

## Regulatory Reconstruction of the Application of Digital Evidence in Realizing Children's Rights (Study of the Directory of Decisions of the Supreme Court of the Republic of Indonesia)

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### Abstract

The development of technology continues and develops in accordance with the times. The use of technology is also carried out to the context of daily life so that life becomes more practical. Then, this context is also very close to the use of technology in the judicial process through the e-court system. This is what makes Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the Examination of Article 43 paragraph (1) of Law Number 1 Year 1974 concerning Marriage appear and change the paradigm of proof from the determination of children outside marriage can be done by using technology in the form of DNA tests. In this case, electronic evidence or digital evidence can be strong evidence to recognize the father's nasab position over the child. The research method used in this research is Normative Juridical with a statutory approach and a case approach. The results and discussion of this study found that it turns out that the application of digital evidence can realize children's rights when looking at several existing decisions. Of the 10 (ten) decisions and/or court decisions that have been reviewed, all of them use digitized evidence and make the judge's view more objective, resulting in a decision that recognizes the father's lineage to the child. The context of this recognition is the essence that the concept of child recognition makes his rights fulfilled and the father cannot deny that the child is his own child. In addition, DNA evidence, CCTV

and photos and videos exist to strengthen the position of the father's lineage to a child whose father previously did not recognize his own child. Regulatory reconstruction in the application of digital evidence to realize children's rights is carried out by changing the provisions of the Religious Courts Law and the Marriage Law in terms of strengthening the position of children's rights.\_\_\_\_

## I. Introduction

The development of the times requires the adoption of digitalization which is increasingly penetrating into all levels of society. The needs of society will follow the developments that occur in the world, including in terms of digitization. Digitization is the process of converting archived documents into digital form, which requires equipment such as computers, scanners, operators, and supporting software. In addition, the industrial revolution 4.0 also encourages the acceleration of digitization, including in the context of legal developments that are closely related to legal certainty, expediency, and justice in society.

The legal structure in Indonesia is based on legal objectives that emphasize certainty, expediency, and justice.<sup>1</sup> These three aspects are used as a foundation to ensure that the law has a positive impact on society.<sup>2</sup> These principles are formally stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state of law and firmly affirms the rule of law and the limitation of power based on the constitution.<sup>3</sup> The impact of these principles is that the rule of law is the main focus in Indonesia, and there are clear limits to the powers granted by the constitution. In addition, in the context of the Indonesian rule of law, every step taken by officials or events and legal relationships are based on the law, so that the three objectives can be achieved simultaneously.<sup>4</sup>

The Indonesian legal system, especially in marriage law, is regulated in Law No. 1 of 1974 concerning Marriage which was last amended in Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. The legal concept in the law is closely related to protecting and requiring a systematic arrangement regarding marriage so as to create a good and structured concept.<sup>5</sup> The arrangements in the Law are marriage registration, marital status to the position of children and inheritance.<sup>6</sup>

Legal certainty in Islamic law is highly respected, especially in terms of recognition of entities in the womb. The concept of legal certainty in the context of modern legal theory initiated by Gustav Radbruch underlines the importance of having clear rules in law to prevent arbitrary actions.<sup>7</sup> Within this framework, every legal action must be based on the law itself so as not to

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<sup>1</sup> Abdur Rahim et al., "Relevansi Asas Kepastian Hukum Dalam Sistem Penyelenggaraan Administrasi Negara Indonesia," *JlIP-Jurnal Ilmiah Ilmu Pendidikan* 6, no. 8 (2023): 5806–5811. See also Fathor Rahman, "Perbandingan Tujuan Hukum Indonesia, Jepang Dan Islam," *Khazanah Hukum* 2, no. 1 (2020): 32–40.

<sup>2</sup> Muhammad Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)," *Legalitas: Jurnal Hukum* 4, no. 1 (2017): 130–52, <http://dx.doi.org/10.33087/legalitas.v4i1.117>.

<sup>3</sup> Dian Herdiana, "Implementasi Kebijakan Pembatasan Sosial Berskala Besar (Psbb) Sebagai Upaya Penanggulangan Corona Virus Disease 2019 (Covid-19)," *Decision: Jurnal Administrasi Publik* 2, no. 2 (2020). See also Atang Hermawan Usman, "Kesadaran Hukum Masyarakat Dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum Di Indonesia," *Jurnal Wawasan Yuridika* 30, no. 1 (2015): 26–53.

<sup>4</sup> Ir H Juniarso Ridwan, M H Achmad Sodik Sudrajat, and others, *Hukum Administrasi Negara Dan Kebijakan Pelayanan Publik* (Nuansa Cendekia, 2020).

<sup>5</sup> Atikah Rahmi and Sakdul Sakdul, "Fungsi Pencatatan Perkawinan Dikaitkan Dengan Upaya Perlindungan Hukum Terhadap Anak Setelah Putusan Mahkamah Konstitusi Nomor: 46/PUU-VIII/2010," *De Lega Lata: Jurnal Ilmu Hukum* 1, no. 2 (2016): 264–86.

