

Legal Review of a Man who has Sexual Intercourse with a Woman so that He has a Child Out of Wedlock (Case Study of North Sumatra Police Report Number: STTLP/B/559/X/2024/SPKT/POLDA SUMUT)

David Angdreas

Indonesian Community Development University

Article Info	ABSTRACT
Keywords: Legal Review Children Outside of Marriage Copulation	Sexual intercourse outside the bonds of legal marriage is a complex phenomenon with profound legal and social implications, especially when it results in children out of wedlock. In the Indonesian legal context, this act is known as adultery or extra-marital copulation, and has significant consequences, particularly in relation to the legal status of the child and the rights attached to it. In this research, the research method used is non-research qualitative research. Results of Research and Discussion: Police efforts in conducting DNA tests to biological fathers and legal protection for victims (children) of intercourse in review of Law Number 35 of 2014. The conclusions and suggestions in this study are that police efforts in establishing biological fathers through DNA testing are important procedures in criminal investigations, supported by the Criminal Procedure Code and the Child Protection Law, despite facing cost, consent, privacy, and psychological challenges; meanwhile, Law No. 35 of 2014 provides strong legal protection for children from the results of adultery based on the principle of non-discrimination, guaranteeing their basic rights even though proving the relationship of biological fathers and related civil rights is still a challenge. To optimise the use of DNA testing by the police and the legal protection of children from adultery in accordance with Law Number 35 of 2014, clear SOPs, adequate budget, strong coordination, increased officer capacity, data privacy guarantees, psychological considerations, cross-agency cooperation, socialisation of the Constitutional Court Decision, effective paternity proof mechanisms, increased paternal responsibility, harmonisation of civil law, empowerment of mothers and children, and evaluation of the implementation of the law are needed.
This is an open access article under the CC BY-NC license 	Corresponding Author: David Angdreas Indonesian Community Development University adv.davidangdreas@gmail.com

INTRODUCTION

Sexual relations outside the legal bonds of marriage are a complex phenomenon with profound legal and social implications, especially when producing children out of wedlock. In the context of Indonesian law, this act is known as adultery or intercourse outside of marriage, and has significant consequences, especially related to the legal status of the child and the rights attached to it. According to Article 284 of the Criminal Code (KUHP), adultery is defined as intercourse committed by a man or woman who is bound by marriage to a non-wife or

Legal Review of a Man who has Sexual Intercourse with a Woman so that He has a Child Out of Wedlock (Case Study of North Sumatra Police Report Number:

STTLP/B/559/X/2024/SPKT/POLDA SUMUT)–David Angdreas

husband, or by a man who is not bound by marriage to a woman who is bound by marriage, or vice versa. However, in the context of the birth of a child out of wedlock, the legal focus is not always on the criminal offense alone, but rather on the civil implications and child protection.

The impact of these acts can extend to the public sphere, especially when it involves law enforcement and the protection of human rights. Children born out of wedlock often face social stigma and vulnerability in fulfilling their rights. This problem is exacerbated by the absence of automatic legal recognition of biological fathers, which can hinder the fulfillment of basic rights such as the right to name, the right to maintenance, the right to inheritance, as well as the right to identity and education. As stated by Siahaan (2020) in his study, children born out of wedlock often experience uncertainty of legal status that has an impact on their future.

Cases involving extramarital intercourse to the birth of a child are not uncommon and often become the attention of law enforcement. One of the main challenges in handling this kind of case is the determination of the biological father of the child. In the absence of a strong acknowledgment or evidence, a child's legal status can become unclear, and his or her rights may potentially not be met. Determining this biological father often requires forensic efforts, such as DNA testing, which is crucial in legal proof. The Constitutional Court through Decision No. 46/PUU-VIII/2010 has given a broader interpretation of the status of children out of wedlock, that children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including civil relations with his father's family. This decision opens up space for the recognition of biological fathers through DNA tests, as well as the basis for law enforcement officials, especially the police, to carry out these evidentiary efforts.

