

Baby Dumping in Malaysia and Indonesia: Between National Regulation and Islamic Criminal Law

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Abstract

This study aims to analyze the problem of baby dumping that happened in Malaysia and Indonesia according to regulation and Islamic Law (Fiqh al-Jinayah). As known, both countries are majority Muslims population which have similarities in terms of culture and customs. However, baby dumping cases are still happening in these countries, increasing every year. So it needs to be studied more deeply, considering that both countries have implemented laws related to the prohibition of baby dumping. This research is a normative method by descriptive qualitative type. This study concludes that baby dumping cases are not a light problem but a big problem that must resolve with the support of all parties. Some factors that influence a person in baby dumping cases are pregnancies outside of marriage, lack of education with knowledge of sex, embarrassment with the surrounding community. From the laws regulated in Malaysia and Indonesia, the perpetrators of this baby disposal can be subject to the most severe punishment as regulation implemented in both countries. However, the punishment for the perpetrators is still limited to imprisonment. Even if the perpetrators are children, child protection rules are applied. This punishment in Islam is categorized as ta'zir punishment.

Keywords: *Baby Dumping, Children, Islamic Law, Islamic Criminal Law*

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Introduction

Malaysia and Indonesia are the nations with a majority of Muslim societies. They are still struggling to reduce baby dumping's problems. The phenomenon of baby dumping is not a new issue in these countries. This problem has appeared for a long time and still exists.

In 2010 there were 470 cases of baby dumping in Malaysia. This case makes this issue be a significant issue to be settled. The public was stunned, horrified, overwhelmed by the expanding revealed instances of deserted children, some of whom were discovered dead.² According to Malaysia's former Women, Family, and Community Development Minister, Datuk Seri Dr Wan Azizah Wan Ismail, 1,010 baby dumping cases have been recorded between 2010 to May 2019, in which 64 per cent of those cases have recorded the babies were found dead.³

Research shows that around 14 in each 1,000 underage young ladies in Malaysia get pregnant consistently, which amounts to a normal of 18,000 young ladies every year. At the core of the issue are undesirable pregnancies, basically from underage young ladies who not just face shame over being pregnant at a young age yet, in addition, does not have the information on sexual instruction and backing from their adored ones.⁴ Surprisingly, the baby dumping problem turns out to many underages who are pregnant without legal married and cannot accept the reality of her life. According to some research, some of the baby dumping's perpetrators did not know enough information and knowledge about sex.

In 2020, it accounted for that 53 child dumpings. Indeed, this found the median value of clockwork, and

² Nazni Noordin et al., "The Voice of Youngsters on Baby Dumping Issues in Malaysia," *International Journal of Trade, Economics and Finance*, 2012, 66–72, <https://doi.org/10.7763/IJTEF.2012.V3.174>.

³ "The rise of baby dumping cases in Malaysia," accessed May 24, 2021, <https://www.astroawani.com/berita-malaysia/rise-baby-dumping-cases-malaysia-252476>.

⁴ "The rise of baby dumping cases in Malaysia."

one child unloaded in Malaysia. These deplorable insights had never diminished for over 15 years, notwithstanding the strategies and laws that were set up.⁵

This information explained that baby dumping cases in Malaysia are not a simple problem but a big problem that needs to be solved. Moreover, the perpetrators are children underage.

Meanwhile, there are many baby dumping cases; as reported in Bali, 40 babies were dumped in 2018-2020.⁶ This number is certainly not small, considering that the case was counted in the last two years and did not include the cases in other provinces in Indonesia.

Protection for babies is arranged in various laws and regulations such as The Criminal Law Codes (KUHP, KUHAP), Law about the Juvenile Justice System, Law on Marriage, Law about health. Law on Child Protection and other legal regulations.⁷ However, in reality, legal protection does not have a fearful effect on society. Nowadays, there are frequent discoveries of babies whom their parents have abandoned.

Some of the factors in baby dumping are the lack of sex education, conservative public views, and the pros and cons of abortion policies. In Malaysia, where most of the population is Muslim, sex education does not get a proportional share in primary educational institutions. Talking about sex is considered to support promiscuity. At the same time, many parents are embarrassed or

⁵ “Baby Dumping: What We Should Do -- Dr John Teo,” *CodeBlue* (blog), August 12, 2020, <https://codeblue.galencentre.org/2020/08/12/baby-dumping-what-we-should-do-dr-john-teo/>.

⁶ “Masih Marak, Berikut Data Kasus Pembuangan Bayi di Bali 2018-2019,” *Tribun Bali*, accessed May 24, 2021, <https://bali.tribunnews.com/2020/01/20/masih-marak-berikut-data-kasus-pembuangan-bayi-di-bali-2018-2019>.

⁷ Muhammad Zaki, “Perlindungan Anak dalam Prespektif Islam,” *ASAS Journal*, Vol.6, No.2, 2014, p. 15.

uncomfortable when their children ask questions or two about sexuality.⁸

Conditions get complicated when women enter pregnancy. Society does not hesitate to give a lousy label to those who get pregnant outside of wedlock. Instead of supporting them, the family puts more pressure on women because they are considered embarrassing. The option for abortion is also unreliable, considering the Law strictly prohibits it, and doctors who are willing to do this practice are hard to find. So what happened next: these women made a wrong decision by leaving their newborn babies at any place unsafe. The family's role is crucial, and the public should not easily judge someone just because he has done something wrong. However, changing the mindset of a society that is already conservative is not as easy. Instead of fully understanding the problem, the Malaysian public has addressed cases like this with something abstract and unclear.

