

COMPARATIVE STUDY ON PUNISHMENT AND PREVENTIVE METHODS OF BABY DUMPING: MALAYSIAN PERSPECTIVES

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Abstract — Baby dumping case is a serious crime in Malaysia. The study is important to be conducted in order to discuss the suitable punishment with regards to this crime. It is not only confined to the legislations, but also to find the other preventive methods for the solution. In Malaysia, not only the laws are being used, but other preventive methods are also available such as the awareness, monitoring actions and baby hatch. This paper is to discuss the comparative study of the punishment and preventive methods available in Malaysia and some other countries. The method of this research is by using content analysis, under qualitative method, which the laws from various countries pertaining to baby dumping will be analyzed. By comparing Malaysia and other countries approach, we could have foreseen that the preventive methods are also needed as much as the punishment methods in order to curb the problem of baby dumping in Malaysia.

Keywords: Baby Dumping, Comparative Study, Legislation, Prevention, Punishment.

I. INTRODUCTION

A person under the age of 18 in Malaysia is protected under the Child Act 2001, the Juvenile Courts Act 1947, the Women and Young Girls Protection Act 1973, and the Child Protection Act 1991. The Child Act 2001 is an act which consolidates the other three acts. It was enacted partially in order to fulfill Malaysia's obligations under the United Nations Convention on the Rights of the Child. Under these acts, 'child' is defined as a person below the age of 18 years old including newborn. The Child Act 2001 imposes severe punishments for child trafficking, abuse, molestation, neglect and abandonment. In cases where death were reported, it might be a case of child murder (infanticide), parents as the murderer (filicide) and or death within 24 hours of life (neonaticide) [1, 2]. The Child Act 2001 would be read together with Penal Code and Syariah Enactment. This paper is focusing on the incident of baby dumping.

The act of dumping a baby can be differentiated by age, where the baby being left, involvement of the biological parent and the intention of neglecting the baby. The US Department of Health and Human Services (DHSS) distinguished baby

dumping as either boarder babies, abandoned infants and discarded infants [3]. Infants under the age of 12 months who remain in the hospital beyond the date of medical discharge are defined as boarder babies. Abandoned infants are those who are unlikely to leave the medical facility in custody of their biological parents. Discarded infants involve those who were left in non-medical facilities without any care or supervision. Depending on the legal framework of the country of interest, the definition varies from one study to the other. For example, the UK has a larger age range which is up to two years old or the date of concealment [4]. It may or may not involve infanticide, filicide and or neonaticide. For the context of this paper, baby dumping is defined as discarding or leaving alone, for an extended period of time, a child younger than 12 month of age in a public or private setting with the intent to dispose of the child.

The incidence of infanticide can be traced since the beginning of recorded history [4, 5, 2,]. While the statistics on baby dumping is available from 1898 in the UK, the statistics on baby dumping is not widely available in most countries. Since most authorities in the country are not required to keep these statistics and only few of these newborns are found [6], the official statistics is always assumed to be understated. News headlines, law enforcer and other stake holders press statements are commonly quoted in majority of discussions relating to this issue. Widely treated as a heartless crime, baby dumping is considered as one of serious social issue. As shown in Table I, 102 cases of baby dumping incidents were officially reported in Malaysia for the year 2008 as compared with 90 cases in 2014. The decline in the statistics could be the result of the various prevention campaign and punishment strategy implemented by the authorities in the country. However, in comprise on with developed country, the statistic of reported baby dumping in Malaysia is alarming [7].

TABLE I: BABY DUMPING CASES IN MALAYSIA

Year	Number of reported cases
2008	102
2009	79
2010	91

2011	98
2012	88
2013	90
2014*	13

Source: Mansoor (2014); PDRM (2014).
Note : * as of March 2014.

Many feedbacks have been received pertaining to the matter. As for example, ex-Malacca Chief Minister Datuk Seri Mohd Ali Rustam has supported the move to impose severe penalties on baby dumping offenders and said that the death penalty is a harsh reminder not to be taken lightly. The Chief Minister, who suggested setting up a special school for pregnant teens, was recently criticized by the public for the controversial decision by the Malacca Islamic Religious Council to allow underage marriage for Muslim girls who aimed to reduce unwanted teen pregnancy conceived out of wedlock[8]. The special school which is known as “Sekolah Harapan” was set up on September 2010 to enable pregnant teen to continue schooling and has seen 82 births so far. According to the Chairman, Datuk Abdul Rahaman Abdul Karim, the school could only accommodate 30 teenagers at one time and the school has 10 to 20 girls monthly on average. The Centre also receives 50 to 60 applications from September to December 2011. The centre has saved the babies born out of the wedlock from being dumped.