The importance of disclosing the material truth in these cases is not only for the sake of criminal law enforcement (if there is a criminal element that is met), but also for the legal protection of children. Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection expressly mandates the state to guarantee children's rights without discrimination (Article 2). Article 4 of the Child Protection Law further affirms that every child has the right to live, grow, develop, and participate reasonably in accordance with the dignity and dignity of humanity, and to be protected from violence and discrimination. Children born as a result of adultery, even if their status is different from that of a legitimate child, still have rights that must be fulfilled and protected as guaranteed by the law. However, in practice, the implementation of legal protection for children in situations like this still faces various obstacles, ranging from evidentiary issues to public legal awareness.

A case study on the North Sumatra Regional Police with a Police Report Number: STTLP/B/559/X/2024/SPKT/POLDA SUMUT is relevant to highlight the dynamics of handling cases of extramarital intercourse that produce children. This case, as part of law enforcement in the jurisdiction of the North Sumatra Police, can provide a real picture of the Police's efforts to conduct DNA tests on the biological father as part of the investigation and proof process.

It is important to see how the existing procedures and mechanisms in the police are implemented in order to fulfill the mandate of the Constitutional Court Decision regarding the determination of biological fathers. In addition, this study will also analyze how legal protection for victims (children) of the proceeds of adultery reviewed from Law Number 35 of 2014 is applied in practice, as well as the challenges faced in ensuring that children's rights are fulfilled in the context of this concrete case. Thus, this research is expected to contribute to understanding more deeply the role of law enforcement and the effectiveness of child protection regulations in dealing with the problem of children out of wedlock.

METHOD

In this study, the research method used is non-questionnaire qualitative research. According to Bogdan and Biklen (2019), qualitative research is a research method that is oriented towards data collection through observation, interviews, and documentation. Meanwhile, according to Patton (2020), non-questionnaire qualitative research is a research approach using questionnaires as a data collection tool. Instead, this study uses data collection methods such as observation, interviews, and documentation to obtain more in-depth and detailed data.

RESULTS AND DISCUSSION

Police Efforts to Conduct DNA Tests on Biological Fathers

The police's efforts to conduct DNA tests to determine the biological father are part of the process of investigating certain criminal acts that require scientific proof of kinship relationships. The steps involve a series of procedures governed by law and police protocol:

1. Identify the Need for DNA Testing in Investigation:
 - a. Investigators will consider the need for DNA testing if other evidence is not strong enough or ambiguous enough to establish a biological father relationship. This often happens in cases such as:
 - 1) Sexual Crimes with Child Victims: To ascertain the identity of the perpetrator who may deny being the father of the child born to the victim.
 - 2) Child Neglect Cases: To ensure parental responsibility for abandoned children.
 - 3) Child Trafficking Cases: To identify the biological parents of the child who is the victim.
 - 4) Child Custody Dispute Cases (with criminal elements): Although it is in the civil realm, if there is an alleged criminal act in the custody dispute, a DNA test can be an important piece of evidence.
 - 5) The decision to conduct a DNA test must be based on reasonable suspicion and relevance to the criminal act being investigated.
2. Submission of Official Application:
 - a. Investigators will submit an official request letter to the National Police forensic laboratory or other accredited laboratory to conduct DNA analysis.
 - b. This application letter will include:

- 1) Police Report Number (LP) and case identity.
- 2) The identities of the parties whose DNA samples will be taken: Children (victims), mothers (if present and relevant), and suspected biological fathers (reported/suspects).
- 3) The purpose of the DNA test: To identify the perpetrator, prove the relationship in case of neglect, etc.
- 4) Legal basis for DNA test requests.
- 5) Other relevant information related to the case.
- c. This application usually has to be approved by the investigating supervisor (e.g., the Head of the Criminal Investigation Unit).
3. Summons and Request for Evidence of Related Parties:
 - a. Investigators will summon related parties (suspected biological father, mother, or guardian of the child) to be questioned regarding the case.
 - b. In this process, the investigator will explain the purpose and importance of DNA testing in the investigation.
 - c. The voluntary principle is generally preferred in DNA sampling. However, in the case of certain criminal acts, if the suspected perpetrator is uncooperative, investigators may consider other efforts in accordance with the criminal procedure law.
4. DNA Sampling:
 - a. Coordination with Forensic Laboratories: Investigators will coordinate with the forensic team for sampling schedules and procedures.
 - b. Authorized Officer: DNA sampling is ideally performed by a medical officer or forensic laboratory technician who has expertise in sampling for forensic purposes.
 - c. Collection Location: Sampling can be done at a police station, hospital, or other location deemed safe and appropriate.
 - d. Common Sample Types Taken:
 - 1) Buccal Swab (Cheek Mucosal Swab): The most common method because it is non-invasive and easy to perform, especially in children. Officers will use a sterile tool to swipe the inside of the cheek to collect epithelial cells containing DNA.
 - 2) Blood Sample: Can be taken if needed or if the quality of DNA from the buccal swab is in doubt. Blood collection must be done by medical personnel.
 - 3) Hair Samples (with Roots): If no other samples are available, hair with roots can be used as it contains DNA.
 - e. Biological Evidence: In certain cases (e.g., sexual crimes), evidence such as sperm found on the victim or at the crime scene will also be collected for DNA analysis and compared to the DNA of the alleged perpetrator.
 - f. Proper Sampling Procedures: Strict sampling should be followed to avoid contamination and ensure the accuracy of the results. Officers must use sterile tools and change gloves each time they take samples from different individuals.
 - g. Chain of Custody Labeling and Security: Each sample must be clearly labeled with the identity of the person sampled, the date of collection, the case number, and the

