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

Hafiz, S. S. S. A.
Department of Shariah and Islamic Affairs, International Islamic University Malaysia, Kuala Lumpur, Selangor, Malaysia

Abstract

The use of DNA tests to determine the paternity of a child is a controversial issue in Islamic law. Although most majority of legal scholars pragmatically concede its use as a means of connecting undiscernible children or dead bodies to their next of kin, they oppose its use to exonerate the paternity of children born out of illicit sexual intercourse to the male parties involved. Consequently, such an illegitimate child is a liability to the female partner in terms of raising and supporting. The conventional logic for such a top-down application of [child's] paternity was that in the case of female partners, it is easier 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 religious men was to emotionally only female member to bear the stigma and burden of caring for such children. This 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.thewarriory.com/2013/01/baby-dumping-cases-listing-are-stressed-evil-life-Malaysianhealth疲れVWXfGr1seyd (2013). This paper, however, argues that in the age of scientific technology, the conventional wisdom of non-traceability of male partner in a sexual act no longer holds true. Accordingly, biologically connecting illegitimate babies to male partners, is, in the context of present Muslim societies, goes a long way in protecting women and children. © 2013 by De Gruyter.

Author keywords

child legitimacy; DNA test; male partner; women and children protection

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