On the other hand, The Indonesia Police Watch (IPW) report shows that throughout 2017, 178 newborns were dumped on the streets. This figure is up 90 cases compared to the previous year. Of the total cases, 79 babies were found lifeless, 10 were fetuses, and 89 others have been rescued. Cases of neglect of babies, still citing IPW's report, were primarily found in Jakarta, with 27 incidents. East Java (24 cases) is second in second place, followed by West Java (23 cases) in third place. Surprisingly enough, Aceh is in the fourth position with 16 cases, making this region a province outside Java with the most cases of dumping babies. The pattern is almost the same as what happened in Malaysia. In Indonesia, sex matters are still considered taboo. Talking about sex is seen as inconvenient - and even distorted. People almost

⁸ “Mengapa Banyak Bayi Dibuang di Malaysia dan Indonesia?,” *tirto.id*, accessed May 24, 2021, <https://tirto.id/mengapa-banyak-bayi-dibuang-di-malaysia-dan-indonesia-dnpD>.

shut their mouths shut when asked about sex, including in family circles.⁹

This situation makes abortion a realistic option. As many as 2 million abortions occurred in Indonesia in 2000. It is estimated that 37 per 1,000 women of childbearing age (15-49 years) have had abortions. However, in the eyes of legal and moral, abortion is like a disease that must eradicate. According to a 2013 Pew Research Center survey, about 89 per cent of Indonesians believe that abortion is morally difficult to accept. Meanwhile, legal perspective, as stipulated in the 2009 Health Law, abortion is prohibited for everyone unless an indication of a medical emergency threatens the life of the mother or fetus and the victim of rape.¹⁰

So, the problem of baby dumping in Malaysia and Indonesia is a big problem that must be solved. Malaysia and Indonesia are predominantly Muslim countries; of course, this fact is essential to pay attention to.

Based on the information mentioned above, the problem of baby dumping is still rampant in Malaysia and Indonesia, which is mainly done by young women who are not yet ready to become a mother, not infrequently, resulting in stretcher pregnancy outside marriage.

Therefore, it needs to be studied more deeply about how the government's efforts to overcome the increasing number of cases of disposal of babies, how the community seeks to provide sufficient education about sex to the millennial generation, and how the Law sees this incident from the perspective of *jinayah* jurisprudence and also the state law that applies in Malaysia and Indonesia. Furthermore, this is the primary purpose of this study.

Baby Dumping: Definitions, issues and problems

Baby dumping refers to two words, "Baby" and "dumping". Dumping in Arabic Words "*Takhlish*" means

⁹ "Mengapa Banyak Bayi Dibuang di Malaysia dan Indonesia?"

¹⁰ Guttmacher Institute, "Aborsi di Indonesia," n.d., 6.

purifying it and purifying it from its stains.¹¹ Meanwhile in other meaning of “*Takhlish*” is Purify him, save him, or distinguish him from others,¹² Ibn Mandhur said: “The yarn gets rid of if confused”.¹³ In Malay and Indonesian, the word dumping refers to the word “*Membuang*”, which means throwing a place to throw rubbish, which is place to throw rubbish. It mentioned that the meaning of disposal is “the place of punishment,” like throwing the punishment to the place of alienation.¹⁴

Meanwhile, the meaning of a baby is a newborn, a young child who came to the existing or life recently. Laura E. Berk said: “The newborn is the newborn from the moment of his birth to the age of 18-24 months.”¹⁵ Therefore, this study will analyze the problem of throwing newborn baby dumping in the place of rubbish.

The term Baby dumping is throwing away babies at any place without caring.¹⁶ Baby dumping means the informal term utilized for relinquishing a baby, presenting it to danger and possible death.¹⁷ So, the definition of baby dumping is the act of throwing, abandoning or leaving the newborn in any public or private place to dispose of it. In this study, researchers will explain the Law of throwing newborns away to the place without taking care of the baby, either live or die.

¹¹ Jama’ah min Kibari al-Arab, *Al-Mu’jam al-Arabi al-Asasi Linnathiqin Bi al-Arabiyyah Wa Muta’allimiha* (Cairo: al-Munadlamah al-Arabiyyah littarbiyyah wa al-Tsaqafah wa al-’Ulum, n.d.). p.414.

¹² Ahmad Abu Haqqah, *Mu’jam al-Nafa’is al-Wasith*, vol. 7 (Beirut: Dar al-Nafa’is, 2007). p.342.

¹³ Muhammad Ibn Makram Ibn Mandhur, *Lisan Al-Arab* (Riyadh: Dar ’Alim al-Kutub, 2003). P.292.

¹⁴ Dewan Bahasa, *Kamus Dewan Malaysia*, 4th ed. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2009). p.209.

¹⁵ Faizah Abdul Rahim, *Pembuangan Bayi Di Kalangan Masyarakat Kini, Perbandingan Dengan Zaman Jahiliyyah* (Kuala Lumpur: Universiti Malaya, 1997). p.143.

¹⁶ Scribd, “Baby Dumping,” 2021, <https://id.scribd.com/doc/37842406/Baby-Dumping>.

¹⁷ Unicef Team, *Baby Dumping* (Minister of Gender Equality and Child Welfare, 2019). p.2.

There are many cases of dumping babies by their mothers. Crimes committed by mothers against their children were declared as something that would be impossible if there were no special causes (personal factors). Disposal of babies is more likely to be psychiatric problems, psychological stress or burdens born by a mother for the child born. In practice in the field, the crime of disposing of babies is a problem that has caught the attention of the public and law enforcement officials. The case of baby dumping is not a simple problem because officers have difficulty uncovering cases where the perpetrators often hide their pregnancies and even deliveries preferring to give birth alone so that officers have difficulty identifying the perpetrator.¹⁸

Historically, Getting rid of births is not a new thing in human life. The Qur'an told us, for example, about what the people of *Jahiliyyah* used to do in the Arabian Peninsula, which is called the infanticide of ignorance (*we'd al-banat*). Because of the awareness of newborns (female). In general, newborns are discarded due to the spread of fornication in society. Allah said a story about this situation in Surah al-Takwir: "*And when the girl-child that was buried alive is asked. For what sin she was slain*" (Q.S.: *al-Takwir*: 8-9).

In this topic, the researcher provides a historical overview of the phenomenon of getting rid of newborns from the time of ignorance to the present day, as Islam forbids fathers from killing their children because of fear of poverty. Moreover, the rights of children in Islam and the evidence for the prohibition of killing children.