identity of the officer who took it. A strict chain of custody must be documented to ensure the integrity and authenticity of samples from the time of collection to analysis in the laboratory. Any sample transfers must be recorded and signed by the submitting and receiving parties.

5. Sample Delivery and Analysis in Forensic Laboratories:
 - a. The DNA samples that have been taken will be sent to a forensic laboratory with appropriate security protocol.
 - b. In the laboratory, forensic experts will perform a series of DNA analysis processes, including:
 - 1) DNA extraction: Isolating DNA from the cells contained in the sample.
 - 2) DNA Amplification (PCR): Using the Polymerase Chain Reaction (PCR) technique to multiply (amplify) specific parts of DNA so that there are sufficient numbers for analysis.
 - 3) DNA Profile Analysis: Analyzes variations in DNA sequence at specific loci that are highly polymorphic (vary between individuals) to produce a unique DNA profile for each individual.
 - 4) DNA Profile Comparison: Comparing the child's DNA profile with the mother's DNA profile (if any) and the father's suspected DNA profile. Genetic inheritance patterns will be analyzed to determine the probability (possibility) of kinship relationships.
 - c. Analysis Results: The results of the analysis are usually expressed in the form of a report that includes the DNA profile of each individual and the likelihood ratio (LR) or probability of paternity (W) which indicates the probability that the alleged father is the biological father of the child. A probability above 99.9% is generally considered very strong evidence.
6. Use of DNA Test Results in Legal Proceedings:
 - a. The results of the DNA test are scientific evidence that has high evidentiary power in court.
 - b. Expert Testimony: The forensic expert who conducts the DNA analysis will be presented in court to provide expert testimony on the analysis procedure, the results obtained, and its interpretation.
 - c. The results of the DNA test will be used by investigators to corroborate other evidence and determine the next steps of the investigation, including the determination of suspects and the preparation of case files.
 - d. In court, the results of the DNA test are one of the judges' considerations in deciding cases related to the identity of the biological father and legal liability.

Legal Protection for Victims (Children) from the Proceeds of Adultery Reviewed from Law Number 35 of 2014

Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection provides a comprehensive legal protection framework for all children in Indonesia,

excluding children born as a result of adultery (outside of legal marriage). The basic philosophy of this law is that every child, regardless of his or her parents' marital status, has basic rights that must be fulfilled and protected. The following are the aspects of legal protection for children from the results of adultery reviewed from Law Number 35 of 2014.

