul and Fuady M Daud, 'Ilmu Pengetahuan Dari John Locke Ke Al-Attas' (2015) 9 Aceh: Jurnal Pencerahan.[13].

or other body parts. While fingerprint-based paternity testing is sometimes used in judicial practice, it remains a less clear-cut area of forensic practice and is ultimately overshadowed by advances in serology and DNA profiling.²⁵

The Maternity test is a test conducted to determine the existence of a blood relationship between a child and a woman suspected of being his mother and the sample uses mitochondrial DNA (mDNA), while the Paternity test is a test used to identify the blood relationship of a child with a man suspected of being his father. Therefore, the relevant technology in proving a man as the father of a child is the Paternity test method.²⁶ Finding the mother's and the claimed father's DNA profiles and matching them to the child's is currently the most used technique in paternity trials. Sample collection, DNA extraction, quantification, amplification, and STR analysis are the five main processes in the paternity testing process. DNA is extracted from its biological source during the sample collection phase, and the amount of DNA recovered is evaluated during the quantification stage.²⁷

In addition, another element that needs to be fulfilled is "other evidence according to the law". According to law, Proving has a juridical meaning, defined as providing sufficient grounds for the judge to examine the relevant case in order to ascertain the truth of the events presented. Essentially, proving is a process aimed at establishing the certainty of the facts in a trial, using evidence that is admissible under the law. In this case, the judge can be bound by the law regarding certain evidence, and vice versa that in the case of certain evidence the judge is given the freedom to assess the evidence.²⁸ In general, as long as the law does not determine otherwise, judges are free to assess evidence. Article 146 HIR/248 RBg/1866 BW states that the means of evidence are:

1) Letter or writing;

²⁵ Daniel Asen, 'Fingerprints and Paternity Testing: A Study of Genetics and Probability in Pre-DNA Forensic Science' (2019) 18 *Law, Probability and Risk*. [179].

²⁶ Indah Nur Utami, 'Implementasi Pembuktian Asal-Usul Anak Luar Kawin berdasarkan Ilmu Pengetahuan Dan Teknologi Dalam putusan Mahkamah Konstitusi nomor 46/PUU-VIII/2010' (2014) 1 *Novum: A Legal Journal*. [5].

²⁷ Kareem Essam, 'Role of DNA in Paternity Testing' (2020) 14 *Journal of Forensic Sciences & Criminal Investigation*. [17].

²⁸ Sri Wardah and Bambang Sutiyoso, *Hukum Acara Perdata Dan Perkembangannya di Indonesia* (Gama Media 2007). [123].

- 2) Witness;
- 3) Expectations;
- 4) Recognition;
- 5) Oath.

In addition, in certain circumstances the HIR and RBg also mention other evidence, namely:

- 1) Local examination (descent), which is regulated in Article 153 HIR/180 RBg/211 Rv;
- 2) Expert Testimony, which is regulated in Article 154 HIR/181 RBg/215 RV.

Hence, referring to the case Decision Number 746/Pdt.G/2021/PN.Tng. *jo.* Decision Number 109/PDT/2022/PT Btn. *jo.* Decision Number 1055/K/PDT/2023 (*inckracht*). A case where a woman sued a man for the child, she gave birth to. In her confession and the confession of witnesses at trial, the woman, who we will refer to hereafter as the Plaintiff, admitted that she was close to the Defendant (the alleged father of the child born to the Plaintiff), and that the closeness between the Plaintiff and the Defendant was quite intense without any marital relationship. This closeness also led to the Plaintiff giving birth to a child and by the time the case was heard in the court of first instance, the child was 8 (eight) years old. The lawsuit was filed at the Tangerang District Court with a civil lawsuit for Unlawful Acts (PMH) as stated in the Tangerang District Court Decision Number 746/Pdt.G/2021/PN. Tng, with a claim of PMH Article 1365 of the Civil Code because the Defendant was reluctant to recognize the Defendant's child as his biological child.²⁹

Then, in this case there was no concrete evidence regarding the validity of the genetic relationship between the Plaintiff and Defendant's child, because there were no DNA test results. The Panel of Judges indicated that it could not be established that there was a marital bond between the Plaintiff and the Defendant, whether through a religiously valid marriage or a marriage registered in accordance with the applicable law, the authority of proof was an effort that must be made by the Plaintiff in proving the arguments of his claim. Thus, the court of first instance decided that the Plaintiff's child was not the biological child of the Defendant.