Socially, Malaysia and Indonesia are countries that have similar cultures and customs. These two countries have similar cultural products, especially cultures in activities such as habits, artistry, style of clothing, and

¹⁸ Sumiyanto, *Pembunuhan Bayi oleh Ibu kandungnya Sendiri* (Malang: Universitas Brawijaya, 2000). p.24.

language.¹⁹ One cannot deny that one of the factors causing baby dumping is the lack of early sex education because parents still feel taboo when discussing sex with their daughters. In 2011, the BBC released a news report containing the results of a survey conducted by the BabyChild website of 1,700 parents of children aged 5-11. As many as 59 per cent of them do not agree with sex education for children because it is inappropriate to convey it to their children.²⁰ This fact shows that many parents still do not educate their children about sex education. So, most of them did not understand the negative impacts of doing sex without legal married.

Environmental conditions that are not sufficiently supportive of children accessing sex education make them look for alternative avenues such as the internet today. Some of them access pornography to fulfil their needs for knowledge of their sexuality, while others search Google. The results of a 2017 TECHsex Youth Sexuality and Health Online study of 1,500 children aged 13-24 stated that 21 per cent of them chose this search engine as an effective means of studying sexuality and reproductive health.²¹ However, this alternative sometimes causes misunderstanding. Even some children practice sexual action based on what they watch on the internet. Infrequently, that is what causes pregnancy underage, which leads to baby dumping.

Some of the factors that cause baby dumping are as follows: (a) promiscuity, lack of attention from parents affects the associations of today's youth. (b) With free internet access, many teenagers use the internet to do

¹⁹ Elly Malihah, "Membangun Kesepahaman Budaya Indonesia dan Malaysia Menuju Masyarakat Berwawasan Global", *Jurnal Pendidikan Sosiologim*, Vol. 1, No.1, 2011, p. 6.

²⁰ Patresia Kirnandita, "Pengetahuan Seks adalah Tabu: Bikin Malu Sekaligus Penasaran," *tirto.id*, accessed May 24, 2021, <https://tirto.id/pengetahuan-seks-adalah-tabu-bikin-malu-sekaligus-penasaran-cEHw>.

²¹ Patresia Kirnandita, "Pengetahuan Seks adalah Tabu: Bikin Malu Sekaligus Penasaran," *tirto.id*, accessed May 24, 2021.

things that are not appropriate. Like downloading a porn video, after seeing a porn video, many want to practice it. This act is one of the causes of pregnancy out of wedlock. (c) Social media is also influential, chatting with strangers and meeting and having sex. If the person is pregnant, they do not want to be responsible. Then the baby may be thrown away. (d) baby give birth to a baby outside of marriage. penetrator must be afraid of being ostracized by society. (e) Economic factors are influential because of the inability to support the baby born later.²²

Therefore, the causes of social dumping include Feelings of shame or fear of being discovered by the family, pregnancy outside of marriage, Lack of supervision and attention from parents, Weak faith and religious values, Not ready to have children or not ready to marry, age premature, fear of being ostracized by society, women whom their lovers betray, the impact of globalization.²³

From the above explanation, we can summarise that baby dumping has become a frequent thing in society. Not only Muslim but also non-Muslim. Feeling shame, fear of being insulted, and not being ready to be a parent has often affected baby dumping. Because in fact, people like to insult and sneer cause women decide to throw away their babies. According to researchers, this problem must be solved by educating the community and assistance and supervision for perpetrators.

Baby dumping is one of the issues and topics of research that has conducted by many scholars, among the studies related to this research are:

An article entitled: "Comparative Study on Punishment and Preventive Methods of Baby Dumping: Malaysian Perspectives."²⁴ this research by Mazbah

²² Rifqi Firman, "Analisis Kriminologis Kejahatan Penelantaran Bayi," *Jurnal Poenale* 3, no. 4 (2015): 3.

²³ Herdian Ayu Andreana Beru Tarigan, "Upaya Penanggulangan Tindak Pidana Pembuangan Bayi Di Kabupaten Boyolali," *Publikasi Universitas Muhammadiyah Surakarta*, 2018.

²⁴ Misbah Termizi et al., "Comparative Study on Punishment and Preventive Methods of Baby Dumping", *International Journal of Technical Research and Application*. Vol. 2, No. 1 (2014), p. 6.

Termizi, Nurhidayah Abdullah, Noor Ismawati Mohd Jaafar, Mariam Saidona Tagaranao, and Yasmin Hanani Mohd Safian. This paper studied about Child unloading case as genuine wrongdoing in Malaysia. The investigation is critical to discuss the reasonable discipline concerning this wrongdoing. It is not as it was bound to the enactments, but track down the other preventive strategies for the arrangement. In Malaysia, not just the laws utilized. However, other preventive techniques are also accessible, such as mindfulness, observing activities, and child brings forth. This study found that Malaysia needs the preventive method and the punishment method. However, this research is different because, in this study, the researcher will analyze the problem of baby dumping in the social side, legal and Islamic Law (*jinayah* perspectives).

In another research, "The Voice of Youngster on Baby Dumping Issues in Malaysia",²⁵ by Nazni Noordin et.al. The outcome demonstrates a positive connection between mindfulness towards results of free sex, information on sex schooling and strict conviction towards child unloading cases. The critical of this investigation was mindfulness creation on results of having free sex among youths just as guardians and school organization and comprehensive of rigid bodies/offices in viewing appropriately on the effect of this issue towards our social improvement in the worldwide period. The research that will examine in this research is baby dumping from a social perspective, positive Law, and Islamic Law.

