

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

The issue of how to combat baby dumping has been thoroughly discussed in the previous chapter. Meanwhile, the topic of how the laws are applicable to curb the incidence of baby dumping has also been analysed in light of the social factors affecting the cases. In this chapter, the conclusions derived from the findings of the present study are set out, followed by the recommendations for the improvement and standardisation of punishment for baby dumping. Apart from that, some general recommendations that are believed to help improve the weaknesses in the current approach are presented at the end of this chapter.

6.2 FINDINGS

The extensive discussions provided in the previous chapters clearly show that the existing laws are inadequate to protect babies. It is recommended that the act of baby dumping to be criminalised under the law, particularly under the Penal Code and the Child Act 2001. In addition, a few suggestions proposed to address the gaps in the laws of Malaysia relating to baby dumping are also presented in this chapter. The proposals below are categorised by issues related to baby dumping that have been identified for legal reform, in particular under the Penal Code.

6.2.1 LAWS RELATING TO BABY DUMPING.

The findings of the study, namely the legal findings and the social findings, are presented to address the issue of baby dumping. The legal findings relate to the definition of baby dumping, the inadequacy of legal provisions related to baby dumping, standardisation of punishment for baby dumping, and secondary liability offender issues. A discussion of the social findings is presented in the following part of this chapter.

6.2.1.1 Definition of baby dumping

As previously mentioned, the term “baby dumping” is not defined in the Penal Code. It is submitted that a definition of the term “baby dumping” is needed to assist the court to determine the appropriate punishment to be imposed on the offender in baby dumping cases. Therefore, it is proposed that the term “baby dumping” and a new specific offence to be introduced in the Penal Code prescribing the punishment to be imposed on the wrongdoer rather than rely on the existing sections in the Penal Code. Another purpose would be to highlight to the public that baby dumping is an offence which is specified under the Penal Code. The term needs to be statutorily defined in the Penal Code to avoid any confusion with the layman’s understanding of the term based on what is commonly reported in the newspapers. It is proposed that the following specific offence of baby dumping be inserted into the Penal Code as a new section:

“Baby dumping is a crime when a person leaves a baby at any place without any supervision, with the intention to conceal the birth of the baby, or to harm the baby, so that no one will know the connection of the baby with the offender.”

It is argued that the various terms referring to baby dumping such as infanticide, filicide, and neonaticide should be refrained from use to avoid any confusion among the public and to send the message across that the court will treat the crime of baby dumping seriously. More importantly, defining the term in the Penal Code and creating a specific offence for the act will create public awareness regarding the seriousness of the crime and help the enforcer of the law to curb the problem.

It is submitted that the term “baby dumping” should also be clearly defined in the Child Act 2001 and that the definition of the term must be consistent with the definition of baby dumping in the Penal Code. Meanwhile, the newspaper has reported that the term foetus will be included in the definition of baby dumping. This is rather an interesting issue because it may be able to curb the dumping of foetus which is considered an offence. It is argued that the term “baby dumping” is deemed more appropriate than the term “baby abandoning” as the latter does not carry with it as serious a connotation as the former. Apart from that, the term “baby dumping” indicates the actual intention of the offender to throw away the baby rather than leaving it safely to others. It is believed that the term “dumping” would have a greater impact in reflecting the severity of the offence. Therefore, it would be more appropriate to term the crime as baby dumping.

On this note, the need to criminalise baby dumping in Malaysia has been discussed and reviewed in Chapter 4. The findings from the feedback surveys obtained from the public reveal that the public clearly favours the imposition of harsher punishment on the offenders although there was one respondent who was of the view that punishment for baby dumping is unnecessary. It appears that Malaysians do realise

the seriousness of the baby dumping issue in Malaysia even if the numbers are not accurately reflected in the available statistics.

6.2.1.2 Inadequacy of Legal Provisions on Baby Dumping

It is argued that a new specific offence of baby dumping should be created and incorporated into Penal Code. It is proposed that where the act of baby dumping involves the death of a baby and the intention was to kill the baby, the offender should be sentenced to death, upon conviction.

However, this provision should come with exceptions to the general rule (i.e., in case of insanity, post-partum psychosis, infanticide, filicide, neonaticide, and where an applicable general defence is applicable). There is also a need to define each of the terms related to baby dumping by reference to UK and US case law.