<sup>6</sup> Faradilla Asyatama, Fully Handayani Ridwan, and others, "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 109–22.

<sup>7</sup> Syafrida Syafrida and Ralang Hartati, "Mewujudkan Perlindungan Hukum Dan Jaminan Kepastian Hak Konsumen Muslim Terhadap Produk Halal (Suatu Kajian Ajaran Gustav Radbruch)," *JHR (Jurnal Hukum Replik)* 7, no. 1 (2020): 38–54.

cause uncertainty.<sup>8</sup> This principle is also affirmed in Islamic law by recognizing the validity of the rules of Allah Subhanahu Wa Ta'ala as the supreme law as stated in Surah Al An'am (6): 57 which reads that:

قُلْ إِنِّي عَلَىٰ بَيِّنَةٍ مِّن رَّبِّي وَكَذَّبْتُم بِهُ مَا عَنِدِي مَا نَسْتَعْجِلُونَ بِهِ ۚ إِنَّ الْحُكْمَ إِلَّاهُ ۖ هَلْ يُبْصِرُ الْحَقُّ وَهُوَ خَيْرُ الْفَصِّلِينَ

Meaning: "Say (Muhammad), "I (am) upon a clear testimony (the Qur'an) from my Lord while you deny it. It is not in my power to bring down the punishment which you demand to be hastened. The decree (of the law) is the right of Allah. He explains the truth and He is the best decision-maker." (Surah Al-An'am (6): 57)

In addition, in Surah Al Qasas (28): 59 also explains legal certainty and the non-retroactive nature of the law. This concept requires that mistakes that occurred in the past when a law has not been revealed will not be punished based on the law that was revealed afterwards. When drawn to the concept of the a quo, it is very identical to the concept of the principle of legality, which requires prior regulation of an act before finally someone can be punished on criminal grounds if the act is regulated as a criminal offense in law. The paragraph reads that:

وَمَا أَهْلَكْنَا مِنْ قَرْيَةٍ ۖ بَطَرَتْ مَعِيشَتَهَا فَإِنَّكَ مُسْكِنُهُمْ لَمْ تُسْكَنْ مِنْ بَعْدِهِمْ إِلَّا قَلِيلٌ ۚ وَكُنَّا نَحْنُ الْوَارِثِينَ

Meaning: "And your Lord will not destroy any land, until He sends a messenger in its capital who recites Our verses to them; nor do We ever destroy (the inhabitants of) a land, unless its inhabitants commit injustice." (Surat Al-Qasas (28): 58).

The concept of the status of a child in marriage law is closely related to the validity of a marriage.<sup>9</sup> According to Article 2 paragraphs (1) and (2) of Law No. 1/1974, a marriage is considered valid if it is conducted in accordance with the laws of religion and belief, and is registered in accordance with applicable laws and regulations.<sup>10</sup> This is important because it determines the validity of a person's birth or the status of a child explicitly.<sup>11</sup> Conversely, if the marriage is not valid, then the legal status of the child becomes uncertain.<sup>12</sup>

The importance of the existence of children in human life is reflected in the law of Allah SWT which requires marriage.<sup>13</sup> Marriage is considered a sacred bond in forming a stable family and offspring.<sup>14</sup> However, if marriage is not carried out in accordance with the applicable legal rules, it is not considered legally valid, which has legal implications for the husband, wife, and children born from the marriage.<sup>15</sup> The objectives of the Shari'ah regarding marriage are, among others, to continue offspring properly, maintain lineage, prevent disease, and create a harmonious

<sup>8</sup> Kelik Iswandi and Nanik Prasetyoningsih, "Kedudukan State Auxiliary Organ Dalam Sistem Ketatanegaraan Di Indonesia," *Jurnal Penegakan Hukum Dan Keadilan* 1, no. 2 (2020), <https://doi.org/10.18196/jphk.1208>.

<sup>9</sup> Isyana K Konoras, "Perlindungan Hukum Terhadap Anak Diluar Nikah Di Indonesia," *Jurnal Hukum Unsrat* 1, no. 2 (2013): 44–58.

<sup>10</sup> Fika Burlian, "Eksistensi Perkawinan Dan Perceraian Menurut Hukum Islam Dan Pasca Berlakunya UU NO. 1 Tahun 1974," *Mizan: Jurnal Ilmu Hukum* 8, no. 2 (2019): 77–84.

<sup>11</sup> Yohanes Halim Martiono, "Kedudukan Anak Luar Kawin Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Yang Diubah Menjadi Undang-Undang Nomor 16 Tahun 2018 Tentang Perkawinan (Studi Kasus: Alk Ryan Daniel Dickson)," *Jurnal Education and Development* 8, no. 2 (2020): 231.

<sup>12</sup> Rahmawati Rahman, Muh Tamrin, and others, "Penetapan Status Anak Akibat Perkawinan Dibawah Tangan,"

*Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 151–64.