In addition, Airlangga Justitia explained in his paper "Baby Dumping: Abandonment Perspective."²⁶ There are 3 (three) legal instruments that contain criminal

²⁵ Nazni Noordin, Zaherawati Zakaria, et al. "The Voice of Youngsters on Baby Dumping Issues in Malaysia.", *International Journal of Trade, Economics and Finance*, Vol.3, No.1, 2012, p. 66. DOI: 10.7763/IJTEF.2012.V3.174

²⁶ Airlangga Justitia, "Pembuangan Bayi Dalam Prespektif Penelantaran Anak," *University of Bengkulu Law Journal*, vol 3, no. 1 (2018).

approvals against the culprits of the wrongdoing of baby/youngster removal, specifically the Criminal Code, Law No. 23 of 2004 on the Elimination of Domestic Violence, and Law No. 35 of 2014 on Child Protection. In any case, recently conceived youngster victimizers are as yet not dispensed with, and one of the components is the absence of conviction of criminal arraignment. Although this research discusses Law, it is different from the study carried out in this research, which will more comprehensively discuss the regulation prohibiting baby dumping and Islamic Law.

From the above research studies, it can be concluded that research related to baby dumping has indeed been carried out in previous studies, but the research that the researchers will do is different from previous research in terms of studies that lead to the problem of baby dumping in terms of social, legal, and also Islamic Law.

Baby Dumping in Islamic Perspective

According to the baby dumping problem in Islam, If we contemplate and look at history before the advent of Islam, eliminating births was widespread during the era of ignorance, called infanticide.

The infanticide of daughters means: burying them while they are alive, that is, whether they are a father or a mother - women bury their daughters alive, or a mother buries her daughter when she was born because they are ashamed of the daughter's child. This bad habit is like the customs of the pre-Islamic Arab community at that time.²⁷

Based on the tragedy that happened in the *Jahilliyah* era, Allah Mentioned in Surah al-Nahl verse 58-59: "And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief. *He hides himself from the people because of the ill he has*

²⁷ Kurdi Kurdi, "Kontinuitas dan Diskontinuitas Al-Qur'an terhadap Tradisi Arab Pra-Islam," *JURNAL PENELITIAN*, Vol. 12, no. 1 (May 2, 2015): 141, <https://doi.org/10.28918/jupe.v12i1.648>.

been informed of. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide." (Q.S.: Al-Nahl: 58-59).

Women in the pre-Islamic era were deprived of fundamental rights, such as their right to life as a female. The father used to support his daughter immediately after her birth, following the prevailing tribal norms, especially the penetration of the Jewish perspective of women, especially in the pre-Islamic era, which has been persistent in infanticide girls. During the closure of its civilizational openness, this penetration of Israeli women is expressed as a prevailing cultural background that reproduces in our jurisprudential consciousness, which made women freedom linked to impurity, shame and space of modesty.²⁸

In addition, the status and right of the child in Islam show that human instinct is to love children. Allah mentions in Surah al-Imran: *"Beautiful for men is the love of things they covet; women, children..."* (Q.S.: Al-Imran:14). Imam al-Qurthubi explained that: Rather, money and children were the adornments of the life of this world, because in money there is beauty and benefit, and in children, there is strength and repulsion, so they became the adornment of the life of this world.²⁹

The Prophet's Sunnah urged the request of offspring, and she wanted to marry and have children. The Prophet Muhammad PBUH said: *"If a person dies, his work is cut off from him except for three."*³⁰ (Hadith narrated by Imam Muslim and Abu Daud). Moreover, he mentioned of them

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- ²⁸ Alfieri Alfieri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia," *Studia Islamika*, Vol. 27, no. 2 (August 3, 2020): 273-307, <https://doi.org/10.36712/sdi.v27i2.9408>.
- ²⁹ Muhammad Ibn Ahmad Abi Abdillah al-Anshari Al-Qurthubi, *Jami' Ahkam al-Qur'an*, vol. 5 (Cairo: Dar Al-Syu'bi, 2000). p.4030.
- ³⁰ Muslim Ibn Al Hujjaj, *Shahih Muslim*, vol. 3 (Beirut: Dar al-Kutub al-ilmiah, 1998). p.1255.

a righteous boy who calls for him.³¹ Islam has given great importance to the rights of the newborn because children are the fruit of life, and they are the most precious thing that a person gains from his worldly life after he believes in God and His Messenger.

Islam did not differentiate between makes males and females. It is human instinct to love children, whether male or female, and that human beings pray to God to provide them with the blessing of offspring so that they may be comforting to their eyes, peace to their souls, and happiness to their hearts.³²

On the other hand, children's rights in Islam are determined by the al-Qur'an and hadith. The suitable means give every One his right so that caring for the child becomes a practical reality and a tangible reality. Some rights of children in Islam between child and his father are: a Father must choose a righteous mother, his right to inheritance, Child's right for observing the life of the fetus, preserving its lineage, naming the newborn well, breastfeeding, custody, alimony, the right to education, justice between children. Meanwhile, children's rights from his mother; breastfed him from his mother's breast, Mothers' mercy on their children, as explained: "*God has ordained paradise for her in her, or freed her from Hell.*"³³

Allah prohibits baby dumping based on what has been mentioned on surah al-An'am: "*Come, I will recite what your Lord has prohibited to you. [He commands] that you did not associate anything with Him, and to parents, good treatment, and do not kill your children out of poverty; We will provide for you and them. And do not approach immoralities - what is apparent of them and what is concealed. And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. This has He*

³¹ Muhammad Syamsu al-Haq al-'Adhim Abadi, *Aunul Ma'bud Syarah Sunan Abi Daud* (Beirut: Dar al-Fikr, 1995). p.69.

³² Zulfikar Ismail and Maisyarah Rahmi Hasan, "Islamic Legal Modernism and Women's Emancipation in Tunisia," *Mazahib* 19, no. 2 (2020): 281-314, <https://doi.org/10.21093/mj.v19i2.2800>.

