

THE IMPLEMENTATION CONCEPT OF HUMAN RIGHTS THROUGH DEOXYRIBONUCLEIC ACID TESTS ON THE CHILDREN'S INHERITANCE RIGHTS TO BIOLOGICAL FATHERS

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THE IMPLEMENTATION CONCEPT OF HUMAN RIGHTS THROUGH DEOXYRIBONUCLEIC ACID TESTS ON THE CHILDREN'S INHERITANCE RIGHTS TO BIOLOGICAL FATHERS

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ABSTRACT

The development of science and technology has contributed to the development of legal science, especially the issue of evidence. The evidentiary process in law is the key to determining legal certainty regulated in civil law. The issue of protection of children, which is supposed to be their human right, often become an obstacle. This happens when the biological father does not want to admit or recognize the child, the result of mass rape, the doubts of the biological father or biological father towards the child. Meanwhile, human identification technology continues to develop rapidly, from fingerprint identification, tooth arrangement, iris to DNA (deoxyribonucleic acid) testing. DNA testing as an evidentiary technology solves many thorny problems, ranging from uncovering criminal cases, infidelity, swapped babies, to ascertaining the identity of corpses. The process of proving children through DNA tests is widely used to determine the validity of a person's descendants. Rahma Ashari-Rauf's family turmoil ended after DNA tests proved that the couple's child was not Rauf's flesh and blood. There was also the child case of the unregistered marriage between Machica Mochtar and the late Moerdiono. DNA is a chain of amino acids that forms the blueprint of humans and regulates all biological processes. Everyone has a distinctive DNA. No two people have the same DNA profile. Inside human cells, DNA can be found inside the cell nucleus and within mitochondria. Protection of children with various legal statuses have been normed in several regulations, including: Geneva Declaration on the Rights of the Child of 1924, Declaration of the Rights of the Child approved by the General Assembly on November 20, 1959 and recognized in the Universal Declaration of Human Rights, Law no. 39 of 1999 concerning Human Rights and Constitutional Court Decision Number: 46/PUU-VIII/2010 .

Keywords: Realization of Children's Human Rights, DNA Test, Legal certainty and protection, Civil Rights of Extramarital Children.

INTRODUCTION

Children's rights are part of human rights. This is as stipulated in international law governing human rights. The instrument of regulation of recognition is the same as that of adults. Where human rights are universal that are owned by every human being in this case, including children. In this regard, children also need to be guaranteed to enjoy their human rights, especially rights related to their status as children who need care and protection, including having a legal relationship with their biological father.

This protection is needed because children are basically born not only the role of their mother, but the existence of their biological father contributes to the birth of the child. Therefore, it is very necessary to protect and recognize the biological father for the child, when they were born from an unregistered marriage, infidelity, rape or abandoned by his biological father. Children therefore need a specific right and specific protection in a specific human rights regime.

The issue of providing protection to children which are supposed to be their human rights is often become an obstacle, when the biological father does not want to admit/recognize the child, the results of mass rape, doubts of the biological father or biological father towards the child. Therefore, in today's technological world, human identification technology continues to develop rapidly. From fingerprint identification, tooth alignment, iris of the eye, to DNA (deoxyribonucleic acid) tests. With DNA testing, many thorny problems can be solved. Starting from uncovering criminal cases, infidelity, swapped babies, to ascertaining the identity of corpses.

Lately, the process of proving children through DNA tests has been widely used to determine the validity of a person's descendants. Rahma Ashari-Rauf's family turmoil ended after DNA tests proved that the couple's child was not Rauf's flesh and blood. A serial marriage case between Machica Mochtar and the deceased Moerdiono that produced children. DNA is a chain of amino acids that forms the blueprint of humans and regulates all biological processes. Everyone has a distinctive DNA. No two people have the same DNA profile. Inside human cells, DNA can be found inside the cell nucleus and within mitochondria.