<sup>13</sup> Parsid Parsid, "STUDI EKSISTENSI HAK-HAK PERLINDUNGAN ANAK DALAM KHI (KOMPILASI HUKUM ISLAM) DENGAN KONVENSI INTERNASIONAL HAK ANAK" (Fakultas Hukum UNISSULA, 2016).

<sup>14</sup> Oyoh Bariah, "Rekonstruksi Pencatatan Perkawinan Dalam Hukum Islam," *Majalah Ilmiah SOLUSI* 1, no. 04 (2014).

<sup>15</sup> Asrul Hamid and Defel Fakhyadi, "LEGAL CONSEQUENCES OF CHILDREN OUTSIDE OF MARRIAGE AFTER CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010," *JCH (Jurnal Cendekia Hukum)* 7, no. 2 (2022): 181–92.

family. In Islam, offspring are considered legitimate if the pregnancy occurs in a legally valid marriage.<sup>16</sup>

According to positive law in Indonesia, the status of children is divided into legitimate offspring and illegitimate offspring, legitimate offspring are based on a legal marriage, meaning that other offspring based on birth or as a result of a legal marriage are called legitimate children. Meanwhile, illegitimate offspring that are not based on a legal marriage, thus the child born is called a child outside of marriage.<sup>17</sup> Meanwhile, the position of children is regulated in Article 43 paragraph (1) based on Law Number 1 of 1974 concerning Marriage which explains that children born outside of marriage only have a family relationship with their mother and their mother's family. Islamic law which regulates that out-of-wedlock children are only related to their mothers is also found in the Compilation of Laws (KHI).<sup>18</sup> Article 100 KHI stipulates that "children born out of wedlock only have a civil relationship with their mother and their mother's family".<sup>19</sup> Therefore, KHI can be said to be an embodiment of law that is unique to Indonesia.

After the issuance of the Constitutional Court Decision Number 46/PUU-VIII/2010, namely the interpretation of Article 43 paragraph (1) of Law Number 16 of 2019 Second Amendment to Law Number 1 of 1974 concerning Marriage which reads that children born outside of marriage only have a civil relationship with the mother and her mother's family and with the man as the 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.<sup>20</sup> With the issuance of the Constitutional Court Decision, this has become a polemic that has not ended among Islamic legal figures and the Indonesian people.<sup>21</sup> The main factor is related to the material of the decision itself. The material is Islamic law which is very applicable, practical, and rooted to the lower levels of society, because it concerns marriage and marriage institutions and even civil registration institutions. The context of the Constitutional Court's decision shifts the paradigm in national marriage law, which starts from the child of extramarital relations will only be related to his mother, to be allowed with his father with the obligation to be proven by science and technology and / or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family.

The case of non-recognition of an out-of-wedlock child is found in the case of RAD and WAK where RAD avoided recognizing his biological child. The condition in Banten High Court Decision No. 109/PDT/2022/PT BTN granted the appellant, namely the plaintiff (in this case WAK) by basing it on, among others, Constitutional Court Decision No. 46/PUU-VIII/2010 and

<sup>16</sup> R Tetuko Aryo Wibowo and Thohir Luth, "Akibat Hukum Anak Yang Dilahirkan Dalam Kawin Hamil," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 5, no. 2 (2020): 233–40.

<sup>17</sup> Pathul Bari, "TINJAUAN HUKUM ISLAM TENTANG PERKAWINAN YANG TIDAK BERTANGGUNG JAWAB ANTARA PASANGAN SUAMI ISTRI YANG SAH STUDI KASUS DI DESA TANJUNG JATI KOTA AGUNG LAMPUNG TANGGAMUS 2022," *JURNAL SYARIAHKU: Jurnal Hukum Keluarga Islam & Manajemen Haji Umrah* 1, no. 01 (2023): 121–30.

<sup>18</sup> Bagya Agung Prabowo, "Pertimbangan Hakim Dalam Penetapan Dispensasi Perkawinan Dini Akibat Hamil Di Luar Nikah Pada Pengadilan Agama Bantul," *Jurnal Hukum Ius Quia Iustum* 20, no. 2 (2013): 300–317.

<sup>19</sup> Yulkarnain Harahap and Andy Omara, "Kompilasi Hukum Islam Dalam Perspektif Hukum Perundang-Undangan,"

*Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 22, no. 3 (2010): 625–44.

<sup>20</sup> Luh Putu Putri Indah Pratiwi, Dewa Gede Sudika Mangku, and Ni Putu Rai Yulianti, "Pengaturan Terhadap Kedudukan Anak Di Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010," *Jurnal Komunitas Yustisia* 3, no. 1 (2020): 13–24.

<sup>21</sup> Imam Ghozali and Mahfudz Fahrizi, "Transformasi Organisasi Advokat Indonesia Dari Single Bar Menjadi Multi Bar (Implikasi Putusan Mahkamah Konstitusi No. 101/PPU-VII/2009 Dan Surat Ketua Mahkamah Agung No. 73/KMA/HK. 01/IX/2015)," *Mizan: Jurnal Ilmu Hukum* 7, no. 1 (2020): 72–82.