³³ *Shahih Muslim*. P.79.

instructed you that you may use reason." (Q.S.: al-An'am:151). The significance is, do not kill young children out of poverty that befell, lest see them hungry in lap. For He is the One who provides you and them, i.e., He provides them with the following for you.³⁴

Another verse explained that killing children fearing wealth is probits by Allah and Prophet Muhammad PBUH. *"And do not kill your children, fearing poverty; We shall provide sustenance to them as well as to you; indeed killing them is a great mistake."* (Q.S.: al-Isra: 31). The significance of this verse is that it indicates that God Almighty forbids killing children as He commanded children in inheritance. *"And do not kill your children for fear of destitution,"* that is, fear that you will be poor in the second case, and this is why he gave attention to their livelihood. Moreover, he said: *"The killing of them was a big mistake"*, meaning a great sin.³⁵

To conclude that the problem of baby dumping is similar to burry baby girls in the pre era of Islam. The factors of this practice also shame and fear. However, the punishment of these cases is different because burry baby girls happened pre-Islam, and baby dumping is happening in this era.

The act of throwing away a baby is often related to pregnancy outside of marriage, otherwise known as adultery (*Zina*) in Islam. *Zina*, according to fiqh, is intercourse between a man and a woman without any legal marriage bond, namely entering the male sex into the sex of women, at least to the limit of *Hashanah*.³⁶ In Islam, adultery is considered a crime with the finger. Islam strictly forbids adultery as in the word of Allah SWT in the Qur'an: *"And do not approach unlawful sexual*

³⁴ Muhammad Rasyid Ridho, *Tafsir Al-Manar*, vol. 8 (Egypt: al-Hai'ah al-Mishriyah li al-Kutub, 2002). p.164.

³⁵ Ismail Ibn Umar Ibn Katsir, *Tafsir Ibnu Katsir*, 1st ed., vol. 5 (Beirut: Dar al-Ammah Thayyibah, 2002). 71-72.

³⁶ Muhammad Abdul Mujieb, et.al, *Kamus Istilah Fiqh*, (Jakarta: Pustaka Firdaus,2002), p.443.

intercourse. Indeed, it is ever an immorality and is evil as a way." (Q.S.: al-Isra':32).

There are two kinds of adultery, namely *Ghairu Muhsan*, which means adultery carried out by people who have never been legally married. For the punishment imposed on the adulterer with this status is one hundred lashes times based on Q.S. al-Nur: *"The [unmarried] woman or [unmarried] man found guilty of sexual intercourse – lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment."* (Q.S.: An-Nur:2). And *Muhsan*; If the perpetrator is married do it voluntarily (no forced, not raped), they were lashed 100 times, then stoned (*rajam*), this based on the punishment applied by Ali bin Abi Talib. They are stoned without being flogged, and this is better, as laws applied by Muhammad, Abu Bakr ash-Siddiq, and Umar bin Khattab.³⁷ According to these verses, Islam is prohibited *Zina* and has punished adulterers.

Legal Regulation of Baby Dumping in Malaysia and Indonesia

1. Malaysian's Government's Law of Baby Dumping

The issue of baby dumping is not new in Malaysia, but this phenomenon is increasing daily in many cities and regions. As for Malaysia, this problem increases because adultery spread among people, even among members of the Malaysian's Muslim community.

Baby dumping causes arise among Malaysian youth, and it often arises because of a disturbance between the man and the woman after they enter into a sexual relationship without a marriage contract, which is fornication. It is forbidden, according to Sharia, for fear of punishment or contempt from the family and moving away from people; this action occurs. In

³⁷ Rahmawati, "Tindak Pidana Perzinaan dalam Prespektif Perbandingan antara Kitab Undang-undang Hukum Pidana dan Hukum Pidana Islam", *Jurnal An-Nisa'*, Vol.8, No.1, 2013. P.16.

addition, the woman's despair from her partner in the forbidden One who commits his act leaves it and escapes without virility, so he does not bear the responsibility of her pregnancy while she alone faces the responsibility of her pregnancy and gets rid of him immediately after his birth.

Therefore, the Malaysian government has introduced the disposal of births into the criminal Law (*Kanun Keseksaan*) and made every effort to return to common sense, the instinct of good parenting, and among those laws are the following:³⁸

- a) Penal Code Article 318: Disposing of births is a crime punishable by two years of imprisonment, fine, or both.
- b) The laws year 2001 stipulates a fine not exceeding twenty thousand ringgit or imprisonment for a period not exceeding ten years, or both.
- c) In the year 2011, the Malaysian government issued a special law for the protection of children No. 31, and Article 302 of it considered the baby dumping or murders will be punishable by death, as stated in the Law: "Whoever kills intentionally must kill."
- d) While Article No. 307 of this Law considers it an attempt to murder, the perpetrator is punished with twenty years imprisonment, as stated in the Law:
 - 1) Article (1): "Whoever kills someone with intent or intentionally killing him, then the murdered person dies, he must be imprisoned for 10 years, or blood money," Or if he severely cuts someone else, he should be imprisoned for 20 years.
 - 2) Article (2) stipulates The One who is wrong under this section, if the person is injured, he

³⁸ Mohd. Fuzi Harun & Roseli Ahmad, *Intisari Kanun Keseksaan* (Kuala Lumpur: Dewan Bahasa dan Pustaka Kementerian Pendidikan Malaysia, 1993).p. 156.

must be imprisoned, imprisoned for 20 years, or killed.

The same Law stipulated that employees and workers in the social care department can be sponsors and assistants for a pregnant woman outside the correct marriage, fearing that she will not get rid of her pregnancy and child.