In order to provide protection for extramarital children there are several regulations drawn up, including: the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on November 20, 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (especially in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (especially article 10), Law No. 1 of 1974 on Marriage.

PROBLEM FORMULATION

In relation to the above facts, the following problems are formulated:

1. What is the binding force of the Constitutional Court decision Number: 46/PUU-VIII/2010 against article 43 (2) of Law Number: 1 of 1974 on Marriage?
2. How the government's efforts (the framer of the law) implement the fulfillment of human rights for extramarital children over their biological fathers as a form of legal certainty?

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3. What is the implementation concept of human rights through DNA testing of the right to inherit children from their biological fathers?

DISCUSSION

There are two basic rights in humans, namely; First, human rights are rights that are inherent in humans and fundamentally exist since humans are born. It is related to the existence of human life, is fixed and primary, inalienable, independent of the presence or absence of others around him (inalienable right) (Rhona KM. Smith et al; 2008; 11). On a broader scale, human rights are the basis of law. The manifestations of this right include inner freedom, freedom of religion, freedom of personal life in the name of good, marriage, freedom to assemble and express opinions, emancipation of women. Second, legal rights are rights granted by law specifically to the human person because it is given, the nature of the regulation must be clearly stated in a number of laws and regulations. Whoever does not comply with the provisions of the law may be subject to sanctions determined by the framer of the law.

According to the 1986 UN Declaration, human rights are both end and means of development. Community participation in development is not just an aspiration, but the key to the overall human right to development itself, and it is the duty of international and national development agencies to place human rights as one of the main focuses of development. However, the phenomenon of human rights must be observed wisely, because in the society of individualism, there is a tendency to demand the implementation of this human right excessively. Even though human rights cannot be demanded for implementation absolutely, because prosecution for the implementation of human rights absolutely means violating the same human rights that are also owned by others.

It has become an agreement of various nations, children's issues are arranged in a forum Unicef (United International Children Educational of Fund). For Indonesia itself, children are classified as vulnerable groups. In the Explanation of Article 5 paragraph (3) of Law No. 39 of 1999, it is stated that vulnerable groups include the elderly, children, the poor, pregnant women, and people with disabilities. Regarding the issue of children, how is the realization of all legal orders in Indonesia? Especially the implementation of the provisions of Article 34 of the 1945 Constitution regarding the state's obligation to protect the dignity and dignity of children, has the state made its efforts? (I Gede Arya B Wiranata; 2009; 229)

Child limitations can be found in several applicable laws and regulations in Indonesia. Although in many formulations, in principle, the diversity of boundaries has the same implications, namely providing protection to children individually, personally, and even providing protection. According to Article 1 paragraph (1) of Law Number 23 of 2002, "A child is someone aged 18 (eighteen years) including children who are still in the womb". According to Article 1 of the CRC / Presidential Decree No. 36 of 1990, "a child is any person under the age of 18 years except under the applicable law for which it is determined that the age of majority is reached earlier". Meanwhile, according to Article 1 paragraph (5) of Law No. 39 of 1999 concerning Human Rights, "a child is every human being under the age of 18 years and unmarried, including children who are still in the womb if it is in their interest.

Child Protection Concept

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Conceptually, child protection in Indonesia based on article 28 B paragraph (2) and article 28 D paragraph (1) is the obligation and responsibility of the State, Government, Community, Family and parents (article 20 Law No. 23 of 2002). The scope of child protection is in the form of respect and guarantee of children's human rights without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of children (researcher bold), order of birth of children, and physical and / or mental conditions (Article 21 UU No 23 of 2002 jo Article 52 of Law No 39 of 1999).

