

The Implementation of The Negativa Non Sunt Probanda Principle in Indonesian Civil Litigation: An Analysis of Banten High Court Decision Number 109/PDT/2022/PT BTN

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Abstract

In the Indonesian legal system, civil procedural law pays great attention to the principles underlying decision making by judges in civil cases. One of the principles regulated in civil law is the principle of *negativa non sunt probanda*, which is often understood as the principle that states that "what is not proven is what does not need to be proven." This principle plays an important role in regulating the burden of proof in a civil dispute. In this thesis, the author will discuss the application of this principle in private lawsuits, with a case study of Civil Case Decision Number: 109/PDT/2022/PT BTN. The formulation of the research problem is how the implementation of the Negative Non Sunt Probanda Principle and it is possible to use Negative Non Sunt Probanda principle be used in private in Implementation as a jurisdiction. The research method used is normative legal research, including the case approach and the statute approach. Data sources

were obtained from primary data include the 1945 Constitution of the Republic of Indonesia, Civil Code, HIR, RBg, Rv, and others. The secondary data can be in the form of explanations and/or understanding of scientific writing thoughts, scientific publications, and research related to the writing of this law. The results of this research show that the application of the principle of Negativa Non Sunt Probanda in the context of civil law, as seen in the decision in case number 109/PDT/2022/PT BTN, shows that the court firmly emphasizes that the burden of proof lies on the party making the claim. The principle of Negativa Non Sunt Probanda, which means "the negative does not need to be proven," has an important role in the application of civil law, especially in the context of litigation.

Keywords

Negative Non Sunt Probanda Principle, Civil Case, Court Decisions

Introduction

Civil litigation is fundamentally concerned with the protection and enforcement of private rights through a structured judicial process. In civil proceedings, the court is not only required to determine whether a legal relationship exists between the parties, but also to assess whether the factual claims submitted before the court are supported by sufficient and admissible evidence.¹ For this reason, the law of evidence occupies a central position in civil procedural law, particularly in determining which party bears the burden of proof and how such burden should be fairly allocated.²

In Indonesian civil procedural law, the burden of proof is generally imposed on the party who asserts a right, fact, or legal event. This principle is reflected in Article 163 HIR, Article 283 RBg, and Article 1865 of the Indonesian Civil Code, which require a party

¹ Dahliani Dahliani and Hadi Tuasikal, "Penyelesaian Sengketa Perdata Melalui Non-Litigasi: Kajian Hukum Dan Implementasinya Di Indonesia," *Journal of Dual Legal Systems* 2, no. 1 (2025): 46–69, <https://doi.org/10.58824/jdls.v2i1.322>.

² Fauziah Lubis et al., "Alat Bukti Dalam Hukum Acara Perdata," *Innovative: Journal Of Social Science Research* 5, no. 3 (2025): 6008–15, <https://doi.org/10.31004/innovative.v5i3.19878>.

claiming a right or relying on a particular event to prove the existence of such right or event.³ This evidentiary rule reflects the classical maxim *actori incumbit probatio*, namely that the claimant bears the burden of proving the claim. It also prevents a lawsuit from being granted solely on the basis of allegations unsupported by legal evidence.⁴

One of the evidentiary principles closely related to the allocation of the burden of proof is *negativa non sunt probanda*. This principle is commonly understood to mean that negative facts are generally not required to be proven.⁵ In civil litigation, the principle protects a party from being unfairly required to prove the non-existence of a fact, especially when the opposing party is the one asserting the existence of that fact. The principle is therefore important in maintaining procedural fairness, as it prevents the burden of proof from being imposed irrationally or disproportionately on a party who merely denies an allegation.⁶

However, the application of *negativa non sunt probanda* cannot be understood as an absolute exemption from evidentiary responsibility.⁷ A party who denies a claim may not be required to prove a negative fact, but if that party raises an affirmative defense or

³ Arkisman Arkisman, “Efektifitas Alat Bukti Pemeriksaan Setempat Pada Sidang Perkara Perdata Di Pengadilan Negeri Gresik,” *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik* 5, no. 1 (2017), <https://doi.org/10.55129/jph.v5i1.485>.

⁴ Kabir Duggal and Wendy W. Cai, *Principles of Evidence in Public International Law as Applied by Investor-State Tribunals: Burden and Standards of Proof*, January 2, 2019, <https://doi.org/10.1163/24055778-12340005>.