1. Principle of Non-Discrimination: This law strongly emphasizes the principle of non-discrimination against children. Article 3 of the Child Protection Law states that child protection is based on non-discrimination. This means that all the rights of the child set out in this law apply to all children regardless of origin, including the child's birth status. Children born out of wedlock are entitled to the same treatment and should not be discriminated against because of their parents' legal status.
2. Right to Identity: Every child is entitled to identity from birth. Article 5 of the Child Protection Law guarantees the right of every child to self-identity. This identity is stated in the birth certificate (Article 5 paragraph (2)). Although the birth certificate of a child born out of wedlock generally only includes the mother's name, the child's right to have an identity and have his birth recorded is still guaranteed by this law. The Constitutional Court Decision No. 46/PUU-VIII/2010 further strengthens the right of an out-of-wedlock child to have a civil relationship with his biological father that can be proven based on science and technology (including DNA tests), which paves the way for the recognition of the child's status in the eyes of civil law related to his biological father.
3. Right to Survival, Growth, and Development: This law guarantees the right of every child to be able to live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity, as well as to be protected from violence and discrimination (Article 4). The child's birth status should not be an obstacle to the fulfillment of these basic rights.
4. Right to Upbringing and Protection: Every child has the right to be cared for by his or her parents (Article 14), and has the right to be protected from various forms of mistreatment, neglect, violence, and discrimination (Article 13 and Article 15). Although the marital status of the parents is invalid, the law still mandates the responsibility of the parents (both the mother and the biological father, if the civil relationship with the biological father is legal under the law) and the state, local governments, communities, and families to protect and care for the child.
5. Protection from Neglect: The Child Protection Law expressly prohibits child neglect and provides criminal sanctions for the perpetrators (provided for in the amendments to Chapter XIII on the Criminal Provisions, although the details of the neglect article are in the previous Law and its amendments). Children born from adultery are one of the groups of children who are vulnerable to neglect. This law provides a legal basis for the authorities to take action against the perpetrators of neglect, including if it is proven that it was committed by a biological father who is not bound by a legal marriage.
6. Special Protection: The law also provides for special protection for children in emergency situations, children facing the law, children from minority and isolated groups, children victims of exploitation, and children victims of violence and neglect

(Chapter X). Children of the result of adultery who are abandoned or victims of violence are entitled to this special protection.

Governments, local governments, and related agencies have an obligation to provide these special protection services and coordinate their implementation. The goal is to ensure the most vulnerable children get the support they need to recover from traumatic experiences, access their rights, and thrive optimally.

Although Law No. 35 of 2014 provides a strong legal umbrella regarding the fundamental rights and protection of all children without discrimination, challenges in the case of children from adultery often arise related to proving a legal relationship with the biological father (especially if the father does not admit) and its implications for certain civil rights such as inheritance or alimony in the absence of recognition or court determination. However, the spirit and articles in the Child Protection Law clearly place children as legal subjects entitled to full protection from the state and society, regardless of their birth status.

CONCLUSION

From the formulation of the problem, based on the results of the research and discussion that has been described above, the author can draw the following conclusions: The police's efforts to conduct DNA tests to determine the biological father are an important and structured procedure in the investigation of certain criminal acts. The measures, from identifying needs to using test results in court, demonstrate the police's commitment to seeking the truth and enforcing the law scientifically, especially in cases involving children. The legal basis for the implementation of this DNA test is sourced from the Criminal Code and the Child Protection Law, which provides a basis for investigators to use this scientific evidence in the investigation process. However, there are challenges such as costs, consent issues, genetic data privacy issues, and psychological implications that need to be considered and addressed in order for this process to run effectively and fairly. Law Number 35 of 2014 concerning Child Protection provides strong legal protection for children from the results of adultery based on the principle of non-discrimination. This law guarantees basic rights of children such as the right to identity (including through the Constitutional Court Decision related to civil relations with the biological father), the right to life, growth, and development, the right to care and protection, and protection from neglect and special treatment if necessary. Nonetheless, challenges often arise in proving a legal relationship with the biological father and the implications for the child's civil rights. However, the main spirit of the Child Protection Law is to ensure that children are legal subjects who are entitled to full protection regardless of their birth status.

REFERENCE

- A. Hamid S. Attamimi. (2001). *Perlindungan Hukum bagi Anak di Indonesia*.
Abdul Manan, *Aspek Hukum Perdata Islam di Indonesia*, (Jakarta: Kencana, 2010), hlm. 67.
Dewi, R.. (2020). "Kedudukan Anak Luar Nikah dalam Hukum Keluarga Indonesia: Studi Kasus di Wilayah Sumatera Utara." *Jurnal Keluarga dan Hukum*, 11(2), 45-58.