The legal status of children should be individual, but because children are inherently physiologically vulnerable, children will depend on others for their survival in ways that cannot be compared to other groups. Children can also suffer secondary violations of human rights if the right to their primary caregiver is violated (Rhona KM Smith; 2008; 138)

The concept of extramarital children, the concept of adultery, discordant children, children born as a result of mass rape and their legal position

Every marriage always requires the birth of children as offspring from the marriage partner. However, the conditions of marriage as stipulated in religious norms, customary norms, are not always linear or in accordance with the legal norms of the country. The Indonesian state has pluralism in its marriage law, so there are several concepts about the concept of marriage. In this regard, there are also legal concepts about the legal position of children in a marriage.

Concept of Extramarital Children.

What is meant by extramarital child according to the Civil Code based on Article 280 jo Article 863 of the Civil Code. The extramarital child who has the right to inherit is an extramarital child in the narrow sense, considering the doctrine of grouping illegitimate children in 3 (three) groups, namely extramarital children, adulterous children, and discordant children, in accordance with the mention given by the lawmaker in Article 22 jo 283 of the Civil Code (concerning adultery and discordant children). Extramarital children who are entitled to inherit are in accordance with the arrangements in Article 280 of the Civil Code. Based on Article 283, linked to Article 273 of the Civil Code, that adulterous children differ from discordant children in their legal consequences. With respect to discordant children, the law in certain circumstances provides exceptions, in a sense, to those who by dispensation are given the opportunity to marry each other (Article 30 paragraph (2) of the Civil Code can recognize and certify their discordant children to be legal children (Article 273 of the Civil Code). Such exceptions are not given to adulterers.

The difference between an extramarital child and an adulterous child lies in the time of conception or sexual intercourse that gives rise to pregnancy, that is, whether at that time one or both (meaning a man and a woman having extramarital intercourse)

are in the marriage bond with another person or not, while when the child is born is irrelevant. Adulterous children are children born of an extramarital relationship between a man and a woman in which one or both are married to another person. Discordant children are children born from a relationship between a man and a woman, between which under the provisions of the law there is a prohibition against marrying each other (Article 31 of the Civil Code).

Thus, extramarital children in the narrow sense are children born from the result of a relationship between a man and a woman, both of whom are not bound by marriage with other people and there is no prohibition to marry each other, such children can be legally recognized by their father (Article 280 of the Civil Code)-(Syafran Sofyan, Professional in Law and Human Rights of the Indonesian National Lemhannas).

2 Position of Extramarital Children

Based on Article 28 (15) the Civil Code, an extramarital child will have a civil relationship with his parents if it has been legally recognized. Thus, if an out-of-wedlock child is not recognized by his parents, then he will not have a civil relationship with either his biological father or mother. However, according to Law No. 1 of 1974 concerning Marriage, the position of an extramarital child by law has a civil relationship with his mother and his mother's family as stipulated in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage. However, in paragraph (2) it is stated that the position of the extramarital child will be further regulated in a government regulation that until now has not been promulgated by the government. Thus, based on Article 66 of Law No. 1 of 1974 concerning Marriage, this provision applies. So the position of extramarital children legally after the enactment of Law No. 1 of 1974 concerning Marriage still requires recognition to create a civil relationship between an extramarital child and his parents.

Recognition of an extramarital child can be done by voluntary recognition, namely: a recognition made by a person in the manner prescribed by law, that he is the father (mother) of a child who has been born out of wedlock. With the recognition, a civil relationship arises between the child and the father (mother) who has recognized it as stipulated in Article 280 of the Civil Code. Voluntary recognition can be carried out in the ways specified in Article 281 of the Civil Code, namely:

- In the birth certificate of the child According to Article 281 paragraph (1) of the Civil Code, to be able to recognize an extramarital child the father or mother and or his attorney based on authentic power of attorney must appear before a civil registry employee;
- Recognition of extramarital children can also be made when the marriage of the parents takes place which is contained in the marriage certificate as stipulated in Article 281 paragraph (2). Jo Article 272 of the Civil Code;
- According to Article 281 paragraph (1) of the Civil Code. Recognition of extramarital children can be done in an otheint deed such as a notary deed;
- With a deed made by a civil registry employee, which is required in the birth register of the civil registry according to the day of its calendar as stipulated in Article 281 paragraph (2) of the Civil Code.