Birth Certificate Excerpt Number. 3174 LT-15032016-0133. In addition, the concept of digital evidence can also strengthen the arguments of the plaintiff although it is not used, only on the basis of the judge in his legal considerations. In addition, there is in the Determination of the Indramayu District Court No. 394/Pdt/P/2022/Pn Idm. The determination of a child out of wedlock was requested by Lina Wati Dewi and HSU Hsin Jan, which also referred to the Constitutional Court Decision No. 46/PUUVIII/2010 by referring to DNA evidence which became strengthening evidence from the amendment of Article 43 paragraph (1) of Law No. 1 of 1974 by allowing technological evidence to strengthen evidence to the judge to strengthen the arguments of the applicant. The stipulation was granted by the judge based on Article 43 paragraph (1) of Law No. 1 of 1974 which was affected by the Constitutional Court's decision a quo.<sup>22</sup>

The concept of digitization has consequences for the existing restrictions in Islamic family law, which basically strengthens the legal position of the legal subject. This has an impact on the recognition of children born outside of marriage, which will then be legally supported through the courts.<sup>23</sup> In addition, digitalization also affects the evidentiary aspects in terms of recognition of children out of wedlock, especially when the child is born when both parents are still outside of an official marriage.<sup>24</sup> In addition, differences in understanding of out-of-wedlock marriages can create differences in perception that can lead to misinterpretation of the Constitutional Court Decision No. 46/PUU-VIII/2010.

Children in the context of Islam are preserved in accordance with maqashid sharia which also respects the dignity and honor of children as individuals born from parents.<sup>25</sup> However, in the view of Islamic law, children outside marriage only have a nasab relationship with their mother, not with their father. However, there is a Constitutional Court decision that calls for the recognition of the father's nasab to children outside of marriage, provided that it can be proven by technology such as DNA testing or other evidence that can be considered by the judge in establishing the relationship. The researcher's attention is drawn to DNA technology that can be used as evidence to strengthen the argument in a child determination application when the biological father refuses or does not recognize the relationship. This is the impact of digitization on the use of evidence to support the status of children. Therefore, based on a number of problems above, this article aims to answer how the reconstruction of the regulation of the application of digital evidence in realizing children's rights (Study of the Directory of Decisions of the Supreme Court of the Republic of Indonesia).

## 2. Research Method

In The research method used is normative juridical with a statutory approach, conceptual approach, and case approach. Normative juridical research is defined as research based on literature studies or relying solely on secondary data.<sup>26</sup> The statutory approach is an approach that focuses on the use of positive rules or laws as a tool to solve the problems raised in the research.<sup>27</sup>

<sup>22</sup> Penetapan Pengadilan Negeri Indramayu No. 394/Pdt.P/2022/PN Idm.

<sup>23</sup> Andi Suherman, "Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman," *SIGn Jurnal Hukum* 1, no. 1 (2019): 42–51.

<sup>24</sup> Nada Putri Rohana, Wilda Rahma Nasution, and others, "Dinamika Pemberian Dispensasi Kawin Dibawah Umur Oleh Hakim Pasca Perubahan Undang-Undang Perkawinan," *Ajudikasi: Jurnal Ilmu Hukum* 7, no. 1 (2023): 163–74. <sup>25</sup> Sayyid Sabiq, *Fiqh Al-Sunnah* Jilid 2 (al-Qahirah: Maktabar Daar al-Turats, 1983):20.

<sup>26</sup> Sri Mamudji and Soerjono Soekanto, "Penelitian Hukum Normatif Suatu Tinjauan Singkat," *Jakarta: Raja Grafindo Persada* 1 (2003).

<sup>27</sup> Bahder Johan Nasution, "Metode Penelitian Ilmu Hukum" (Bandung: Mandar Maju, 2008).

In this case, researchers used Law No. 1 of 1974 concerning Marriage, Law No. 7 of 1989 concerning Religious Courts, and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. Then the conceptual approach is an approach that focuses on the use of doctrine and/or theory as a problem-solving tool. In this case, researchers used the theory of legal objectives, maqashid sharia theory and digitalization theory. Furthermore, the data analysis technique uses descriptive prescriptive. Then the data collection technique uses the literature study method.