If they are Muslims, then Islamic Sharia has a particular ruling on the adulteress, if she is married, he must be stoned, and if she is not married, he must have a hundred lashes. Some scholars argue that stoning punishment (*Rajam*) is unmentioned in the Quran, so it has no foundation to apply to Muslim society. However, the basics of implementation stoning punishment can be found in the Prophet tradition (*Hadith*), which has applied for adultery (*Zina*) conductor who has wife or husband (*Muhshan*).³⁹ Rasulullah (PBUH) has mentioned in hadith: *“Sa’id bin ‘Ufair told us, he said that he received from al-Layth which he received from Abdurrahman bin Khalid, from Ibn Shihab, from Ibn Musayyab and Abu Salamah that Abu Hurairah once said: “A man came to the Messenger of Allah. While at that time, he was in the mosque. The man is calling Rasulullah said, “O Messenger of Allah, indeed I have committed adultery.” Then the Prophet turned his face away. Then the man moved to the front of the Prophet after turning away and saying again, “O Messenger of Allah, indeed I have adultery.” The Prophet turned away a second time. Then he testified as much as four times; then the Prophet said: “Are you crazy?” The man replied: “No, O Messenger of Allah.” Then the Prophet asked again: “Are you muhshan (married)?” The man replied: “Yes, Messenger of Allah. Messenger of Allah said to his companions: “Go and do the stoning” to*

³⁹ Hamdiah A. Latif, “Hukuman Rajam dalam Al-Qur’an dan Sunnah: Suatu Ikhtiyar Pembacaan Ulang”, *al-Mua’shirah Journal*, Vol.16, No.1, 2019, p.1.

him."⁴⁰ This hadith explained that adultery married and doing *Zina* must be stoned.

There are many efforts by the Malaysian government to eliminate this process, the disposal of newborns is still increasing day by day, campaigns and performances, and a fine of up to 20 years imprisonment for those who committed this crime, but with great regret that these efforts did not reach any result that wants: government and Malaysian Society. The reason for all of this is due to the change in the ethics of society, the spread of Western cultures and ideology, globalization, and barbarism have an essential role in destroying the ethics of the Malaysian Muslim society, by supporting that the sexual relationship is a human right, and the sexual relationship between Malaysian youth and girls became common without a valid contract, so something happened. It happened, and in most cases, the man leaves the woman pregnant, and the woman lives in embarrassment, fear, and turmoil, for the woman's despair is a primary reason for their disposal of newborns.

Islam prohibits abortion, killing and disposing of the fetus and child.⁴¹ As Allah mentioned in Surah Al-An'am, verse 151: "... and do not kill your children out of poverty; We will provide for you and them. Furthermore, do not approach immoralities - what is apparent of them and what concealed. And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right..." this verse shows that parent does not kill their child because Allah will provide poverty for everyone in this world.

Malaysian government allocated the death penalty to those who disposed of newborns, so it entered the

⁴⁰ Abu Abdillah Muhammad bin Ismail Al-Bukhari, *Shahih al-Bukhari*, (Kairo: Dar al-salam, 2005), Vol.8, p.257.

⁴¹ Fatmawati, "Aborsi dalam Pandangan Islam: Meluruskan Problema Perempuan di Mata Publik", *Jurnal Al-Maiyyah*, Vol 9, no. 1 (2016): 13.

issue of disposing of births to Article 302 of the Malaysian Penal Code, where this offence was considered a crime of murder punishable by death.

The baby dumping cases in the world, scholars have almost talked about this issue, whether it is in the West or other countries. The researcher sees this because of a rare reason for them. Muhammad Asri Zain al-Abidin, a former mufti of the State of Perlis, said: "The time has come for this country to apply the Islamic Sharia law based on the texts of the Qur'an to educate and remember so that adultery and getting rid of births are not out of society's habit." Moreover, it needs to bring scholars and teachers closer to applying this Law wise so that this issue will not be widespread in Malaysia. It confirms what Yusuf Al-Qaradawi said regarding the issue of the children adopting the husband's mother, even if she was pregnant before marriage. One of the reasons for getting rid of births in Malaysia is that a woman who gives birth to a child without marriage will often feel shy and try to hide their children from society.⁴²

In order to this issue, the scholars must search for these rulings not only from the Shafi'i school thought but from other schools of thought. Moreover, preventing the disposal of births is a duty of the government and all members of Malaysian society.

The chief minister of the State of Kelantan said on the social issue: "It is support for punishment for giving birth to a child that is more severe than the punishment prescribed now because the punishment today tends to have compassion for the perpetrator."⁴³ His real purpose is the lack of religious awareness because the Law is not an honest answer to solving this

⁴² Jpn Muslim, Ust. Asri, accessed May 31, 2021, <http://archive.org/details/Ust.Asri>.

⁴³ Ibnu Hasyim, "Sokong Hukuman Lebih Berat Kes Buang Bayi -Nik Aziz," accessed May 31, 2021, <http://www.ibnuhasyim.com/2010/08/sokong-hukuman-lebih-berat-kes-buang.html>.

problem, such as bribery and the disposal of births.⁴⁴ Nik Abdul Aziz argued: "The application of the Law is not sufficient to prevent the baby dumping problems in Malaysia. The foundations on which it should be is the correct Islamic religious education, starting from the family; parents, and the school; the teacher and teacher, the educator, the nanny, the government or the State."⁴⁵

The *hudud* penalty was not applied in Malaysia, not only as punishment but for the education of the whole community. Moreover, we will deal with the limits in the other section of this study.

According to this argumentation, there are regulations prohibiting baby dumping cases, especially the programs that can prevent Muslim society from doing that deed.

2. Indonesian's Government Law about Baby Dumping

Baby dumping is an act that seriously injures humanity and morals related to existing norms. Moreover, the act of throwing away the baby is a criminal act. If the actual baby dumping and is carried out by a parent who, in this case, is the mother who threw the child away after birth, then the criminal threat related to this is contained in Article 308 of the Criminal Code:

"If a mother is afraid that people will find out about her birth. the child, not long after giving birth, places the child to be found or leaves him with the intention of escaping from him, then the maximum penalty in Articles 305 and 306 reduced by half (1/2)".

"As for Article 305 of the Criminal Code provides rules regarding placing / placing minors. 7 (seven) years (including a baby) in a place to pick up by someone else to

⁴⁴ "Nik Aziz sokong hukuman lebih berat kes buang bayi," Malaysiakini, 15:09:54+08:00, <https://www.malaysiakini.com/news/139991>.