²⁹ Decision Number 746/Pdt.G/2021/PN Tng.

However, this decision at the First Level was then appealed by the Plaintiff. Then, based on Appeal Decision Number 109/PDT/2022/ PT BTN on Decision Number 746/Pdt.G/2021/PN. Tng, the Panel of Judges decided to cancel the Tangerang District Court Decision Number 746/Pdt.G/2021/PN. Tng, the Panel of Judges at the appellate level then issued an interlocutory decision in which the decision ordered the Appellant or Defendant in the case *a quo* to conduct a DNA Test based on the Constitutional Court Decision Number 46/PUU-VIII/2010 jo. Article 43 of the Marriage Law. The panel of judges in their consideration stated that in case *a quo*, the Plaintiff was in a weak position to prove her biological relationship and in this case, it should be done by the Appellant or Defendant.³⁰ The Panel of Judges also considered evidence related to presumption and applied in the case *a quo* as Article 164 HIR jo. Article 43 of the Marriage Law. The Panel of Judges stated that presumptive evidence can be used as a basis for biologically linking the children of the Plaintiff and the Defendant. The presumptive evidence applied in the case *a quo* is based on the evidence of letters and witness testimony at trial.

The Defendant or the Appellant then filed a cassation appeal with Decision Number 1055K/Pdt/2023. The Panel of Judges then decided to uphold the Appeal Decision Number 109/PDT/2022/ PT BTN and stated that the Banten High Court did not err in applying the law. Another consideration was the absence of a marriage between the Plaintiff (or Appellant) and the Defendant (or Appellant), the child was determined to be the biological child of the Defendant, as long as the Defendant could not prove otherwise. The judge in deciding the case *a quo* must have been based on the evidence submitted by the parties in the trial and must have made an evidentiary assessment of the evidence. However, if faced with a similar case, then the need for the results of a DNA test will be a way out in cases relating to proving a person's biological relationship.³¹

When examined in accordance with the elements set forth in Constitutional Court Decision Number 46/PUU/VIII/2010, a man can be deemed to have a civil relationship with a child if, supported by scientific evidence, technological advancements, and other forms of legally recognized proof, the following indicators are identified:

³⁰ Decision Number 109/PDT/2022/ PT BTN.

³¹ Interview with Winsu Kristiyanto, Judge at the Yogyakarta District Court, in Yogyakarta, May 14, 2024.

Table. 1 Indicator based on the elements in Constitutional Court Decision Number 46/PUU-VIII/2010

No.	INDICATORS	
1.	Science. In this case, the relevant and sustainable family of science as an effort to prove the validity of the biological relationship between a man as a father and a child is the family of medical science, especially Forensic Medicine in the Forensic DNA branch.	Not Fulfilled
2.	Technology. In this case, the technology used in supporting the identification of a person is based on science in Forensic Codecter Science such as Fingerprints and Teeth, DNA, Property, and Medical.	Not Fulfilled
3.	Other Evidence According to Law. Article 146 HIR/248 RBg/1866 BW mentions evidence in the form of letters or writings, witnesses, testimony, confessions, oaths and in certain circumstances HIR and RBg also mention other evidence in the form of local examination (descent) and expert testimony which is regulated in Article 154 HIR/181 RBg/215 RV.	Fulfilled

These three elements, which rely on science, technology, and other forms of evidence recognized by law, need to be established cumulatively. This cumulative proof needs to be done for certainty. In addition, the status of biological father or biological father can be proven or disproven by conducting a DNA test, which is a test on nucleic acid that stores all information about genetics with the closest possibility of certainty.³² Then, the evidence recognized in law as mentioned earlier will support the results of the DNA test that has been carried out. The results of the DNA test will become authentic evidence. Thus, these three elements are then interconnected and need to be proven cumulatively.

This then leads to a contradiction between the court and the law in determining the status of illegitimate children. Proof through scientific evidence, technological advancements, and others form of legally recognized proof provides legal certainty in determining the status of illegitimate children. As a result, the status of illegitimate children can establish a civil relationship with the biological father as long as he can prove it in accordance with the provisions in Constitutional Court's Decision Number 46/PUU-VIII/2010. Therefore, according to the status of illegitimate children, besides

³² Angga Dikta Bhijana, 'Penerapan Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010 Atas Pelaksanaan Pembagian Harta Warisan Bagi Anak Luar Kawin (Studi Kasus Kantor Notaris Surakarta Dan Karanganyar)' (2016) IV Privat Law.[129].

it can be proven through technological methods, but also through recognition by the biological father.