### 3. Results and Discussion

#### Several Decisions of the Supreme Court of the Republic of Indonesia in the Directory of Supreme Court Decisions that use Digitization as Evidence

| No | Type of Cases | Cases Number                           | Digitalization/Used Evidence | Decision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|---------------|----------------------------------------|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Child Denial  | Decision No. 0114/Pdt.G/2015 / PTA.Sby | Deoxyribo Nucleid Acid (DNA) | Correct the decision of the Surabaya Religious Court Number 0792/Pdt.G/2014/PA.S by, dated December 23, 2014 Miladiyah, coinciding with the date 01 Rabi'ul Awwal 1436 Hijriyah, so that the amendment reads as follows: Supreme Court of the Republic of Indonesia 1. Granting the Plaintiff's provisional claim in part; 2. Ordering the Plaintiff, Defendant to carry out a DNA (Deoxiribo Nucieric Acikahanid) Test and 3 (three) children of the Plaintiff and Defendant named : - CHILD 1, male, born in Surabaya on March 26, 2000; CHILD 2, female, born in Surabaya on February 23, 2001; - CHILD 3, male, born in Surabaya on April 11, 2003 at a hospital in |

|   |              |                                             |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---|--------------|---------------------------------------------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |              |                                             |                                    | Surabaya;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 2 | Child Denial | Decision No.<br>147/Pdt.G/2018/<br>P TA.Smg | Deoxyribo<br>Nucleid Acid<br>(DNA) | <p>- Stating that the appeal filed by the Appellant is admissible;</p> <p>- To affirm the decision of the Cilacap Religious Court No. 1800/Pdt.G/2017/PA Cip dated November 28, 2017 AD coinciding with the 9th of Rabiul Awal 1439 Hijri which is appealed against</p> <p>- Charges the Appellant with court costs at the appeal level in the amount of Rp. 150,000,</p> <p>- (one hundred and fifty thousand rupiah).</p>                                                                                                    |
| 3 | Divorce      | Decision No.<br>031/Pdt.G/2013/<br>P A.Sly  | Deoxyribo<br>Nucleid Acid<br>(DNA) | <p>IN CONVENIENCE 1. To grant the petition of the applicant in its entirety. 2. To grant permission to the applicant (Bali Gauk bin Dg. Manappu) to divorce the respondent (Andi Nangnga binti Malagong) in front of the Selayar Religious Court. 3. To order the applicant to provide mut'ah to the respondent in the amount of Rp1,000,000.00 (one million rupiah). 4. To order the applicant to provide iddah maintenance to the respondent in the amount of Rp1,500,000.00 (one million five hundred thousand rupiah).</p> |

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|--|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  |  |  | <p>GRANT the plaintiff's claim for reconviction in part.</p> <p>2. To order the respondent to pay alimony to the plaintiff in the amount of Rp600,000.00 (six hundred thousand rupiah) per month, starting from November 2011 until the respondent takes the pledge of divorce. The Supreme Court of the Republic of Indonesia</p> <p>3. Ordered the respondent to provide alimony to his children named:</p> <p>a. Zulfikar, male, aged 20 years; b. Marlina. Female, 17 years old; c. Mahda, female, 12 years old; d. Misnawati, female, aged 9 years; e. Akbar, male, aged 6 years; at least Rp200,000.00 per month for each child, starting from the date of divorce until the children reach the age of 21 years.</p> <p>4. Declare that the plaintiff's counterclaim for compensation in the amount of Rp100,000,000.00 for defamation is unacceptable.</p> <p>5. Rejecting the plaintiff's counterclaim in addition to and for the rest.</p> <p>IN CONVENTION AND</p> |
|--|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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|---|---------------------|---------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                     |                                       |                              | COUNTERCLAIM<br>To impose court costs on the applicant/respondent in the amount of Rp191,000.00.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 4 | Divorce<br>Petition | Decision No. 1323/Pdt.G/2018 / PA.Tbn | Deoxyribo Nucleid Acid (DNA) | IN CONVENTION 1. Granting the Petition of the Applicant. Supreme Court of the Republic of Indonesia<br>2. Grant permission to the Petitioner (PPPP) to pronounce divorce one raj'i against the Respondent (TTTT) in front of the Tuban Religious Court;<br>IN COUNTERCLAIM<br>1. Grant the Plaintiff's claim in part;<br>2. Punish the Defendant (PPPP) to pay to the Plaintiff (TTTT) in the form of:<br>a. Mut'ah in the amount of Rp 3,000,000.00 (three million rupiah);<br>b. Iddah alimony in the amount of Rp 1,800,000.00 (one million eight hundred thousand rupiah); c. Madliyah alimony in the amount of Rp 1,800,000.00 (one million eight hundred thousand rupiah); to be paid before the pronouncement of the Pledge of Talak; 3. Not accepting the rest of the Plaintiff's claim; IN CONVENSON AND RECONCEPTION<br>Charges the |