The rights of the children have been thoroughly addressed in Chapter 2 and Chapter 3, particularly from the Malaysian, international, and Islamic legal frameworks. Chapter 4 provides a thorough discussion on the efforts to strengthen the law in Malaysia to criminalise baby dumping. When assessing the adequacy of laws related to baby dumping, consideration must be given to the social aspects relating thereto. Also, the statistics from the Royal Malaysian Police reveal that very few offenders have been sentenced to harsh punishment in baby dumping cases. Apart from that, in Chapter 5, the element of public sympathy towards the offenders is also considered having regard to how baby dumping cases are treated in other jurisdictions.

6.2.1.3 Standardisation of punishment

It is submitted that there should be a consistent approach to sentencing and punishment based on the standards having regard to the facts and past precedents. The analysis of previous cases may be able to assist the court to determine the most appropriate punishment for the wrongdoer by taking into consideration the most important factors below:

- i) Whether the baby was born dead or alive because this would affect the punishment imposed. As mentioned earlier, many cases are categorised under Section 318 of the Penal Code, relating to the concealment of the dead body of the baby. Based on statistics, the number of babies who are found dead is significantly higher than the number of babies that survive. It is argued that the punishment should be lighter for cases where the babies are found alive in comparison to those where the babies are found dead.
- ii) The person who dumps the baby and their state of mind. In this context, punishment for a normal offender should differ from the punishment imposed on an offender who is found to be psychologically unstable.
- iii) The location where the baby was dumped. In some countries, leaving a baby in public places is not an offence and therefore, the wrongdoer will be free from prosecution. However, such a proposition would clearly not be welcome by Malaysians considering the culture of the country which frowns upon babies being thrown away in public places. The place where the baby is dumped is indicative of the intention of the wrongdoer to conceal the baby from the public and more importantly, their intention to harm or kill the baby by exposing it to dangerous situations that may include the risk of

the baby being devoured by animals or being hit by cars. Accordingly, heavier punishment should be imposed on the offender who leaves and exposes the baby to dangerous situations. This can be assessed by observing the baby's injuries, bruises and sickness as a result of the exposure. It should be reiterated that leaving a baby at a baby hatch as discussed in Chapter 3 is not a criminal act as it does not constitute baby dumping but instead amounts to surrendering the baby to be cared for and adopted by a more suitable family.

6.2.1.4 Secondary offender liability

Usually, the person who dumps the baby will be solely liable for his or her own actions based on the principle of law that the person who commits the act will be liable as the offender. However, in the case of baby dumping, it is proposed that the secondary offender be held liable as well as this crime involves the life of a human being. For example, if a woman is caught dumping her baby, the father of the baby should also be made liable, if the case against him is supported by corroboration by witnesses and evidence. It is time for the law to be reviewed to facilitate the investigations to locate the father and to ascertain the paternity of the child, i.e. DNA test, expert evidence and the like. An analogy that can be used is where a suspect is ordered to undergo DNA tests in rape cases. The father of the baby could be held liable for having a baby with the partner outside wedlock, and secondly, if he has contributed towards its abandonment. This would debatably reduce the burden borne by mothers who are often the only ones having to deal with the consequences of an unwanted baby. The findings of the interviews presented in Chapter 3 are especially illuminating. Most of the unwed

mothers interviewed claimed to be the victim of the men who caused them to dump their babies because the men refused to take responsibility for the babies. In view thereof, it would be necessary to enact a law that would allow the secondary offender to be held liable in baby dumping cases rather than only prosecuting the primary offender.

6.2.2 RIGHTS OF CHILDREN AND PROHIBITION OF BABY DUMPING

The current research classifies the social issues into two, namely, the welfare of the dumped babies and the welfare of the pregnant mothers with unwanted babies.

6.2.2.1 Welfare of the Dumped Babies

The Child Act should focus more on the welfare of the dumped babies because it is the right of the babies to be protected; a suitable family should be chosen for them by the authorities if they are to be adopted. As minors, the identity of the babies should be protected. Media exposure should be restricted to protect the babies' dignity and identity and to avoid unreasonable misuse of their personal information. In addition, there is a need to collaborate with NGOs to allow them to act as a transit for babies whose mothers are unable to care for the babies, especially if the government agencies are unable to handle this responsibility alone. NGOs should be allowed to help unwanted babies by giving them a chance to live before they are given away to suitable adoptive families.

