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The Status of an Illegitimate Child in Islamic Law: A Critical Analysis of DNA Paternity Test (Article)

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Abstract

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The use of **DNA test** to determine the **paternity of a child** is a controversial issue in **Islamic law**. Although vast majority of legal scholars pragmatically concede its use as a means of connecting unidentifiable children or dead bodies to their next of kin, they oppose its use to ascribe the **paternity** of children born out of illicit sexual intercourse to the male parties involved. Consequently, such an **illegitimate child** is a liability on the female partner in terms of raising and supporting. The conventional logic for such a lopsided application of **child's paternity** was that in the case of female partner, it is easy to ascertain that such a **child** is her biological progeny but establishing such a de facto connection of the **child** to her male partner is impossible to obtain. Accordingly, practical option for the naive even curious but sexually active female member to thwart the stigma and burden of giving birth to such children, has been either abortion or baby dumping (Statistics show that there were 417 baby dumping cases recorded nationwide between 2009 and September 2013. See more at: <http://www.theantdaily.com/Main/Baby-dumping-cases-turning-into-an-epidemic-in-Malaysia#sthash.tPHHoWGk.dpuf>). This paper, however, argues that in the age of scientific technology invoking the conventional wisdom of non-traceability of male partner in a sexual act no longer holds true. Accordingly, biologically connecting ill-conceived babies to male partners, in the context of present Muslim societies, goes a long way in protecting women and children. © 2016 by De Gruyter.

Author keywords

child illegitimacy, **DNA test**, male partner, women and children protection

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