Alimentation Rights of Illegitimate Children

Children are citizens who have their rights and responsibilities safeguarded and guaranteed by the Constitution. As stated in Article 28B According to Articles 1 and 2 of the Republic of Indonesia's 1945 Constitution, everyone has the right to start a family and continue their ancestry through a valid marriage. Every kid also has the right to life, development, and protection from prejudice and violence.³³ Furthermore, children are a sacred blessing from God Almighty that should be safeguarded with utmost dedication and guided through proper education, as they stand for the future of Indonesia.³⁴ In this article, the concept of "children" refers to individuals considered as "*persoon*," who have a legal relationship with their parents. This is following the provisions of Articles 45 and 46 of the Marriage Law, which prove reciprocal rights and obligations between children and their parents.³⁵

In addition to the definition of a child as stated earlier, the term biological child is also known. Biological children in this case refer to the term children who have filiation to someone who has given birth to them. In the Indonesian Dictionary, children are second offspring or smaller humans, while biology in the Indonesian Dictionary is things related to biology or a family of sciences that study the conditions and properties of living things.³⁶ So, in terminology biological children can be interpreted as second offspring or humans born from biological processes. The biological relationship is between a child and men and women who have filiation with him. The reference to the biological relationship in this study is the direct genetic aspect.

Biological Child in the viewpoint of genetics refers to an individual who inherits a combination of genes from both parents through the process of genetic inheritance that

³³ Article 28B (1) of the Republic of Indonesia's 1945 Constitution.

³⁴ Marilang, "An Examination of Constitutional Court Decree No. 46/PUU-VIII/2010 from the Viewpoint of Civil and Islamic Law: The Legal Relationship between Illegitimate Children and Their Biological Father" (2016) 10 Journal of Indonesian Islam[335-354].

³⁵ Law Number 1 of 1974 regulating Marriage, Articles 45 and 46.

³⁶ Departemen Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia (2019).

occurs at conception.³⁷ In the viewpoint of Developmental Biology, biological children are individuals born from the process of fertilization between eggs fertilized by sperm. This stage then triggers the process of embryo formation which develops into an individual with physical and genetic characteristics inherited from both biological parents.³⁸

In the biological process, the child is the result of the meeting between the ovum and the seed of a man called spermatozoa. The meeting unites and then becomes a zygote, then grows into a fetus. From the fetus then develops into a human being (*baby*) born in the world.³⁹ From this process, naturally a person is born in this world with the mediation of his biological (biological) father and mother. The process then continues until the conceived child is born in this world. Thus, a child has a biological relationship either with the woman who conceived him or with the man responsible for the woman's pregnancy.⁴⁰ The woman who conceived him will then automatically become his mother. Furthermore, through this biological process and according to Putusan MK Number 46/PUU-VIII/2010 as stated earlier, a man can be recognized as a biological father as long as there is evidence, such as scientific methods about their genetic inheritance.

Whether through biological evidence or the acknowledgment, a child then establishes a civil relationship with that biological father. As a result, reciprocal obligations are created regarding alimention rights.⁴¹ According to M Natsir Asnawi, the term "alimention" can be understood as a maintenance or prvision of livelihood.⁴² The obligation of alimony is a duty within blood-relations or in-laws, such as between a son-in-law and mother-in-law, and vice versa. Or between a husband and his ex wife, or between a husband and wife with their children, to assist poviding financia support. This obligation is intended to ensure that those who are unable to provide for their

³⁷ Bruce Alberts and others, *Molecular Biology of the Cell* (2017).

³⁸ James L Kelly, 'Developmental Biology Scott F. Gilbert' (1986) 48 *The American Biology Teacher*.

³⁹ Cindy Azkhya, others 'Perkembangan Prenatal Mulai dari Ciri-Ciri Periode Prenatal Hingga Periode Perkembangan Prenatal' (2023) 1 *Jurnal Pendidikan dan Penyuluhan Sosial*. [1047].