Although groups of children are also guaranteed protection through general international treaties that provide protection for every human being, the international community considers it necessary to elaborate through a convention that accommodates the specific needs of children (Office of the High Commissioner for Human Rights, no year).

1. Authority of the Constitutional Court, Constitutional Court Decisions and Legal Effects

The authority of the Constitutional Court based on article 24C paragraph (1) of the 1945 Constitution and article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law), as well as article 29 paragraph (1) letter a of Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076, hereinafter referred to as Law 48/2009), one of the constitutional powers of the Court is to adjudicate at the first and last instance whose decision is final to test the Law against the 1945 Constitution.

The Constitutional Court is authorized to hear a quo petition. Article 51 paragraph (1) of the Constitutional Court Law and its Explanation, who can apply for a Legal Review the 1945 Constitution are those whose constitutional rights and/or authority granted by the 1945 Constitution are harmed by the enactment of a Law, namely: a. Individual Indonesian citizens (including groups of people who have similar interests); b. the unity of customary law communities as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as stipulated in the Law; c. public or private legal entity; or d. state institutions

The examination of the Law against the 1945 Constitution must first explain and prove: a. their position as Petitioners as referred to in Article 51 paragraph (1) of the Constitutional Court Law; b. loss of constitutional rights and/or authority granted by the 1945 Constitution resulting from the enactment of the Law for which the test is invoked.

Constitutional Court Decision Number 006/PU-III/2005 dated May 31, 2005 and Constitutional Court Decision Number 11/PU-V/2007 dated September 20, 2007, as well as subsequent decisions maintain that the loss of constitutional authority as referred to in Article 51 paragraph (1) of the Constitutional Court Law must meet five conditions, namely: a. the existence of the Applicant's constitutional rights and/or authority granted by the 1945 Constitution; b. such constitutional rights and/or authority by the Applicant are deemed aggrieved by the enactment of the Act for which the test is invoked; c. The constitutional harm must be specific and actual or at least potential which reasonable reasoning can reasonably ascertain will occur. d. there is a causal verband between the damage and the enactment of the Act for which the test is requested; e. there is a possibility that by granting the petition the constitutional harm as orchestrated will not or will no longer occur;

The Constitutional Court considered the legal standing of the Petitioners as follows: a. The petitioner posts as an individual Indonesian citizen who has constitutional rights stipulated in the 1945 Constitution, namely: 1) Article 28B paragraph (1) which states, "everyone has the right to form a family and continue offspring through legal marriage", 2) Article 28B paragraph

(2) which states, "every child has the right to survival, growth and development and the right to protection from violence and discrimination", and 3) Article 28D paragraph (1) which states, "everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law";

b. This Constitutional Right has been harmed due to the enactment of the provisions of Article 2 paragraph (2) and Article 43 paragraph (1) of Law 1/1974;

Opinion of the Constitutional Court in the Application Subject

The subject matter of the Petitioners' petition, is the test of the constitutionality of Article 2 paragraph (2) of Constitution 1/1974 which states, "Every marriage shall be recorded according to the prevailing laws and regulations", and Article 43 paragraph (1) of Constitution 1/1974 which states, "Anak yang dilahirkan diluar perkawinan hanya mempunyai hubungan perdata dengan ibunya dan keluarga ibunya", kecuali mengenai hak untuk mendapatkan status hukum anak.

Permasalahan hukum mengenai pencatatan perkawinan menurut peraturan perundang-undangan adalah mengenai makna hukum (legal meaning) pencatatan perkawinan. Mengenai permasalahan tersebut, Penjelasan Umum angka 4 huruf b UU 1/1974 tentang asas-asas atau prinsip-prinsip perkawinan menyatakan,

"... bahwa suatu perkawinan adalah sah bilamana dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu, dan disamping itu tiap-tiap perkawinan harus dicatat menurut peraturan perundang-undangan yang berlaku. Pencatatan tiap-tiap perkawinan adalah sama halnya dengan pencatatan peristiwa-peristiwa penting dalam kehidupan seseorang, misalnya kelahiran, kematian yang dinyatakan dalam surat-surat keterangan, surat-surat yang juga dimuat dalam daftar pencatatan".