- Fahrudin, A.. (2021). "*Anak Luar Nikah dalam Perspektif Hukum Perdata dan Hukum Islam di Indonesia.*" *Jurnal Hukum Perdata*, 19(4), 56-72.
- Frank D. Pittman, *Private Lies: Infidelity and the Betrayal of Intimacy* (New York: W. W. Norton & Company, 2019), hlm. 3.
- Harahap, R.. (2019). "*Perlindungan Hukum bagi Anak Luar Nikah dalam Hukum Positif Indonesia.*" *Jurnal Hukum Anak*, 8(1), 77-89.
- Indonesia, *Kitab Undang-Undang Hukum Pidana*, Pasal 284.
- Indonesia, *Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak*, Pasal 43 ayat (1).
- Indonesia, *Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan*, Pasal 33.
- Indonesia. *Kitab Undang-Undang Hukum Pidana*.
- Indonesia. *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.
- Indonesia. *Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*.
- Indonesia. *Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*.
- Kasus Polda Sumatera Utara, Laporan Polisi Nomor: LP/XX/2023/SUMUT, *tentang Perselingkuhan dan Implikasinya terhadap Hukum Keluarga*.
- Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, *Panduan Hak Anak di Indonesia*, (Jakarta: KPPPA, 2020), hlm. 45-46.
- Kitab Undang-Undang Hukum Pidana (KUHP), terutama Pasal 304.
- Kompilasi Hukum Islam (KHI), Pasal 115.
- Kompilasi Hukum Islam (KHI), Pasal 99.
- M. Yahya Harahap, *Hukum Perkawinan Nasional*, (Jakarta: Sinar Grafika, 2016), hlm. 112-113.
- Muhammad Sholeh. (2014). *Hukum Keluarga Indonesia*. Jakarta: Sinar Grafika.
- Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Pengakuan Anak Luar Nikah terhadap Ayah Biologisnya.
- Richard Weeks, Nancy Gambescia, dan Katherine M. Jenkins, *Treating Infidelity: Therapeutic Dilemmas and Effective Strategies* (New York: W. W. Norton & Company, 2020), hlm. 5.
- Sarlito Wirawan Sarwono, *Psikologi Remaja* (Jakarta: Rajawali Pers, 2020), hlm. 105.
- Setiawan, Y.. (2018). "*Pengaruh Perselingkuhan Terhadap Hukum Perkawinan di Indonesia.*" *Jurnal Hukum dan Peradilan*, 15(3), 100-115.
- Siahaan, S.M. (2020). *Hukum Perkawinan, Pewarisan, dan Peradilan Agama*. Jakarta: Rineka Cipta.
- Siregar, F.. (2018). "*Tantangan dalam Penegakan Hukum Kasus Perselingkuhan di Polda Sumatera Utara.*" *Jurnal Penegakan Hukum di Daerah*, 13(1), 65-80.
- Siti Musdah Mulia, *Hukum Perkawinan Islam: Analisis Komprehensif Berbasis Hak Asasi*

Manusia, (Jakarta: Kencana, 2014), hlm. 45.

- Soerjono Soekanto. (2019). *Sosiologi Hukum*. Jakarta: Rajawali Pers.
- Sudikno Mertokusumo. (2020). *Hukum Perdata Indonesia*. Jakarta: Kencana.
- Sudikno Mertokusumo. (2020). *Hukum Perdata Indonesia*. Jakarta: Liberty.
- Sukanto. (2003). *Hukum dan Penegakan Hukum di Indonesia*. Jakarta: Raja Grafindo Persada.
- T.O. Ihromi. (2004). *Hukum Pidana Indonesia*. Jakarta: Raja Grafindo Persada.
- Undang-Undang Nomor 1 Tahun 1946 *tentang Peraturan Hukum Pidana (Kitab Undang-Undang Hukum Pidana lama)*, Pasal 284.
- Undang-Undang Nomor 1 Tahun 2023 *tentang Kitab Undang-Undang Hukum Pidana (KUHP Baru)*, Pasal 411 dan Pasal 412. (Berlaku efektif mulai 2 Januari 2026).
- Undang-Undang Nomor 35 Tahun 2014 *tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*, terutama Pasal 13, Pasal 15, Pasal 20, Pasal 21, Pasal 25, Pasal 26, Pasal 59, Pasal 76B, dan Pasal 77B (serta merujuk pada perubahan terbaru KUHP).
- Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 *Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan*, Pasal 1.
- Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 *Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan*, Pasal 2 ayat (1).
- Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 *Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan*, Pasal 39 ayat (1).