⁴⁰ Nur Fitri Hariani, Muh Saleh Ridwan, dan Marilang Marilang, 'Hubungan Hukum Anak dari Surrogate Mother dengan Ayah Kandung dalam Perspektif Hukum Islam' (Tinjauan Putusan Mahkamah Konstitusi (MK) Nomor 46/PUU-VIII/2020) (2021) 8 *Jurnal Al-Qadau: Keadilan dan Hukum Keluarga Islam*. [131].

⁴¹ J. Satrio *Op.Cit.*[6].

⁴² Alfian Qodry Azizi, 'Sanksi Pengabaian Hak Alimentasi Anak: Perspektif Fiqh dan Perundang-Undangan Indonesia' (2020) 7 *Jurnal Iqtisad: Reconstruction of Justice and Welfare for Indonesia* [4].

own needs supported by family members who are able to do so, in accordance with the principle of mutual responsibility within the family.⁴³

Regarding the legal proof of a child's biological relation with a man considered as his father, as in the case mentioned before, it can be interpreted as merely affirmation of the biological connection or blood relation. This biological relationship then makes a man liable for fulfilling the fundamental basic rights of the child, which are essential for the child well being.⁴⁴ Or in other words, the fulfillment of alimentary rights.

Then, if the Decision Number 746/Pdt.G/2021/PN.Tng. *jo.* Decision Number 109/PDT/2022/PT Btn. *jo.* Decision Number 1055/K/PDT/2023 (*inckracht*) proves that there is a biological relation between a child and a man as his biological father, the relationship formed due to the adultery and the differences between the term 'illegitimate child' and 'adultery child' will be ambiguous. Because, according to Article 53 of the Compilation of Islamic Law and Fatwa MUI Number 11 Year 2012, children born from adultery cannot be recognized as having a kinship relation with men. Kinship is closely linked to *nasab*, and to establish such a relationship between a man and a child, the positive law applicable in Indonesia requires a marital bond between the man (as the father) and the mother who gave birth to the child, regardless of whether the marital bond is still intact or has been dissolved through divorce.⁴⁵

In terms of protection for the child of adultery, the government in this case is authorized to impose *ta'zir* punishment for the adulterous man who caused the birth of the child by obliging him to provide for the child's needs and provide property after he dies through a mandatory will.⁴⁶ The protection of a child born from adultery is not achieved by establishing a *nasab* with the man as the father, but rather by imposing *ta'zir* on him. This punishment serves as a means to enforce the obligations and responsibilities of the man who engaged in adultery.

⁴³ Meliala, Djaja S., 'Perkembangan Hukum Perdata Tentang Orang dan Hukum Keluarga' (Penerbit Nuansa Aulia 2015).[106].

⁴⁴ Rifaldi Adi Tama and Umar Haris Sanjaya, 'Perkawinan Sebagai Konstruksi Dasar Hubungan Kekerabatan dan Tanggung Jawab Seorang Laki-Laki Terhadap Anak di Indonesia' (2023) 1.2 Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia.[75].

⁴⁵ Sonny Dewi Judiasih dan Efa Laefa Fakhriah, 'Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia' (2018) 5 PADJADJARAN Jurnal Ilmu Hukum (Journal of Law).[319].

⁴⁶ Sari Pusvita.*Op.Cit.*[49].

As a consequence, with regard to the child of adultery even though it has been proven through science and technology to have a genetic relationship with the man as the father, the child still cannot be related or considered to have a kinship relationship with the man as the father. Nevertheless, a child should not bear the sin committed by his parents, so as a form of protection for the child, the man who committed adultery and is suspected of being the father can be sentenced to *ta'zir* in the form of providing for the child's needs and giving property after he dies through a mandatory will, as regulated in Fatwa MUI Number 11 Year 2012.

Conclusion

An Illegitimate children have a civil relationship with their mother and their mother's family and with the man as their father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with the father's family. In relation to the proof of the three elements outlined in Constitutional Court Decision No. 46/PUU-VIII/2010—namely science, technology, and/or other legally recognized evidence—this serves as an effort to achieve legal certainty regarding the rights and status of biological children. The existing biological relationship can obligate the man to fulfill the basic rights essential for the child's well-being (alimentation rights).

Furthermore, the kinship bond between a child and their parents in Indonesia based on the existence of a marriage, either legally recognized or performed according to religious rites, it is necessary for such a marriage to be in place. Regarding the protection of the child, the government enforces *ta'zir* as punishment on the adulterous man who caused the child's birth, requiring him to provide for the child's needs and to allocate property through a mandatory will upon his death.

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