⁵ Muhammad Kadafi Bashori, “Analisis Penerapan Asas Negativa Non Sunt Probanda Pada Putusan Nafkah Lampau Nomor 262/Pdt. G/2017/PTA. Sby,” *SAKINAH: Jurnal Hukum Keluarga Islam* 3, no. 2 (2025): 96–104.

⁶ Cantika Tresna Rahayu et al., “Perlindungan Hukum Terhadap Pihak Yang Dirugikan Dalam Wanprestasi,” *Media Hukum Indonesia (MHI)* 2, no. 4 (2024): 138–49, <https://doi.org/10.5281/zenodo.14058588>.

⁷ Eka Nurhikmah et al., “Asas Iudex Non Ultra Petita dalam Kasus Wanprestasi dan Implikasinya pada Hak, Kewajiban, dan Etika Beracara,” *Jurnal Fakta Hukum* 4, no. 1 (2025): 37–53, <https://doi.org/10.58819/jfh.v4i1.187>.

introduces a new factual assertion, the burden of proof may shift accordingly. In this sense, the principle must be interpreted together with the broader doctrine of burden of proof in civil procedure. The central issue is not simply who wins or loses a dispute, but whether the evidentiary burden has been allocated in a manner consistent with fairness, legal certainty, and substantive justice.⁸

The complexity of this principle becomes more apparent in civil cases involving biological status, children's rights, and scientific evidence. Banten High Court Decision Number 109/PDT/2022/PT BTN provides an important case for examining this issue. The decision concerned a civil dispute between Wenny Ariani Kusumawardani and Rezky Adhitya Dradjamoko, classified as an unlawful act case, in which the High Court accepted the claim in part and declared that a child was the biological child of the respondent as long as the respondent could not prove otherwise. This decision is significant because it involves not only ordinary civil evidentiary rules, but also the question of whether and how scientific evidence, particularly DNA testing, may influence the judicial determination of biological relationship.

The case also reflects broader developments in Indonesian family and civil law following Constitutional Court Decision Number 46/PUU-VIII/2010. That decision has been widely understood as opening the possibility for a child born outside marriage to have a civil relationship with the biological father, provided that the relationship can be proven through science and technology or other legally valid evidence. In this context, scientific evidence plays an increasingly

⁸ Atis Ika Ernawati et al., *Penyelesaian Sengketa Pertanahan Melalui Hukum Perdata: Dari Konstruksi Gugatan Hingga Implikasi Putusan* | *Al-Muamalat Jurnal Hukum Dan Ekonomi Syariah*, October 1, 2025, <https://journal.iainlangsa.ac.id/index.php/muamalat/article/view/11636>.

important role in civil litigation, especially where the facts in dispute concern biological lineage, identity, and parental responsibility.

The relevance of *negativa non sunt probanda* in Decision Number 109/PDT/2022/PT BTN lies in the tension between formal evidentiary rules and the practical difficulty of proving biological relationship. On one hand, the claimant who asserts the existence of a biological relationship must provide sufficient evidence. On the other hand, the most reliable evidence may require the participation of the alleged biological father, particularly where DNA testing is involved. This situation raises a critical question: should the alleged father be protected by the principle that negative facts need not be proven, or may the court consider his failure or refusal to disprove the claim as part of its evidentiary assessment?

This issue demonstrates that *negativa non sunt probanda* should not be applied mechanically. In ordinary civil disputes, the principle may function to prevent defendants from being burdened with disproving unsupported allegations. Yet in cases involving children's rights and biological identity, a rigid application of the principle may create an evidentiary imbalance and may obstruct the pursuit of substantive justice. The court must therefore balance the claimant's obligation to prove the claim, the respondent's right not to be unfairly burdened with proving a negative fact, and the child's interest in obtaining legal recognition of biological status.

Based on these considerations, this article analyzes the implementation of the *negativa non sunt probanda* principle in Indonesian civil litigation through the lens of Banten High Court Decision Number 109/PDT/2022/PT BTN. The discussion focuses on how the burden of proof was constructed in the decision, how the court treated the issue of biological relationship, and whether the

application of the principle was consistent with the values of fairness, legal certainty, and justice in contemporary civil procedure.

Method

This research employs normative legal research, which focuses on the examination of legal norms, legal principles, statutory regulations, court decisions, and doctrinal opinions relevant to the issue under study. Normative legal research is appropriate for this article because the main object of analysis is not empirical behavior, but the legal reasoning used by the court in applying the principle of *negativa non sunt probanda* in civil litigation.⁹

This study applies three main approaches. First, the statutory approach is used to examine legal provisions governing the burden of proof in Indonesian civil procedural law, particularly Article 163 HIR, Article 283 RBg, and Article 1865 of the Indonesian Civil Code. These provisions establish the general rule that a party who asserts a right, fact, or legal event must prove the existence of such right, fact, or event before the court.