⁴⁵ Ahmad Mawardi Bin Abdullah, "Kebijakan Politik Islam Nik Abdul Aziz Nik Mat Di Kelantan Tahun 1990-2008," n.d., 117.

be free from the care of the child shall be sentenced to 5 (five) years and 6 (six) months. In comparison, the weighting of this which affects the child has injured The weight according to the provisions of Article 306 paragraph (1) of the Criminal Code is 7 (seven) years and 6 (six) months and will aggravate if in the case of carrying out the disposal of the baby it causes the death of the baby, he sentenced to imprisonment for 9 (nine) years. It also violates Article 341 of the Criminal Code, Article 342 of the Criminal Code and is a violation of Law Number 39 of 1999 concerning Human Rights relating to children's rights where the child, since he is still in the womb (fetus) has the right to live and live. Maintain its life.⁴⁶

These laws above mentioned that Indonesia state law for baby dumping cases. It includes the criminal code when the guilty person will be punished based on the case. If a mother leaves her baby away and is found alive, she will be imprisoned for seven years, and if the baby throws with injury, it will be punished by seven years and six months. Meanwhile, if the baby is found dead, the perpetrator will be imprisoned for nine years.

Some cases of child abandonment mainly carry out their biological mothers and are usually carried out after the birth process; because most do this because they are afraid and worried that other people would know that they are pregnant and giving birth to a child. Crimes committed by a mother against her child are declared as something impossible to happen if there is no particular cause (secrete factors). The cases of dumping a newborn child are more likely to be psychological problems, the pressure or psychological burden a mother bears on the child she is born with, as well as social-environmental problems.⁴⁷

The criminal law policy on the neglect of children (infants), which will discuss, is related to legal regulations such as the Criminal Code, Law Number 8 the Year 1981 concerning Criminal Procedure Law, and

⁴⁶ "Pembuangan Bayi Dalam Prespektif Penelantaran Anak."

⁴⁷ *Pembunuhan Bayi oleh Ibu kandungnyanya Sendiri.*

Law Number 35 of 2014 concerning Amendments to Law.⁴⁸

Article 305 means that there are two criminal acts, i.e. discarding a child under the age of seven and leaving the child with the aim of releasing the child from the perpetrator. The difference between the two acts is that leaving the child is done by someone who has a legal relationship with the child, while the child's disposal can carry out anyone or those who have no relationship with the child. The child must be under the age of seven, and this does not need to be known by the perpetrator because the article does not state that element must be intentional, while it can be seen from the element of "objective" to release the child from the perpetrator.

According to Article 308 of the Criminal Code, if a mother throws away her child not long after the child is born, out of fear that people will find out that she has given birth to a child, or if she leaves the child with the aim of releasing the child from him out of fear too, the maximum penalty for the crime is from Article 305 and Article 306 of the Criminal Code, it is reduced by half.⁴⁹

Therefore, The provisions regarding children are set in the constitution of the State of Indonesia, namely in Article 28B paragraph (2) of the Law Basic of the Republic of Indonesia 1945 (UUD NRI 1945). Namely in the article states that "Every child has the right to survival, growth, and develop and have the right to protection from violence and discrimination." It can interpret that the State is fully responsible for all

⁴⁸ Eli Julimas Rahmawati, "Penelantaran Anak (Bayi) Dalam Prespektif Hukum Pidana (Studi Kasus Di Wilayah Kota Surakarta)". *Undergraduate thesis*, Faculty of Law, Universitas Muhammadiyah Surakarta, 2017

⁴⁹ "Kitab Undang-Undang Hukum Pidana, Pasal 308," n.d.

children's survival, growth, and development in Indonesia.⁵⁰

Thus, Indonesia as a state of Law has been implemented the Law according to the baby dumping case. This matter is arranged in The Criminal Code of Indonesia article number 304, 305, 306, 307, 308. Meanwhile, if the perpetrator is children, the Law must protect children law regulated in Indonesia.

To sum up, both countries, Malaysia and Indonesia, have been implemented laws about baby dumping. This case includes the criminal case. Even Ulama in these countries said that baby dumping is a great sin that must be shunned and avoided.

Criminal Law in Islam (*Fiqh al-Jinayah*)

The word *jinayah* in legal terms is often called a crime or offence. It has several meanings, such as: expressed by Abd al-Qadir Awdah, *jinayah* is an act that is prohibited by syara', whether it is an act regarding life, property, or other.⁵¹ Meanwhile, according to Sayid Sabiq: "*Jinayah* according to the Islamic Sharia tradition is all actions prohibited by Sharia law. Prohibited is any action prohibited by the Shari'a and must be avoided because this act causes a real danger to religion, soul, reason (intelligence), self-esteem, and property."⁵²

Some *Fuqaha* use *jinayah* to actions relating to the soul or limbs, such as killing, injuring, and abortion. Thus the term *fiqh jinayah* is the same with criminal Law. Some other *Fuqaha* define "*jinayah*" used by the *Fuqaha* is the same as the term "*jarimah*", which is defined as

⁵⁰ Rizqi Mayang A, "Tindak Pidana Pembuangan Anak yang Baru Dilahirkan Serta Pertanggungjawaban Pihak Terkait," *Jurist-Diction* 2, no. 2 (July 9, 2019): 687-702, <https://doi.org/10.20473/jd.v2i2.14259>.

⁵¹ Abd Al-Qadir Awdah, *At-Tasyri' al-Jina'i al-Islami* (Beirut: Dar al-Kutub al-ilmiah, 1963). p. 67

⁵² Sayid Sabiq, *Fiqh Al-Sunnah*, 3rd ed. (Cairo: Maktabah Dar al-Turats, 1970). Vol.4, p.5.