Motivated by that, the paper discuss about the prevention and punishment methods for baby dumping available in Malaysia in comparison with other country using content analysis. In specific, the paper identifies the types of punishment and prevention methods enforced in few selected countries. The comparison would be the basis for recommendation of the most effective prevention and punishment methods to reduce the incident of baby dumping. The paper will first describe the Malaysian legislative system and then focusing on baby dumping incident and the prevention and punishment method available.

II. PUNISHMENT METHODS

The classical theory of laws about crime and punishment is interrelated. A person is considered innocent until he is found guilty by the law. In Malaysia there are different types of punishment. Among the punishments are death penalty, life imprisonment, caning, long term or short term imprisonment, and fine. There are four traditional theories of punishment in law: a) retribution b) deterrence c) incapacitation and d) rehabilitation. In the theory of retribution, it is to seek revenge for the offender or to retaliate back for what the offender has committed. In Malaysia, this method can be seen from Section 302 of the Penal Code itself, where death penalty is imposed for the offence of murder. As for the deterrence purpose, it is aimed to prevent other from committing the same offence. In this case, there are two types of deterrence a) personal b) general. Personal deterrence will stop the offender himself to repeat same offence in future as a result of unpleasant punishment. As for general deterrence, it serves as an example to others as what are they going to face if they commit the same crime. Incapacitation is needed when the society needs protection from dangerous criminal which likely to reoffend. Therefore it is justified to take reasonable steps to protect themselves from danger for example the penalty to disqualifying a dangerous driver from driving again. While rehabilitation is to reform the offender so that he can resume a normal and useful role again in the society. This punishment is hoped to allow the offender to change their attitudes in

future and obey the laws and regulations which exist in the society [9].

The law pertaining to baby dumping in Malaysia can be found from the Penal Code. The highest punishment for the crime can be seen from Section 302. According to previous minister of Ministry of Women, Family and Community Development, Datuk Seri Sharizat Abdul Jalil, has decided that the Cabinet in 2010 would categorized baby dumping case to be charged under Section 302 for murder (this section explained that is in the event when the baby found dead, the accused can be punished with the highest penalty, which is the death sentence) or even Section 307 for attempted murder [10]. This proposal was brought to the Cabinet as the case of baby dumping had gone worse even though many initiatives has been taken by the government to curb the problem. Section 317 of the Penal Code provides punishment for the offence of exposure and abandoning a child under 12 years old by parents or person having care of it. Under this particular section, if found guilty, the offender can be punished with imprisonment for a term which may extend to seven years, or with fine, or both. Section 318 of the same Code, is for the offence of concealment of birth by secret disposal of dead body. It is said that the punishment Section 318 of the Penal Code are lenient because the perpetrator will only be punished for two years imprisonment. While in Section 309A of Penal Code is relating to infanticide which states about the offence of causing death to a newly born baby from a mother who suffers from post natal depression. In the Malaysian context currently, there is no specified statute with regards to infanticide. It is only address by Penal Code under Section 309A which interestingly differ from murder. When a woman by any willful act or omission causes the death of her newly-born child, but at the time of the act or omission she had not recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was disturbed, she shall not be liable for infanticide. This particular section is having its own punishment under Section 309B which states that whoever commits the offence of infanticide shall be punished at the discretion of the court, whether with imprisonment for a term which may extend to twenty years and shall also be liable for fine. Although some would agree that women who commit infanticide should be held liable for their actions, but necessary actions also is needed to prevent future crisis.[11] These women might need more of emotional and mental rehabilitation rather than criminal rehabilitation. In considering the corporal punishment might be the best respond for the punishment, however, is it can deter infanticide?