|   |                                        |                                               |                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---|----------------------------------------|-----------------------------------------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                        |                                               |                              | Counterclaim Plaintiff to pay court costs in the amount of Rp 691,000.00 (Six hundred ninety one thousand rupiah).                                                                                                                                                                                                                                                                                                                                                                    |
| 5 | Divorce Cases                          | Decision No. 0004/Pdt.G/2019 / PA.Ars         | Deoxyribo Nucleid Acid (DNA) | 1. Declare that the Respondent, who has been officially and properly summoned to appear before the court, is not present; 2. Grant the Petitioner's petition by way of a verdict; 3. Grant permission to the Petitioner (Applicant) to impose divorce one raj'i against the Respondent (Respondent) in front of the Arso Religious Court; 4. Charge the Petitioner to pay the costs of this case in the amount of Rp. 1,101,000, - (one million one hundred and one thousand rupiah); |
| 6 | Application for Recognition of a Child | Court Stipulation No. 394/Pdt.P/2022/ P N Idm | Deoxyribo Nucleid Acid (DNA) | DECLARE: 1. To grant the petition of the Plaintiffs; 2. To declare that the child acknowledgment filed by the Plaintiffs against the child of the Plaintiffs named SHI JIEYUN born in Cirebon on November 27, 2019 is the legitimate child of the Plaintiffs; 3. Order the Plaintiffs to report the Stipulation of Recognition of a Child to the Indramayu                                                                                                                            |

|   |                         |                                       |                              |                                                                                                                                                                                                                                                                                                                                                                                                        |
|---|-------------------------|---------------------------------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                         |                                       |                              | <p>Regency Population and Civil Registration Office so that a Birth Certificate Excerpt and Family Card of the Plaintiffs' child named SHI JIEYUN born in Cirebon on November 27, 2019 will be issued;</p> <p>4. Charge the Plaintiffs to pay court costs in the amount of Rp.140,000.00 (one hundred and four hundred and fifty thousand rupiah). 000.00 (one hundred and forty thousand rupiah);</p> |
| 7 | Lawsuit Against the Law | Decision No. 746/Pdt.G/2021/ P N TNG  | Deoxyribo Nucleid Acid (DNA) | <p>In Exception: - Reject the Defendant's Exception; In the Matter of the Case: - Reject the Plaintiff's claim in its entirety; - Order the Plaintiff to pay the costs of this case in the amount of Rp395,000.00 (three hundred ninety five thousand rupiah);</p>                                                                                                                                     |
| 8 | Child Denial            | Decision No. 0792/Pdt.G/2014 / PA.Sby | Deoxyribo Nucleid Acid (DNA) | <p>In Provision:1. Grant the Plaintiff's provisional claim in part;2. Ordering the Plaintiff, Defendant to conduct a DNA (Deoxiribo Nucleic Acikahanid) Test and the 3 (three) children of the Plaintiff and Defendant named :- R. Marfiandika Ekaprajna Widodo, male, born in Surabaya, March 26, 2000;- Rr. Marlitya</p>                                                                             |

|   |                           |                                      |                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---|---------------------------|--------------------------------------|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                           |                                      |                              | <p>Dwi Aldira Putri, female, born in Surabaya, February 23, 2001;- R. Marfiandra Triditya Nugroho, male, born in Surabaya, April 11, 2003 at Dr. Soetomo Hospital Surabaya;3. Reject the provisional claim point 2 (two);4. Suspend the costs of the case until the final decision.In Counterclaim :- Reject the Plaintiff's claim; In Counterclaim :- Declare the counterclaim unacceptable; In Counterclaim and Counterclaim :- Charge the Counterclaim Plaintiff to pay all costs in this case which until now have been calculated at Rp. 551,000, - (five hundred and fifty one thousand rupiah);</p> |
| 9 | Legal Child Determination | Decision No. 167/Pdt.P/2018/ P N Pdg | Deoxyribo Nucleid Acid (DNA) | <p>ORDERED:<br/>1. To grant the Applicant's petition in part; 2. To declare that the DNA test results issued by the Cipinang DNA Laboratory on 23 May 2018 are valid, strong and indisputable; 3. To declare that Mr. SUZUKI (the Applicant) is the biological father of a daughter named MARISA MARCHANDA LU; 4. To reject the rest of the</p>                                                                                                                                                                                                                                                            |

|                                                         |         |                                  |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------|---------|----------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                         |         |                                  |      | <p>petition. Declare that Marisa Marchanda Lu has a civil relationship (civil rights) with her father SUZUKI (the Applicant); 5. Reject the other petitions and the rest; 6. Charge the costs of this petition to the Applicant in the amount of Rp171,000.00 (one hundred seventy-one thousand rupiah);</p>                                                                                                                                                                                                                                                                                                                                                                   |
| 10                                                      | Divorce | Decision No. 3/Pdt.G/2022/PA.Llk | Foto | <p>In Convention 1. 2. Grant the petition of the Plaintiff; Terminate the marriage of the Petitioner (Xxxxxx) and the Respondent (Xxxxxx); In Reconvention 1. Grant the Reconvention claim of the Reconvention Plaintiff in part; 2. Order the Reconvention Defendant to provide past maintenance to the Reconvention Plaintiff in the amount of Rp12,000. 000.00 (twelve million rupiah); 3. The Supreme Court of the Republic of Indonesia rejects the remaining claims of the Plaintiff Reconvention; In Convention and Reconvention Charges the case costs to the Convention Plaintiff/ Defendant Reconvention in the amount of Rp745,000.00 (seven hundred forty five</p> |
| Libri: Regulatory Reconstruction of the Application ... |         |                                  |      | 8503                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|  |  |  |  |                   |
|--|--|--|--|-------------------|
|  |  |  |  | thousand rupiah); |
|--|--|--|--|-------------------|