On another but important note, it is proposed that the government provides monetary aid once a dumped baby is found to enable the person who finds the baby to care for it. Additionally, they should be given the choice to continue taking care of the baby or to surrender it to the Welfare Department. Furthermore, the babies should be given a regular allowance for maintenance until the age of maturity to ensure that their welfare is protected continuously. This is in line with the idea of deinstitutionalisation which would lead to a reduction in the duties of institutions and the need for orphanages, and to allow the public to take the responsibility for the care of these children. However, none of the efforts mentioned above has been taken seriously due to the inability of these children to speak for themselves despite the realisation that only the welfare of the babies is crucial for their survival. To illustrate this point on deinstitutionalisation, reference is made to the real-life account of an orphan in a Malaysian orphanage in Chapter 3. Another objective is to encourage adoption among Malaysians since research has shown that children who are raised in a family unit are found to have better lives compared to those who are raised in an institution. The proposed measure will also allow the public to be responsible for every matter that is happening around them while reducing the number of children without a family. Ultimately, it is not the fault of the babies that they were dumped by their parents. Therefore, the protection of their rights must be taken more seriously to ensure that their future is not jeopardised by circumstances beyond their control.

6.2.2.2. Welfare of Pregnant Mothers with Unwanted Babies

Separately, it is strongly recommended for the government to protect the welfare of pregnant mothers with unwanted babies by providing them with a safe refuge during pregnancy. In most cases, the economic circumstances and mental state of pregnant mothers with unwanted babies might force them to dump their babies as they might not have any place to stay during these difficult times. Therefore, these mothers need protection, shelter homes and jobs that will allow them to continue with their lives as normal as possible. Related to this, it is proposed that shelter homes for pregnant mothers be allowed to be established and for the procedure for the establishment/operation of such homes be made easier. It is observed that there are many people who are willing to offer help to protect the pregnant ladies but are unable to do so because they are not granted the necessary licences to operate a shelter home. Above all else, shelter homes may help prevent other illegal activities from being committed, such as desperate mothers selling their babies. As mentioned in Chapter 3, in an interview with women in a shelter home, many of the interviewees were thankful for being allowed to stay at the shelter home rather than making the desperate decision to abandon their own child.

Everyone deserves a second chance to repent and perhaps single mothers who wish to take care of their illegitimate children should be given support through a special kind of assistance from the government. In an interview with women in one of the shelter homes (Chapter 3), it was revealed that many of the interviewees faced financial difficulties in raising a child, and therefore had to give away their child for adoption. Many of them said that if they could find a job, they would prefer to raise the child on

their own. It is common knowledge that for a single parent, raising a child is financially burdensome. Therefore, it is proposed that government assistance be given to protect the welfare of mother and child in such a situation. This, by no means, is intended to encourage premarital sex, but merely to ensure that the rights of an innocent child are protected. Therefore, government aid would allow single mothers to take care of their own child, rather than having to put the child up for adoption, or worse still, to abandon or dump them.

One way of looking at this is that having an illegitimate child in Islam means that the father does not have the responsibility to provide for the child due to the absence of marriage. Hence, the responsibility should be shared by the government to stop desperate mothers from dumping their babies. As mentioned earlier, in an interview session with unwed mothers in a shelter home, many of the interviewees hope to build a better future after all the mistakes they made and would like to be given a second chance to improve themselves. A chance for a better future by having a secure job would enable the unwed mothers to be more independent and take care of their own child without resorting to desperate measures such as abandoning the baby.

6.2.3 COMPARATIVE OVERVIEW

Following on from the comparison of the laws of other jurisdictions presented in Chapter 5, it is argued that Malaysia should assimilate the approaches taken. What cannot be accepted according to Islamic law is having a baby outside wedlock; however, the existing laws on baby dumping must be reviewed and strengthened. In respect of the approach taken by other countries, say, for example, the United States which allows

for the abandonment of children at public places (safe haven law), it is hoped that it would not be necessary for Malaysia to resort to such laws. It is argued that it would be sufficient firstly, to reform the Penal Code to define baby dumping and to create a specific offence for it, taking into account the intention behind the act of dumping and whether there was an intention in the first place to dump or not. Secondly, the punishment for each category should differ. Just like the offence of homicide under the Penal Code is categorised into *inter alia* murder and culpable homicide not amounting to murder, there could also be different categories for the offence of baby dumping, with each carrying a different punishment. It is proposed that Malaysia should stick to the term “baby dumping” to distinguish it from other crimes such as infanticide, filicide, neonaticide because this will deviate the punishment to a lighter one, without we realise that we have taken the right of an innocent child for make it a lighter punishment for the wrongdoer. The comparative overview of the social findings is outlined in the next section.