In another section which relevant to the case of baby dumping, is in Section 312 that is to cause miscarriage. Whoever voluntarily causes a woman with child to miscarry shall be punished with imprisonment for a term which may extend to three years or with fine, or with both, and if the woman be quick with child, shall be punished with imprisonment for a term which may extend to seven years, and also shall be liable to a fine. This is however subject to certain conditions which will be later discussed in preventive part. While in Section 315 of Penal Code is with regards to the act done with intent to prevent a child being born alive or to cause it to die after death. All these laws are drafted to ensure that the case of infanticide and baby dumping could be reduced. Even though the laws in the Penal Code are being used to punish the wrongdoer of baby dumping case, however the phrase “baby dumping” per se does not exist in the context of

Malaysian Criminal Law [12]. Thus, it is agreed that as to curb the problems of baby dumping is by sentencing the person responsible to the justice is by enforcement of effective criminal laws. Table II shows the number cases being opened, charged and convicted for the case of baby dumping in Malaysia from the year of 2010 to 2014. The statistics shows the number of reported baby dumping incidence decreases over the years. The number of person being charge and finally convicted were also reduced during the period of observation. Since most of these statistics are under reported, the number is not an accurate indicator of the severity of baby dumping incidences.

TABLE II: NUMBER OF CASES RELATED TO BABY DUMPING

Year	Open	Charged	Convicted
2010	91	17	7
2011	98	31	6
2012	88	7	2
2013	90	3	3
2014	18	0	0

Source: PDRM (2014). Note : *until May 2014

In United Kingdom, prosecution for abandoning a baby is likely fall under ‘abandonment of a child under the age of two years’ or ‘concealment of birth’ [4]. The majority of known abandoned babies in the UK would fall under the US definition of a discarded child, having been abandoned somewhere other than hospital. Implications and risk factors of these different acts are likely to be diverse. The picture of abandonment is a complex one, where the profile of a parent who abandons their baby to be found (either legally or illegally) is very different to one who leaves a child in an unfindable location, or one who murder their child [13]. In U.S. Safe-haven legislation was enacted to decriminalize baby abandonment and provides a safe place where mothers can leave their newborns. In 1999, Texas became the first state in the United States to enact safe-haven law. Child abandonment is not a new phenomenon in the United States. This could be seen from the establishment of Safe Havens law for quite some time. The law is also known as “Baby Moses” laws or “safe surrender” laws. There were all 50 states in USA which had enacted with same version of laws by early 2008. Under most US safe haven laws, either parent may leave the baby at a safe haven. In a few states, only the mother or the custodial parent has the right to do this. In some states, a person who is acting on the parent’s behalf, with the parent’s approval, can leave the baby. Most laws specifically state that the person dropping off the infant cannot be followed or pursued [14].

In Namibia, although the police and the public speaks about baby dumping, however under the law, there is no crime under that name. The crime of baby dumping are categorized under murder or attempted murder, culpable homicide, exposing a child, abandonment of infant or concealment of birth. This could be seen from Section 18 with regards to ill-treatment or neglect of children of the Children’s Act 33 of 1960. The punishment can be seen in Section 18 (5) of the same Act which stated that any person convicted of an offence under the particular section should be liable to a fine not exceeding two hundred pounds or in default of payment of such fine to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment. [15]

Abandonment also is a crime under the Marriage Law 1950 and 1980 in the omnibus Law Protecting the Rights and Interests of Women and Children passed in 1992 in China. While it was reported in one of the research in China that most

people who abandoned their children were not punished, and were kept as a secret. Out of 237 abandoning families, only 58 (25%) reported discovered by the authorities and being punished. Punishment consisted of fines that in 17 cases in the research were punished with sterilization for the birthmother. When birthparents were caught for abandoning their children, the fines also ranged from several hundred yuan to several thousand yuan, similar fines for having an over-quota child. In some other cases, punishment are given by the birth planning authorities [16].

III. PREVENTIVE METHODS

Preventive measures to reduce the incidence of baby dumping could be done in several stages. The first stage is to create awareness of unwanted pregnancy among the group of interest, followed by monitoring those who are potentially at risk of having unwanted pregnancy and finally create support programs for the mother and the unwanted infant.

Previous studies had identified many factors that contribute to the problem of unwanted pregnancy among youngsters, which can lead to baby dumping. Knowledge on consequences of free sex and strong religious belief had been showed to have significant relationships with the level of awareness on baby dumping issues in Malaysia [17]. Adolescents agree that lack of religious understanding, influence of mass media, marriage’s difficulty, no parental control and the collapse of family institution as possible contributing factors leading towards baby dumping [18].