Second, the conceptual approach is used to analyze the meaning and function of the *negativa non sunt probanda* principle. This approach is necessary because the principle is often misunderstood as merely shifting the burden of proof to the opposing party. In fact, the principle is more accurately understood as a rule that negative facts are generally not required to be proven, especially when the opposing party is the one asserting a positive fact.

⁹ Yulia Audina Sukmawan and Dwi Damayanti, *Metode Penelitian Hukum Normatif Dan Empiris Sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum* | *Notary Law Journal*, July 18, 2025, <https://notarylaw.journal.ulm.ac.id/index.php/nolaj/article/view/116>.

Third, the case approach is used to examine Banten High Court Decision Number 109/PDT/2022/PT BTN. This decision is analyzed to determine how the court constructed the burden of proof, how the principle of *negativa non sunt probanda* was invoked in the judicial reasoning, and whether the application of the principle was consistent with the values of justice, legal certainty, and protection of children's rights.

The legal materials used in this research consist of primary and secondary legal materials. Primary legal materials include statutory regulations, the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, HIR, RBg, Rv, Constitutional Court decisions, and Banten High Court Decision Number 109/PDT/2022/PT BTN. Secondary legal materials include books, journal articles, legal commentaries, theses, dissertations, and previous studies relevant to civil procedure, burden of proof, child protection, and DNA evidence.

The data are analyzed qualitatively using descriptive and analytical methods. The descriptive method is used to explain the legal norms and judicial considerations relevant to the case. The analytical method is used to evaluate whether the application of the *negativa non sunt probanda* principle in the decision reflects a correct understanding of civil evidentiary law. Through this method, the research aims to assess not only the formal application of the burden of proof, but also its relationship with substantive justice in civil litigation involving biological relationship claims.

Result and Dsscusion

1. The Conceptual Position of *Negativa Non Sunt Probanda* in Civil Evidence Law

The principle of *negativa non sunt probanda* is commonly translated as “negative facts do not need to be proven.” In civil evidence law, this principle is closely connected to the allocation of the burden of proof. Its main function is to prevent a party from being required to prove the non-existence of a fact, particularly where the opposing party is the one asserting the existence of that fact.¹⁰

In Indonesian civil procedure, the principle must be read together with Article 163 HIR, Article 283 RBg, and Article 1865 of the Indonesian Civil Code. These provisions establish that whoever claims to have a right, or relies on a particular event to support a right or to refute another person’s right, must prove the existence of that right or event. This means that the burden of proof generally lies with the party who makes a positive assertion before the court.¹¹

However, *negativa non sunt probanda* should not be interpreted as an absolute rule that prevents the court from requiring further evidentiary clarification from the opposing party. If a party merely denies an allegation, that party should not be burdened with proving a negative fact. Yet, if the party introduces a new factual assertion, raises an affirmative defense, or controls evidence that is crucial to the determination of the case, the court may consider such circumstances in assessing the

¹⁰ Achmad Rifai, “Penafsiran Hukum Sistem Beban Pembuktian Dalam Perkara Perdata (Studi Kasus Perkara Perdata No.: 12/Pidt.G/2019/PN.Pmk),” *Jurnal Yustitia* 21, no. 1 (2020), <https://doi.org/10.53712/yustitia.v21i1.812>.

¹¹ Fikri Fikri, *The Existence of Civil Procedure Law in Religious Court*, no. 1, ed. Rahmawati Rahmawati and Aris Aris (IAIN Parepare Nusantara Press, 2021), <https://repository.iainpare.ac.id/id/eprint/2487/>.

fairness of the evidentiary process.¹²

This distinction is important because a misunderstanding of the principle may lead to an incorrect allocation of the burden of proof. The principle does not simply mean that the burden of proof may be shifted whenever a fact is difficult to prove. Instead, it requires the court to examine who asserts the fact, who has access to the evidence, and whether imposing an evidentiary burden on a particular party is reasonable and fair.¹³

2. The Implementation of the Principle in Banten High Court Decision Number 109/PDT/2022/PT BTN

Banten High Court Decision Number 109/PDT/2022/PT BTN provides an important example of the complexity of applying the *negativa non sunt probanda* principle in civil litigation. The case involves a claim concerning the determination of a biological relationship between a child and the alleged biological father. This context makes the evidentiary issue more complex because the proof of biological relationship may require scientific evidence, particularly DNA testing.