From a social perspective, it is undeniable that Malaysia has taken a proactive approach lately in combatting baby dumping. However, the effectiveness of the approach could be enhanced by taking into consideration all the issues highlighted concerning baby dumping. The act of baby dumping is wrong legally and socially. While Malaysia is not against the baby hatch programme as one of the measures to prevent baby dumping, socially, there is another alternative. The pregnant mother has the option of leaving the baby at a baby hatch or she can put the baby up for adoption. There should be proper procedures in place for this. As maybe the law is there for some other countries, however, the single mothers are not being protected enough and this

also would lead to the case of baby dumping. Socially, the protections towards single mothers and the child should be uphold and publicised in order to let them know of their rights and where to go when they need the protections. In some countries, working single mothers are entitled to many rights and benefits in the form of allowance or flexible working arrangement to help them manage their responsibilities at work and home.

6.3 LIMITATIONS

Finally, several important limitations in the present study need to be considered. First, the public (sampling in Chapter 3) was not cooperative in responding to the questions posed, possibly because the questions did not directly relate to them or their families, hence their lack of concern about the issues. The answers given in response to the questionnaires were very general, and the respondents were confused about whether punishment should be imposed on the wrongdoer in baby dumping cases. It would appear that the public at large generally supports the idea of punishing the wrongdoer, but when considering the child's welfare, empathy is demonstrated and in the end, no repercussion in law is favoured. Another possible explanation is that the issue of baby dumping is considered taboo, making it an uncomfortable subject to be discussed openly. Accordingly, some might say that this is to protect the dignity of a person which leads to the hesitant of revealing anything personal. Moreover, it could be observed from the interview sessions that some of the respondents were reluctant to tell the truth and only gave very general answers.

Secondly, it was difficult to obtain the cooperation of officials from public authorities. Specifically, officials often ignored and/or refused to provide a complete answer to questions posed despite permission letters obtained in advance. One possible explanation for this is the issue of privacy and confidentiality, which prevents the authorities from divulging sensitive information. Nevertheless, in reviewing baby dumping cases for almost 10 years, the writer has observed the evolution in the way the public authorities view or treat the issue from the publication of statistics on baby dumping cases; now there are even anti-baby dumping campaigns televised. The admission by the public authorities that the incidence of baby dumping is on the rise is an indication of transparency and openness on their part.

Despite the limitation of the current research, the writer has completed the study and arrived at the conclusions by analysing the primary sources which were mostly extracted from books and statutes. Case law was also analysed. It is hoped that this study will help push for a reform of the laws on baby dumping in Malaysia. Lastly, it should be appreciated the incidence of baby dumping should no longer be ignored or tolerated but must be tackled wisely by the authorities with the help of Malaysian citizens. Babies that are dumped do not deserve to die just because the existing laws are inadequate to protect them.

6.4 RECOMMENDATIONS

It is clear that the issue of baby dumping has not been resolved in Malaysia. The time has come to take a socio-legal approach in combatting the baby dumping epidemic in Malaysia. To end this problem, action must be taken to not just amend the existing

laws but, all stakeholders including parents, teachers, the medical service providers, NGOs and the government must treat the problem with more urgency and play their roles more effectively.

Although there is no denying that baby dumping is wrong, how Malaysia, as a country, approaches the problem will reflect on how humane it is as a society. The focus should not only be on the law but also the alternatives should be considered that would bring benefit to all parties involved. Baby dumping is a social ill that affects babies globally; the important issue is to protect the life of innocent babies. Children should not be left alone and should not suffer merely because of a lacuna in the law. The researcher believes that the first and most important step to take is to incorporate the term “baby dumping” into the existing laws. It is argued that mere abandonment is not sufficient because in the eyes of the public, abandonment is a normal issue that does not require urgent attention.

Eradicating baby dumping is an important issue, not only because of its high incidence but also because it involves helpless children who are unable to fight for their rights. It is therefore, in the hands of society to take action and responsible to end this problem, and it is hoped that this thesis can serve to advance as a medium to encourage public discourse on the matter. It is the earnest hope of the writer that this thesis will give the readers a different perspective, and have an appreciation of the importance to combat baby dumping.

To combat this problem, many strategies from various perspectives could be adopted. It is hoped that this study can be of useful contribution to society, for the sake of all the children, and serve as a reference for other jurisdictions as well. It is argued

that a harmonised socio-legal approach should be adopted to combat this problem. The relevant laws should be enforced and reviewed from time to time to evolve with the times and fit the current situation. As this thesis is the outcome of the work undertaken by the researcher for over 10 years, it is hoped that the suggestions proposed in this thesis would be taken into consideration by the relevant stakeholders to combat baby dumping in Malaysia. Together we can combat baby dumping in Malaysia!

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