### Reconstruction of Regulations in the Application of Digital Evidence to Realize Children's Rights Study of the Directory of Decisions of the Supreme Court of the Republic of Indonesia

| No | Normative Provisions Related to Digital Evidence before Reconstruction                                                                                      | Weakness                                                                                                                                                                                                                                                                                                                                                                                | Conditions after Reconstruction                                                                                                                                                                                                                          |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Article 43 of Law Number 1 Year 1974.<br>(1) Children born out of wedlock shall only have a civil relationship with their mother and their mother's family. | The Constitutional Court through Decision Number 46/PUU-VIII/2010 stated that Article 43 paragraph (1) of the Marriage Law is conditionally unconstitutional insofar as the paragraph is interpreted to eliminate civil relationships with men who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship as the father. | Children born out of wedlock have<br>has a civil relationship with his mother, his mother's family and his father who can be proven based on science and technology and / or other evidence according to the law has a blood relationship as his father. |
| 2  | No Explanation of Article 43 of Law Number 1 Year 1974                                                                                                      | Legal Closures Related to Explanation                                                                                                                                                                                                                                                                                                                                                   | Evidence of science and technology and / or other evidence according to the law has a blood relationship as the father is shown for example there are DNA Test Results, CCTV and or Other Electronic Evidence                                            |
| 3  | Law 11 of 2008 INFORMATION, DOCUMENTS AND ELECTRONIC SIGNATURES Article 5<br>(1) Electronic Information                                                     | There is a Legal Lacuna in the Explanation of Digital Evidence or Electronic Evidence in the Medical Field or Medical Diagnostic                                                                                                                                                                                                                                                        | Addition of one paragraph to Article 5. Namely the addition of Paragraph 5 and paragraph 6:<br>Paragraph 5: Electronic Information and/or Electronic Documents and/or its printouts issued by                                                            |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |       |                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| and/or Electronic Documents and/or their printouts are legal evidence.<br>(2) Electronic Information and/or Electronic Documents and/or their printouts as referred to in paragraph (1) are an extension of legal evidence in accordance with the applicable Law of Procedure in Indonesia.<br>(3) Electronic Information and/or Electronic Documents are declared valid if they use an Electronic System in accordance with the provisions stipulated in this Law.<br>(4) The provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) shall not apply to:<br>a. letters which according to the Law must be made in written form; and<br>b. letters and documents which according to the Law must be made in the form of a notarial deed or a deed made by a deed-making official. | Field | Medicine based on Labor Results shall constitute valid legal evidence.<br>legal evidence.<br>Paragraph 6: Electronic Information and/or Electronic Documents and/or in the form of Social Media or CCTV are valid evidence as long as they are not refuted by experts in their fields.<br>. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The digital trial system has been recognized in Indonesia with the e-court system. E-Court itself is a means for the court to provide services to the public related to online case registration, electronic estimation of case fees, online payment of fees, online summons and online trials by uploading documents or trial files either in the Replik, Duplik, Conclusion or Answer stages.<sup>28</sup> The existence of e-Court application is expected to be able to improve services from registration to trial and can reduce the cost and time of the community and facilitate when registering cases

<sup>28</sup> Sonyendah Retnaningsih et al., "Pelaksanaan E-Court Menurut Perma Nomor 3 Tahun 2018 Tentang Administrasi Perkara Di Pengadilan Secara Elektronik Dan E-Litigation Menurut Perma Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik (Studi Di Peng," *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 124–44.

and during trials.<sup>29</sup> In addition, this e-court is also useful in implementing the principles of simple, fast and cheap justice above, hence the need for progress in terms of administration and trial in order to overcome obstacles in the process of administering justice and access to justice, as well as to respond to the times requiring case administration services and trials in court that are more effective and efficient by utilizing the development of information technology.<sup>30</sup> This refers to the procedural law system which can also be implemented online in accordance with the agreement of the parties and does not violate the procedural law.

In its development, digitalization in the judiciary extends to the implementation of e-courts that can not only be used by registered users (advocates), but can also be used by incidental users.<sup>31</sup> These incidental users consist of individuals, government, and legal entities.<sup>32</sup> Digitalization in this case also extends to the implementation of evidence which also expands the meaning of evidence in procedural law. In civil procedural law, the only evidence that is recognized is that stipulated in Article 1866 of the Civil Code / Article 164 of the HIR which regulates limitatively that the evidence recognized in civil cases consists of written evidence, witness evidence, testimony, confessions, and oaths.<sup>33</sup> However, the times demanded an expansion of evidence in procedural law in terms of responding to existing digitalization, so the government through the President and the DPR passed Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) on April 21, 2008, in Article 5 paragraph (2) of the ITE Law recognizes the existence of digital evidence in the applicable procedural law in Indonesia with the words that "Electronic Information and / or Electronic Documents and / or their printouts as referred to in paragraph (1) are an expansion of legal evidence in accordance with the applicable Procedural Law in Indonesia." However, this was contradicted by the provisions of Law No. 1 of 1974 concerning Marriage when we look from the point of view of this research regarding the position of children out of wedlock, especially in Article Article 43 paragraph (1) which only limits civil relations with the mother and the mother's family.<sup>34</sup> The problem is that when it has been proven by the belief that a man is the father in procedural law, then it cannot be done and recognized that he is the father of the child.<sup>35</sup> Even if proven, it does not change the fact that the child only has a civil position with his