In the decision under analysis, the court referred to the principle of *negativa non sunt probanda* in relation to the difficulty of proving certain facts. The court's reasoning suggests that when a fact is difficult to prove by one party, the opposing party may be required to provide evidence to clarify or disprove the claim. This reasoning raises an important doctrinal issue because it may not fully reflect the classical meaning of *negativa*

¹² Muhammad Kadafi Bashori, "Analisis Penerapan Asas Negativa Non Sunt Probanda Pada Putusan Nafkah Lampau Nomor 262/Pdt. G/2017/PTA. Sby," *SAKINAH: Jurnal Hukum Keluarga Islam* 3, no. 2 (2025): 96–104.

¹³ Iwan Rasiwan, "Suatu Pengantar Hukum Pembuktian Tindak Pidana," *AMU Press*, July 18, 2024, 1–246.

non sunt probanda.

The classical meaning of the principle is that a negative fact generally does not need to be proven. It does not automatically mean that the opposing party must prove the contrary whenever the claimant experiences difficulty in producing evidence. If the claimant asserts the existence of a biological relationship, the claimant should, in principle, provide evidence to support that assertion. However, the situation becomes more complicated when the most reliable evidence, such as DNA testing, requires participation from the alleged biological father.

In this context, the court's reasoning can be understood from two perspectives. From the perspective of strict evidentiary doctrine, requiring the defendant to undergo or provide DNA evidence may appear inconsistent with the traditional meaning of *negativa non sunt probanda*. The claimant is the party who asserts the biological relationship, and the claimant should carry the initial burden of proof.

From the perspective of substantive justice, however, the court's reasoning may be justified if the evidence necessary to determine the truth cannot be obtained without the cooperation of the alleged biological father. In cases involving children's rights and biological identity, the court must not only apply evidentiary rules formally, but also ensure that procedural rules do not prevent the discovery of material truth. This is particularly important because the case concerns not merely the private interests of the litigating parties, but also the legal status and identity of a child.

3. DNA Evidence and the Limits of the Burden of Proof

The use of DNA evidence in civil litigation creates a

challenge for traditional evidentiary principles. DNA testing is scientifically relevant in determining biological relationships, but it usually requires biological samples from both the child and the alleged parent. This means that the claimant may not be able to produce conclusive evidence without the cooperation of the opposing party.

In such circumstances, the court must carefully distinguish between an unfair reversal of the burden of proof and a justified evidentiary order aimed at clarifying the truth. If the court simply shifts the burden of proof to the defendant without sufficient legal reasoning, such an approach may conflict with the principle of *negativa non sunt probanda*. However, if the court requires the defendant's participation in DNA testing because the evidence is essential, proportionate, and relevant to the child's legal status, the order may be viewed as part of the court's effort to achieve substantive justice.

The author's position is that DNA testing does not necessarily eliminate the relevance of *negativa non sunt probanda*, but it requires the principle to be interpreted contextually. The claimant still bears the initial burden of proof. Nevertheless, when the claimant has presented preliminary evidence and the remaining proof depends on the participation of the opposing party, the court may consider whether refusal to participate in DNA testing should have evidentiary consequences.

This approach provides a more balanced interpretation. It prevents the defendant from being unfairly burdened with proving a negative fact, while also preventing the defendant from using procedural rules to avoid clarification of facts that are essential to the child's legal status.

4. The Decision from the Perspective of Justice and Child Protection

The analysis of Decision Number 109/PDT/2022/PT BTN cannot be separated from the principle of justice, particularly justice for the child whose biological status is being disputed. The court's consideration is closely related to Constitutional Court Decision Number 46/PUU-VIII/2010, which recognizes the possibility of a civil relationship between a child born outside marriage and the biological father, as long as such relationship can be proven by science and technology or other legally valid evidence.

This legal development is also consistent with the principles contained in Law Number 35 of 2014 concerning the Amendment to Law Number 23 of 2002 on Child Protection. Article 7 of the Child Protection Law recognizes the right of every child to know his or her parents and to be raised and cared for by them. This right is not merely an administrative matter, but part of the child's broader human rights protection.

Viewed from this perspective, the court's consideration reflects an attempt to balance civil evidentiary rules with the protection of children's rights. The child's right to know his or her biological origin must be given serious consideration in civil proceedings. If the court applies the burden of proof too rigidly, the child may lose the opportunity to obtain legal recognition simply because the necessary evidence is difficult to access.