A. Awareness

To create and increasing the awareness towards unwanted pregnancy, studies need to be done to access the level of awareness among the target group. The incorporation of sex education at learning institutions is high recommend in previous studies. Awareness programs could be conducted at various level of education, not restricted at high school or tertiary level. The program should give the expose of the risk on having unprotected sex and options available if unwanted pregnancy occurs.

Thailand introduces its first national policy on sexuality education in 1978. It was taught in school by integrating sex education with other subjects in relation with reproductive and personal hygiene. The subject is considered as solving the problems of the teenagers’ issues relating to sexual and reproductive health for the country [19]. Unfortunately the same idea has not been implemented in Malaysia where many people opposed the idea of introducing sex education in schools. Their main argument was that although sex education is common in Western countries, why still they are having all kinds of sexual problems? Majority believes that sex education would not stop the problems but instead will accelerate it.

Abortion is one of the options available for unwanted pregnancy. In Malaysia, abortion falls in the Penal Code. It is spelt out in Section 312 to 314 of the Penal Code. Section 312 stated that it is an offence to perform abortions. While Section 313 stated that it is a more serious offence when consent to perform abortions is not obtained. This followed by Section 314 which further discussed about the heavier penalties if it results in the death of the pregnant woman. However as an exceptional to those provisions, Section 91 of the Penal Code highlighted the necessity to perform abortion in order to save the life of the mother. Amendment to Section 312 was done in

1989 which includes further exceptions including factors which affects the physical or mental health of the mother. It is also mentioned in the Code of Medical Ethics, Section 15 stated about the termination of pregnancy that it would not be an offence to carry out a miscarriage if a) a medical practitioner registered under the Medical Act 1971 undertakes the procedure; and b) such practitioner is of the opinion, in good faith, that the mental and physical health of the pregnant woman is involving risk to her life. The Vice President of the Medico Legal Society stated that abortion laws in Malaysia are considered to be 'moderately permissive.' He also compared Malaysia with Australia, Singapore, Vietnam and China which permitting abortions on all the grounds. However, the Philippines and Sri Lanka are more extreme where abortions are restricted only in order 'to save her life' [20]. The statement is however being questioned by the Co-Chair of Reproductive Rights Advocacy Alliance Malaysia (RRAAM). Their study has found that there is very limited accessibility to legal abortion in most government hospital. It is reported that some women who have been raped and women with congenital abnormalities fetuses were refused abortion. The study also it is stated the main barrier for the access to abortion is the misconception by doctors, nurses, women, the media and the public that the abortion is not legal [21]. The writer also further argued that even when the fatwa in Malaysia allow abortion for health and welfare reasons up to four months, this is also not widely known. It is also being uttered by representative of RRAAM, stating that safe abortion services which are legal and available are still difficult to access due to the continuing perception that it is an illegal procedure. He also added, a perfect contraceptive method also has not been discovered and there are the reasons why intended pregnancies still occurring. In Nigeria, due to the fact that the Nigerian Abortion Law criminalizing the abortion, the commercial sex workers stand the risk of unwanted pregnancy which is the key factor to the phenomenon of baby dumping [22]. However it is further added that the current incident of baby dumping in Nigeria is a clear departure from Nigerian traditional socio-cultural value which values the importance of child bearing.

Sex education should not be taught from science point of view only. It should be combined with morale values in order to promote good values as emended in most religion teaching. Teachers, law enforcers and parents must work together for the success of the program.

B. Monitoring actions

Exposing the target group with prevention measures towards unwanted pregnancy and ways to overcome unwanted infant should not be used as the only tool to overcome the issue of baby dumping. Parents, guardians, teachers and law enforcer must play an active role in monitoring the adolescents, especially those who are involved in risky environment.

Parents, guardians and teachers should have a strong bond with their children. When the communication is good, it would be easy for them to detect unwanted pregnancy at an early stage. The incidence of baby dumping might be avoided with the present of a trusted person to give second opinion.

Society also blame pornographic as the cause of free sex, a leading cause of unwanted pregnancy and baby dumping. Law enforcer is expected to control the access to such material either in hardcopy or softcopy. Some even suggest for special

rule to prevent those under the age of 18 for not being able to check-in hotel without the present of parent or guardians [17].

