

Establishing Filiation Relationships of Children Born out of Unlawful Sex: Legal Changes, *Fiqh*, and DNA Test in Indonesia

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Abstract: (200 words)

Regarding the establishment of filiation relationship (*isbat nasab*) of children born of unlawful sex (*zina*), the Indonesian case shows dramatic legal changes. Speaking of changes in law, Jean-Louis Halpérin (2014, viii) distinguishes between “ordinary changes” (inside the same legal system) and “revolutionary changes” (substitution of a new legal order for an older one). We would like to describe how ‘ordinary legal change’ was actually revolutionary. First, the content of Islamic legal doctrine (*fiqh*) on the issue of filiation of children born of *zina* evolved dramatically. The verdict of the Indonesian Constitutional Court in 2012 transformed the legal theory and practice of *fiqh*, especially on the question of the admissibility of DNA tests in establishing of paternity relationship. Consequently, children born of *zina* have now rights and are entitled to filiation, inheritance, maintenance, and custody. Second, Indonesian Islamic courts’ practices have proved deeply flexible on this issue of paternal filiation. Following the advancement of technology (e.g. DNA) and of its recognition within the Indonesian civil legal system, the dynamics of *fiqh* tends toward legal homogenizing, standardization, and positivizing.

Short-bio:

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