However, the protection of children's rights must still be placed within a proper evidentiary framework. The court should clearly explain why the burden of proof may be adjusted, why DNA testing is relevant, and what legal consequences may arise

if a party refuses to participate in such testing. Clear judicial reasoning is necessary to prevent the impression that the principle of *negativa non sunt probanda* is being used incorrectly or inconsistently.

The strength of the decision lies in its orientation toward justice and child protection. Its weakness lies in the possible conceptual confusion in using the term *negativa non sunt probanda*. If the court intended to justify the need for DNA testing, it would have been more precise to rely on the principles of evidentiary necessity, proportionality, access to evidence, and the best interests of the child, rather than framing the issue solely through *negativa non sunt probanda*.

5. Critical Analysis of the Court's Reasoning

The most important issue in Decision Number 109/PDT/2022/PT BTN is not merely whether the court applied *negativa non sunt probanda*, but whether the principle was used correctly. The statement that a difficult-to-prove fact must be proven by the opposing party requires careful examination. If interpreted broadly, such reasoning may create the impression that every evidentiary difficulty allows the burden of proof to be shifted. This would be inconsistent with the general rule of civil procedure.

The proper formulation should be more nuanced. The plaintiff must first present sufficient preliminary evidence to support the claim. After such preliminary evidence is submitted, the court may assess whether additional evidence is necessary and whether such evidence can only be obtained through the cooperation of the opposing party. In that situation, requiring participation in DNA testing is not necessarily a reversal of the

burden of proof, but may be understood as a procedural mechanism to complete the evidentiary process.

This interpretation is more consistent with the principle of justice. It respects the claimant's duty to prove the claim, protects the defendant from arbitrary evidentiary burdens, and safeguards the child's right to legal identity. It also allows the court to use scientific evidence without abandoning the basic structure of civil procedural law.

For this reason, the application of *negativa non sunt probanda* in the decision should be understood critically. The principle remains relevant, but it should not be used as the sole basis for shifting evidentiary responsibility. In cases involving biological relationship and DNA evidence, the court should combine the principle with other legal considerations, including the best interests of the child, access to evidence, proportionality, and the pursuit of material truth.

The implementation of the *negativa non sunt probanda* principle in Indonesian civil litigation shows that evidentiary rules must be applied carefully and contextually. In principle, a party who asserts a claim must prove it, while a party who merely denies an allegation should not be required to prove a negative fact. This rule is important to maintain fairness and legal certainty in civil proceedings.

However, Decision Number 109/PDT/2022/PT BTN demonstrates that civil cases involving biological relationship and DNA evidence cannot be resolved solely through a rigid understanding of the burden of proof. The claimant must still bear the initial burden of proof, but the court may consider the need for scientific evidence when such evidence is essential to

protect the child's legal status and identity.

The use of the *negativa non sunt probanda* principle in the decision therefore requires critical evaluation. The court's orientation toward justice and child protection can be appreciated, but the doctrinal basis should be formulated more precisely. Rather than relying only on *negativa non sunt probanda*, the court should also refer to evidentiary necessity, proportionality, access to evidence, and the best interests of the child as the legal foundation for requiring DNA-related proof in civil litigation.

Conclusion

The implementation of the *negativa non sunt probanda* principle in Indonesian civil litigation must be understood as part of the broader doctrine of burden of proof. In principle, a party who asserts a right, fact, or legal event must prove it before the court, while a party who merely denies an allegation should not be unfairly required to prove a negative fact. In Banten High Court Decision Number 109/PDT/2022/PT BTN, the principle becomes complex because the dispute concerns biological relationship, children's rights, and the relevance of DNA evidence. The analysis shows that the principle should not be interpreted rigidly as a complete exemption from evidentiary responsibility, nor should it be used mechanically to shift the burden of proof to the opposing party whenever a fact is difficult to prove.

The court's reasoning in the case reflects an effort to balance procedural fairness, legal certainty, and substantive justice. Although the plaintiff carries the initial burden to prove the claimed biological relationship, the court may consider DNA testing when such evidence

is essential to determine the child's legal status and identity. In this context, the application of *negativa non sunt probanda* should be supported by other legal considerations, including evidentiary necessity, proportionality, access to evidence, and the best interests of the child. The decision therefore demonstrates that civil evidentiary principles must be applied contextually so that procedural rules do not prevent the protection of children's rights and the realization of justice.

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