<sup>29</sup> Siti Fatwah and Kusnadi Umar, "Penerapan Sistem E-Court Di Pengadilan Tata Usaha Negara Makassar Perspektif Siyasa Syar'iyah," *Siyasatuna: Jurnal Ilmiah Mahasiswa Siyasa Syar'iyah* 1, no. 3 (2020): 582-93.

<sup>30</sup> Majolica Fae Ocarina, Ronaldo Sanjaya, and others, "Eksistensi E-Court Untuk Mewujudkan Efisiensi Dan Efektivitas Pada Sistem Peradilan Indonesia Di Tengah Covid-19," *Jurnal Syntax Transformation* 2, no. 04 (2021): 496-507.

<sup>31</sup> Zil Aidi, "E-Litigation as the Amenities for the Principle of Contante Justitie Manifestation of Civil Jurisdiction in Indonesia," *JCH (Jurnal Cendekia Hukum)* 6, no. 2 (2021): 206-24.

<sup>32</sup> Afif Sachrudin and Peni Rinda Listyowati, "Pandangan Hakim Pengadilan Agama Semarang Terhadap Implementasi e Court Dalam Administrasi Dan Proses Persidangan Perkara Perceraian," *Prosiding Konstelasi Ilmiah Mahasiswa Unissula (KIMU) Klaster Hukum*, 2021.

<sup>33</sup> Arlan Ariya Mokosolang, Revy Samuel M Korah, and Rudolf Sam Mamengko, "Kekuatan Hukum Surat Elektronik Sebagai Alat Bukti Perkara Perdata (Berdasarkan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik)," *LEX ADMINISTRATUM* 11, no. 4 (2023).

<sup>34</sup> Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-Viii/2010 Dan Hukum Islam," *Jurnal Riset Hukum Keluarga Islam*, 2022, 49-52.

<sup>35</sup> Mei Sugiarto, Muhammad Wildan, and others, "Hak Atas Akta Kelahiran Bagi Anak Zina Menurut Kompilasi Hukum Islam," *Jurnal Studi Islam Indonesia (JSII)* 1, no. 1 (2023): 1-16.

mother.<sup>36</sup> However, the Constitutional Court decided a case with the output of Constitutional Court Decision No. 46/PUU-VIII/2010 which examined Article 43 paragraph (1) of the Marriage Law. The decision boils down to recognizing paternal lineage when it can be proven scientifically or technologically.<sup>37</sup> Thus there are several things that change the evidentiary paradigm that can deny a father who does not recognize his child as mentioned in the reconstruction of the article above which can be a way out in the development of children's rights in Indonesia, especially when it is not recognized by the father in the lineage and has the potential to take away his rights as a child.

#### 4. Conclusion

From the 10 (ten) decisions and/or court decisions that have been reviewed, all of them use digitized evidence and make the judge's view more objective, resulting in a decision that recognizes the father's lineage to the child. The context of the acknowledgment becomes the essence that the concept of child recognition makes his rights fulfilled and the father cannot deny that the child is his own child. In some cases, there is indeed a denial that occurs and is done by the father to remove the responsibility of a father to his child. Through this digital evidence, children's rights are better protected. In addition, DNA evidence, CCTV and photos or videos exist to strengthen the father's nasab position towards a child whose father previously did not recognize his own child. Regulatory Reconstruction in the Application of Digital Evidence to Realize Children's Rights Study of the Directory of Decisions of the Supreme Court of the Republic of Indonesia is carried out by Considering Existing Conditions, Legislation and Facts that occur today.

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<sup>36</sup> Muh Luthfi Hakim Ar Rizqi, "KEDUDUKAN HUKUM KEPERDATAAN ANAK DI LUAR NIKAH PASCA PUTUSAN MAHKAMAH KONSTITUSI TENTANG STATUS ANAK DI LUAR NIKAH" (Universitas Islam Sultan Agung Semarang, 2023).

<sup>37</sup> Dodi Irawan, "LEGALISASI STATUS ANAK DI LUAR NIKAH PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUUVIII/2010 TENTANG NASAB ANAK DI LUAR NIKAH (RESPON TOKOH AGAMA KABUPATEN BENGKULU SELATAN)" (IAIN BENGKULU, 2020).

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