God-given legal prohibitions violators are subject to Law in the form of things or *ta'zir*.⁵³

So, the definition of *fiqh al-jinayah* is criminal Law in Islamic Law are the provisions of sharia law that prohibit doing or not doing something, and transgression against the provisions of the Law are subject to punishment in the form of bodily suffering or property.⁵⁴

The classification of Criminal Law in Islam can be divided into several types; Firstly: *Jarimah qisās* and *diyat* are threatened with punishment *visas* or *diyat*. *Qisās* and *diyat* both are punishments that have been determined by *syara'*. The difference with punishment had is that had is the right of Allah (right society), while qisas and diyat are rights human (individual).⁵⁵ In this qisas punishment, some of the provisions are: 1. the punishment is particular and limited, 2. the punishment is an individual right in that the victim or his family has the right to pardon the perpetrator. There are only two kinds of jarimah qisas and diyat, namely murder and persecution. However, if it expanded, there are five kinds: a) intentional murder, b) intentional like murder, c) intentional mistreatment, d) unintentional mistreatment.⁵⁶

Secondly: *Jarimah hudud* is a finger threatened with had punishment; the meaning of had punishment is a punishment determined by *syara'* and becomes the right of Allah (the right of the community).⁵⁷ With the following conditions: a) the punishment is specific and limited, b) the punishment is the right of Allah alone.

⁵³ Abd Al-Qadir Awdah, *Al-Tasyri' Al-Jindi Al-Islami* (Beirut: Al-Risalah, 1998). Vol.1, p.66.

⁵⁴ Haliman, *Hukum Pidana Syariat Islam Menurut Ajaran Ahli Sunnah* (Jakarta: Bulan Bintang, 1971). p.71.

⁵⁵ TM Hasbi Ash-Shiddieqy, *Pidana Mati Dalam Syari'at Islam* (Semarang: PT Pustaka Rizki Putra, 1998). P.7.

⁵⁶ Rahmat Hakim, *Hukum Pidana Islam (Fiqh Jinayah)* (Bandung: Pustaka Setia, 2000).29.

⁵⁷ Syeikh Muhammad Syaltut, *AL-Islam al-Aqidah Wa al-Syari'ah* (Beirut: Dar al-Kutub al-ilmiyah, 1985).14.

There are seven kinds of hudud in this case: 1) *Jarimah Zina*, 2). *Jeremiah qazaf* (accusing adultery), 3). *Jarimah syurbul khamr* (drinking), 4). Finger of theft (*sariqah*), 5). *Jarimah hirabah* (robbery), 6). *Jarimah riddah* (out of Islam), 7). *Jarimah Al Bagyu* (rebel).⁵⁸

Thirdly: *Jarimah Ta'zir* is a finger that threatened with *ta'zir* punishment. *Ta'zir* is also interpreted as *ar-rad wa al-man'u*, which means refusing and preventing. However, according to the terms, as stated by Imam Al Mawardi. *Ta'zir* is a punishment for violations and crimes not regulated in the hadd law. These penalties vary according to different cases and perpetrators. From one point of view, this *ta'zir* is in line with the hadd law; it is an action taken to improve human behaviour and prevent others from doing the same.⁵⁹

In summary, it said that the punishment *ta'zir* is a punishment that has not been determined by *syara'*, but it is left to *ulil Amri* on determination and implementation. In determining the punishment, the ruler imposes penalties globally only. Meaning legislators do not stipulate penalties for each *ta'zir* but only set a set of punishments, from the lightest to the most severe.⁶⁰ The purpose of giving the right to determine the finger of *ta'zir* and the punishment to the ruler is to organize society, maintain interests, and deal with the best of every sudden situation.⁶¹

The characteristic of the finger of *ta'zir* is a. The punishment is indefinite and unlimited. b. Determination

⁵⁸ Makhrus Munajat, *Dekonstruksi Hukum Pidana Islam* (Yogyakarta: Logung, 2004).12.

⁵⁹ Imam al-Mawardi, *Al-Ahkam al-Sulthaniyah Wa al-Wilayat al-Dinniyah* (Beirut: al-Maktabah al-Islamiyah, 1996).239.

⁶⁰ Maisyarah Rahmi Hasan, "Qanun Man'i al-Maysir Fi Wilayati Aceh: Dirasatun Tahliliyatun Fi Dhaui Maqasid al-Syari'ah," *Mazahib* 15, no. 1 (December 22, 2016): 61–89, <https://doi.org/10.21093/mj.v15i1.618>.

⁶¹ Marsaid, *Al-Fiqh al-Jinayah (Hukum Pidana Islam): Memahami Tindak Pidana Dalam Hukum Islam* (Palembang: CV. AManah Rafah Press, 2020). 91.

of the punishment is the right of the ruler.⁶² In contrast to *Jeremiah hudud* and *qisas*, the number of *ta'zir* did not determine. It is because what is included in this *ta'zir* is every immoral act that is not subject to had and *qisas*, which are very numerous.

So, *jinayah* in Islam can classify into their types; as explained by Wahbah Zuhaily, there are three types of punishment or punishment in Islamic Law: *hudud*, *ta'zir* and *qisas - diyat*. *Hudud* is a sanction that has been determined by punishment, and the criteria for its actions in the Law Al-Qur'an and Sunnah are the rights of Allah, while *ta'zir* is different from *hudud* and *qisas* because *ta'zir* is a decision taken by a judge, not a decree from Allah SWT, and *ta'zir* is a human right not including Allah's right. *Hudud* called Allah's right because *hudud* prescribed to maintain honour human, lineage, property, religion, soul and mind, which is the purpose of the revelation of Islamic Law.⁶³

According to the theories mentioned above, we can conclude that baby dumping cases include criminal Law (*fiqh al-jinayah*) because the act of this abuse is set in Islam. Humans are forbidden to kill humans. The term *qiṣās* is mentioned four times, all in *ism* (noun). Two use the definitive noun (*al-qiṣās*), as in Q.S. al-Baqarah/2: 178 and 179. Meanwhile, the other two use the indefinite noun (*qiṣās*), as found in Q.S. al-Baqarah/2: 194 and Q.S. al-Ma'idah/5: 45. Therefore, *qiṣās* mentioned in Quran:

“O ye who believe! