

Tinjauan yuridis terhadap tes deoxyribonucleic acid (dna) dalam pembuktian hubungan keperdataan ayah dan anak: sebuah studi atas putusan no.66/Pdt.G/2012/PTA.sby dan putusan no. 1484/Pdt.G/2012/PA.Bms = The juridical review of deoxyribonucleic acid (dna) in the proof of civil relations between father and son: a study on decision no.66/Pdt.G/2012/PTA.sby and decision no.1484/Pdt.G/2012/PA.Bms

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Abstrak

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Anak yang dilahirkan dalam atau sebagai akibat dari suatu perkawinan yang dilakukan secara sah dan dicatatkan menurut peraturan perundang-undangan yang berlaku, hukum dapat memberikan kepastian dan perlindungan atas hak-haknya. Yang menjadi permasalahan adalah ketika anak yang dilahirkan tidak dalam atau sebagai akibat perkawinan yang sah, maka negara tidak dapat memberikan kepastian dan perlindungan terhadapnya. Dengan begitu, persoalan hubungan keperdataan ayah dan anak menjadi bermasalah.

Pembuktian hubungan keperdataan antara ayah dan anak luar kawin menjadi sulit. Mahkamah Konstitusi mengeluarkan sebuah putusan yang pada intinya mengatakan bahwa ayah biologis dari anak luar kawin dapat mempunyai hubungan keperdataan dengan anak tersebut, sepanjang dapat dibuktikan dengan ilmu pengetahuan dan teknologi yang ada, oleh karenanya penulis mengangkat pokok permasalahan dalam tesis ini yaitu bagaimana kedudukan anak sah yang kemudian dapat dibuktikan berdasarkan Tes DNA bahwa si suami bukan ayah biologisnya dalam pembuktian hubungan keperdataan antara ayah dengan anak dan bagaimana kedudukan tes DNA dan penerapan hukumnya pada pembuktian hubungan keperdataan antara ayah dan anak tersebut dalam Putusan No.

66/Pdt.G/2012/PTA.Sby dan Putusan No. 1484/Pdt.G/2012/PA.Bms. Adapun metode penelitian yang digunakan dalam penelitian ini adalah yuridis normatif. Berdasarkan hasil pembahasan, dapat disimpulkan bahwa hubungan keperdataan yang dimaksud dalam Putusan Mahkamah Konstitusi adalah ayah biologis dari anak luar kawin tetap memiliki kewajiban hukum untuk memberikan nafkah kepada anak luar kawin. Mengenai kedudukan tes DNA sebagai salah satu alat bukti yang dapat membuktikan hubungan keperdataan antara ayah dan anak luar kawin dapat diterapkan, karena tes DNA mempunyai hasil akurasi yang tepat, namun dalam memerintahkan suatu tes DNA, hakim harus memperhatikan fakta-fakta hukum yang ada dan ketentuan perundang-undangan yang berlaku.

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ABSTRACT

Children who were born in or as a result of a legitimate marriage and recorded in accordance with the legislation in force, law can provide certainty and protection of their rights. The problem is when a child is not born in or as a result of a legitimate marriage, then the state can not provide certainty and protection against him. That , the issue of civil relationship of father and son became problematic. Proof of civil relationship between father and son outside marriage becomes difficult. The Constitutional Court issued a ruling that essentially says that the biological father of a child outside of marriage can have a civil

relationship with the child, as long as can be proved by science and technology exist, therefore the authors raise the issue in this thesis is how the position of the legitimate child then it can be proven by DNA testing that the husband is not the biological father in the proof of civil relationship between the father and son and how the position of DNA testing and application of the ruling on evidentiary civil relationship between the father and the child in Decision No. 66 / Pdt.G /

2012 / PTA.Sby and Decision No. 1484 / Pdt.G / 2012 / PA.Bms. The research method used in this research is normative juridical. Based on the results of the discussion, it can be concluded that the civil relationship referred to in the Decision of the Constitutional Court is the biological father of a child outside of marriage still has a legal obligation to provide maintenance to a child outside marriage. Regarding the position of DNA testing as one type of evidence that can prove the civil relationship between father and son outside of marriage can be applied, because the accuracy of the results of DNA tests have the right, but in order a DNA test, the judge must consider the facts existing and regulations legislation in force.;Children who were born in or as a result of a legitimate marriage and recorded in accordance with the legislation in force, law can provide certainty and protection of their rights. The problem is when a child is not born in or as a result of a legitimate marriage, then the state can not provide certainty and protection against him. That , the issue of civil relationship of father and son became problematic. Proof of civil relationship between father and son outside marriage becomes difficult. The Constitutional Court issued a ruling that essentially says that the biological father of a child outside of marriage can have a civil relationship with the child, as long as can be proved by science and technology exist, therefore the authors raise the issue in this thesis is how the position of the legitimate child then it can be proven by DNA testing that the husband is not the biological father in the proof of civil relationship between the father and son and how the position of DNA testing and application of the ruling on evidentiary civil relationship between the father and the child in Decision No. 66 / Pdt.G /

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