Berdasarkan penjelasan UU 1/1974 diatas nyatalah bahwa (i) Marriage registration is not a factor that determines the validity of a marriage; and (ii) record keeping is an administrative obligation required under laws and regulations. The factors that determine the validity of marriage are the conditions determined by the religion of each prospective bride and groom. Compulsory registration of marriages by the state through laws and regulations is an administrative obligation. Therefore, the importance of administrative obligations in the form of marriage registration, according to the Court, can be seen from two perspectives. First, from the perspective of the state, such recording is required in the framework of the function of the state to guarantee the protection, promotion, enforcement and fulfillment of the human rights concerned which are the responsibility of the state and must be carried out in accordance with the principles of a democratic rule of law regulated and set forth in laws and regulations [vide article 28J paragraph (4) and paragraph (5) of the 1945 Constitution]. Where such recording is considered a restriction, such recording is in the opinion of the Court not contrary to constitutional provisions because the restriction is established by law and is carried out for the sole purpose of ensuring recognition and respect for the rights and freedoms of others, and to meet just demands in accordance with considerations of morals, religious values, security and public order in a democratic society [vide Article 28J paragraph (2) of the 1945 Constitution]. Second, administrative registration carried out by the state is intended so that marriage, as an important legal act in the life of the person concerned, which has implications for the occurrence of very broad legal consequences, in the future can be proven by perfect evidence with an authentic deed, so that protection and services by the state related to the rights arising from a marriage concerned can be carried out properly. effective. That is, by having authentic proof of marriage, the rights arising as a result of marriage can be protected and served properly, because there is no need for an evidentiary process that takes more time, money, energy, and thought, such as proving the origin of children in article 55 of Law 1/1974 which stipulates that if the origin of children cannot be proven by authentic deeds, it will be determined by a decision of the competent court.

Such proof is certainly not effective and efficient when compared to the existence of an authentic deed as evidence; a) the legal question concerning children born out of wedlock is about the legal meaning of the phrase "born out of wedlock". To answer in a broader perspective, it is necessary to answer related problems, namely the problem of the legitimacy of children. Naturally, it is impossible for a woman to become pregnant without the converging between the ovum and spermatozoa either through sexual intercourse (coitus) or through other means based on technological developments that cause fertilization. Therefore, it is imperative and unfair that the law stipulates that a child born to a woman due to sexual relations outside marriage only has a relationship with the woman whose mother is born. It would be inappropriate and unfair for the law to exempt the man who had sexual intercourse that led to the pregnancy and birth of the child from his responsibilities as a father and at the same time the law restricted the rights of the child against the man as his father. Moreover, when based on the development of technology it is possible to prove that a child is the child of a certain man.

The legal effect of the legal effect of birth from pregnancy, which is preceded by sexual relations between a woman and a man, is a legal relationship and in it there are reciprocal rights and obligations, the subjects of which include children, mothers and fathers.

Based on the description above, the relationship between a child and a man as a father is not solely due to the marriage bond, but can also be based on proving the existence of a blood relationship between the child and the man as a father. Thus, regardless of the procedure/administrative matter of marriage, child born must receive legal protection. If this is not the case, then the aggrieved child is born out of wedlock, even though the child is not sinful because of his birth against his will. Children born without a clear father's status often receive unfair treatment and stigma in society. The law must provide fair legal protection and certainty for the status of a child born and the rights that exist to him, including for children born even though the validity of the marriage is still disputed. b) Article 43 paragraph (1) of Law 1/1947 which states, "A child born out of wedlock only has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with his father's family". The arguments of the Petitioners insofar as Article 2 paragraph (2) of Law 1/1974 are concerned are not well-founded in law. Article 43 paragraph (1) of Constitution 1/1974 which states, "a child born out of wedlock only has a civil relationship with his mother and his mother's family" is contrary to the 1945 Constitution conditionally unconstitutional, which is unconstitutional as long as the paragraph is interpreted to eliminate civil relations with men that can be proven through science and technology and / or other evidence according to law has Blood relationship as his father.

Based on the above assessment of facts and law as outlined above, the Constitutional Court concluded:

1. The court is authorized to hear a quo petition;
2. The Petitioners have legal standing to apply for a quo;
3. The subject matter of the petition is well-founded in law in part;

Based on the Constitution of the Republic of Indonesia of 1945, Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076).

THE CONSTITUTIONAL COURT FINDING states :

- Grant the petitioners' request in part;
1. Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) which states, "A child born out of wedlock only has a civil relationship with his mother and his mother's family", has no binding legal force as long as it is interpreted to eliminate civil relations with men that can be proven based on science and technology and/or other evidence according to the law turns out to be related by blood as his father, so the verse **must be read**, "A child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with his father's family";
 2. Reject the Petitioners' application for other than and the rest;
 3. Order to publish this decision in the State Gazette of the Republic of Indonesia as appropriate.

DNA Test in Paternity Test as a Form of Legal Certainty Guarantee

It is becoming increasingly realized that every girl has the right to information about their origins (1,2). Knowing of who is the biological father and mother of a child has a lot of impact on the parties concerned. First, information about who the biological parents of a child are, will show the couple as the first person who (supposedly) constitutes the child's inner circle. Second, the knowledge gives certain rights to the child, including the right to care, the right to get compensation for living expenses and inheritance rights from his parents. In case the person in dispute adheres to Islam, the bride (as a child) has the right to ask her biological father to represent her marriage. Third, the existence of the relationship provides for the obligation of upbringing, inheritance and providing for the child and the right to bring the child to the country where the parents come from.

Paternity cases are actually only part of the case of origin disputes. Disputes over origin based on the object of the dispute can be classified into several types of cases, namely: 1) Cases of parental doubt (disputed parentage): namely cases that seek to prove who are the parents (father and mother) of the child, which are included in this category are immigration cases (33-6), cases of finding parents in cases of kidnapping, babies exchanged, because of family separation during war or disaster and cases of identification of unknown victims (7); 2) Cases of paternity (disputed paternity): cases that seek to prove who the biological father of a child is. Included in this category are immigration cases (3-6), cases of paternity claims by a woman, cases of infidelity and cases of incest (1,2); 3) Cases of disputed maternity: cases that seek to prove who the biological mother of a child is. Included in this category are cases of swapped babies, cases of self-murder and cases of abortion (1,2); 4) Doubtful cases of relatives: that is, cases that seek to prove whether two or more people are related by blood, which fall into this category are family difference tracking, family search cases after natural disasters, etc

There are many disputes about origins in society, but usually only a small part of what appears and becomes news. This phenomenon we know as the Iceberg Phenomenon. The most cases of origin disputes in society are cases of claims in utero that she claims to be the son of the man. Such cases are generally resolved familiarly and secretly, are respectable people or married men. This is understandable, because this case can not only result in the destruction of the man's good name and reputation, but can also lead to the breakup of the household and the destruction of the man's career. During the Suharto regime, PP 10 was enacted which could sanction dismissal of civil servants involved in such cases.

Cases of origin disputes are medical cases, so the solution must be medical as well. Every human being is born carrying the combined nature of his father and mother because he is created by the union of his father's sperm cell and his mother's egg at conception. Thus, in the faithful child there is a combined nature of father and mother that is passed down through hereditary material that we call DNA (1-11).

DNA Examination Procedure

The first time a client (customer) comes to the doctor, he consults the doctor about his case. In this consultation this doctor will dig up information about what they want to prove in this case, what will be done (follow-up) after the results are known, and when the examination will be carried out.

This initial consultation can be treated as a regular patient doctor consultation, but it can also be done at the request of the police or the court if the case has entered the realm of law. In cases that have not involved law enforcement officials, the customer is asked whether in the future the case will be or is planned to be processed legally or not. If the customer expects that there will be legal proceedings in the future, such as for divorce arrangements, child guardianship dispute hearings, inheritance disputes, etc., it is recommended that the case be reported first to the authorities so that the process becomes more legal. If the client does not want to involve the authorities, then the doctor must process it the same way as if the case is just out of curiosity and does not plan to carry out legal proceedings at all, for various reasons. In this kind of case, the doctor should to process

normally, while keep making any preparation if at any time the case will proceed to legal proceedings.

If the patient is hesitant, does not or has not thought about follow-up or is not ready to face the truth, the doctor should not conduct the examination until he/she is mentally prepared. In the case of pregnant women who request prenatal screening as a basis for forcing men to marry before the birth of their baby, it can only be served for those who are prepared for the risk of sampling and are non-Muslim. Sampling from the fetus, although done by experts, still has a higher risk than examination after birth. For Muslim clients, DNA testing before birth (antental) is not recommended (Abdul Mu'in Idris and Agung Legowo Tjiptomartono; 2008: 405), because according to the law marriage can only be done after the baby is born. This provision clearly does not meet the expectation that the fetus is the man's child, then forces the man to marry her immediately and thus the child is born with a father (not an illegitimate child).

On the next visit, all parties to be examined come to see a doctor, as much as possible accompanied by witnesses from both parties. At first, all parties are determined the procedures to be carried out. Once it is clear and there is nothing more to ask, then the parties will be taken DNA samples. For customers who are under 21 years old or unmarried, the consent is signed by their parents or guardians.

The sample taken for DNA examination is a vein as much as 1-3 cc inserted in a sterile tube that has been spiked with EDTA preservatives, which serves to prevent blood clots while preventing DNA breakdown by the DNase regime contained in the blood. The tube is tightly closed, shaken, and then given a cable. For children or infants whose blood is difficult or not possible, a swab of the mucous membrane of the inner mouth is taken, which is taken with 2 to 4 sterile lidil cotton. This cheek swab is allowed to dry at room temperature, then stored in a sterile tube without preservatives by removing the end and center of the stick. To prevent future denials, informed consent is also signed by two witnesses and the sampling process is documented with a digital camera.

Nowadays, there is another practical sampling, by using FTA (FTA card). An FTA card is a Whatman filter paper that has been spiked with a certain kind of compound so that the sample placed on it will be absorbed and preserved DNA, for at least 20 years. In this way a sufficient DNA sample is taken from a few drops of blood smeared on the paper, then dried. Its paper form allows sample collection and handling to be practical and easy. DNA extraction from FTA paper is also a short, easy and fast procedure that speeds up the DNA analysis performed.

The sample that has been taken then will be brought to the Forensic DNA laboratory for further processing. The sample is DNA extracted, the levels are calculated and then propagated by the PCR process. DNA procurement by PCR process is further analyzed by separation of DNA fragments by poly-acrylamide gel electrophoresis (PAGE) process or analysis by capillary electrophoresis. If the sample used is a sample on an FTA card, the process of calculating DNA content does not need to be done because the DNA can be duplicated.

The results of DNA examination at each DNA locus are 2 DNA fragments at each DNA locus, where one fragment comes from the mother (maternal fragment) and the other comes from the father (paternal fragment). Each fragment of DNA can be seen in the form of a band on PAGE or in the form of a thorn (peak) in capillary electrophoresis. The DNA fragment note is expressed as a number, which states the length of the DNA fragment.

Example: at the FGA locus the following notation is as below:

Suspected father	:	16,19
Child	:	14,16
Mother	:	14,21

Analysis and Conclusion

After DNA examination was carried out on the suspected father, son and mother, the three DNA test results were included in an FCM (Father Child Mother) table. At each locus, a maternal DNA fragment is sought, which is a fragment of a child's DNA that is the same as one of its mother's DNA fragments. Then the other child's DNA fragment, which is a paternal DNA fragment (derived from the father) is compared to both DNA fragments of the suspected paternity. If it is found that there is a fragment of the DNA of the suspected father that is the same as the anal paternal DNA fragment, then the man is declared "probably" to be the child of the man, if the paternal DNA of the child is not the same as one of the DNA of the suspected father, then the composition can be declared as exclusion (2,3,4,5). The findings of two or more exclusions on panels of 10 or 15 loci confirmed that the child was NOT the man's child

The report on the results of DNA examination in cases of origin disputes is given in written form, in a standard format. As a medical certificate, the results of this examination can be used as evidence in court.

Nowadays individual identification, determination of genetic relationships and tracing of biological material in forensic cases have been accurately solved through DNA examination. DNA analysis that can be done in these cases are father-son-mother analysis and benchmarking analysis. DNA locus allele frequency data from the same population are needed to sharpen the results of DNA analysis storage. For the current forensic case, the recommended DNA examination is the examination of 13 STR loci known as CODIS 13. By conducting DNA analysis at this FBI-recommended locus, the results of DNA examination in Indonesia can be compared with DNA analysis in any laboratory in the world.

In Indonesia there are several legal norms regarding inheritance rights. The right to inherit according to Islamic law, customary law, and western civil law (BW). Meanwhile, according to Law No. 1 of 1974 concerning Marriage, the right to inherit children is based on marriages carried out by their parents. However, if the birth of a child is not in accordance with the legal norms of marriage in Indonesian society, the issue of inheritance rights becomes a separate legal problem for children.

Referring to the concept of Universalism of children's rights as human rights, every child has the right to inherit from male parents (his biological father) without questioning whether a child is an out-of-wedlock child, adulterous child, discordant child, or child resulting from rape. However, consideration based on the principle of justice to children on the right to inherit them will be injustice to children from previous marriages. In conditions like this, people will generally judge that there is an antinomy between the value of justice and the value of legal certainty. In realizing the value of legal certainty and accommodating

the value of justice, the role of the state is needed in its function of forming laws.

The concept of the right to inherit children to their biological fathers must begin with the recognition of their biological father and be strengthened by the determination of the Judge of the Religious Court which then, the confession is brought to the civil registry office equipped with the results of DNA test examinations which are required by the state through the authority of the civil registry office. In Indonesia, the right to inherit a child according to Islamic law from his biological father has been normed in the Compilation of Islamic Law (KHI). Although the IHL is in the minds of Islamic jurists, there are still disagreements because it relates to the existence of various schools in Islamic law so that in cases of inheritance law decided through a judge's decision, there are disparities that are suspected due to the KHI inheritance law that is not in accordance with the maqasid al-shari'ah and is predicted to have deviated from the purpose of deriving inheritance verses. (Habiburrahman; 2011.27). Meanwhile, in the western concept of civil law, the right to inherit children must also be exercised through recognition by their biological fathers, whether it is for extramarital children, adulterous children, discordant children, or resulting from rape.

In the perspective of justice, the right to inherit children who are extramarital children, adulterous children, discordant children, and children resulting from rape must be assumed to still provide a sense of justice to children from previous marriages. This ratio of inheritance rights will reflect a sense of justice not only for children out of wedlock and children from previous marriages but also provide a sense of justice for children around the world.

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THE IMPLEMENTATION CONCEPT OF HUMAN RIGHTS THROUGH DEOXYRIBONUCLEIC ACID TESTS ON THE CHILDREN'S INHERITANCE RIGHTS TO BIOLOGICAL FATHERS

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