C. Baby Hatch

The perceptions towards the case is varies as this case is considered as taboo, not many who would like to participate even in the research. However, government should come out with some policies and programmes in order to cope with the baby dumping cases. This could not be denied as the government has been supporting many NGOs activities in order to prevent the case of baby dumping to be worsened. According to Azizah Mohammad [23], among the social reform needed in protecting the abandoned children in Malaysia are by having baby bank and foundling home has been proposed from a long time. This is to protect the interest of the babies and to prevent the death of the innocent babies. The objective of having the baby bank also is not to encourage the act of baby dumping but as the last resort to ensure protection. This is also with the intention to surrender the innocent babies to a safe place without putting the baby in danger of death or sickness due to exposure.

In Malaysia, the baby hatch was launched in Petaling Jaya, Selangor. There are two objectives why OrphanCare was set up [24]. The first objective is that the centre believe that many children who are orphans are languishing in orphanages nationwide while there are supposed to be placed in the care of loving families. Second objective is that OrphanCare also believe that there is an increasing number of babies that are being abandoned or dumped in an unimaginable places as waste dumps, bushes, drains, public toilets and etc. Among the achievements of OrphanCare are a) 12 older children from various orphanages were adopted via OrphanCare b) 90 "abandoned" babies were adopted between 2010- 2014 c) 10 of the 88 abandoned babies were placed in the baby hatch d) 52 babies placed with biological mothers after counseling e) 3538 parents have registered as prospective adoptive parents f) 2883 couples have been screened g) 614 couples in the waiting list for babies. From this achievement, it can be concluded that the number of baby dumping might be reduced due to the initiative of the OrphanCare Foundation to set up its baby hatch centre and the awareness of the society towards the crime is also helping to reduce it from getting worse. Their function is also as a transit for the babies as these children should be placed with families who readily to adopt them and to be brought up with love, care and security.

There are some institutions where abandoned babies are cared for in other country- such as the Namibian Children's Home and the privately-run Baby Haven in Windoek. Hon Schimming -Chase endorsed the call for more research into infanticide, as well as more support for pregnant women. She stressed the role of post-partum depression, also known as post-natal depression, which is a psychological condition that affects some women shortly after they have given birth. She suggested that part of their risk for post-natal depression, and provision of appropriate support services [15]. In Hamburg, a baby hatch opened in Hamburg in 2000 and since then more than 200 have opened across Germany, providing a place for babies to be abandoned. According to the article, there are 40-60 babies in Germany are killed every year. The bodies were found in the toilets, forests, attics, carrier bags, etc [25].

Chinese authorities have built a 'baby abandonment' building where parents can anonymously leave their unwanted children. The building located in Nanjing, eastern China, will

provide a safe place for parents to leave their children- who will then be cared for at a nearby welfare home. The space-coined a 'baby box' will be electronically monitored so that when a baby is left an alarm will go off. The building is air-conditioned and has humidity monitors. It includes an incubator, a bed and a thermometer [26]. These boxes usually equipped with electronic sensors that notify physicians when a baby is left. This ensures that the newborns are safe, and allows them to get access to health care services [4]. Baby hatch called as "Stork's Cradle" has been in place at Jeiki Hospital in Kumamoto City, Japan since May 10, 2007. Since 2012, Jeiki hospital has taken measures to protect the lives of fetuses and children, for example, by conducting telephone counseling for women worried about pregnancy [27].

CONCLUSION AND RECOMMENDATIONS

From the discussion above, it can be concluded that what Malaysia is doing is in line with other countries. According to the research, comparatively, Malaysia is also penalizing the baby dumping offender and also provide for the alternative or preventive measure as example the baby hatch. The availability of the preventive method is not to encourage the crime to happen, but it is considered as to avoid more babies being dumped at dangerous places which can lead to death.

As for the recommendation, it is perhaps the time to introduce a new law or section with regards to baby dumping in the Penal Code as to clarify the definition of baby dumping itself and to identify specifically who could be penalized for this crime. As for now, the laws pertaining to baby dumping is not being even defined under the laws of Malaysia. Perhaps in the near future, it is time to penalize those who are contributing towards the crime of baby dumping as this crime is not happening without contributing factors. It is to ensure that every citizen should be aware of the crime and not to let the case getting worse in the future as we have to preserve the rights of the future generations.

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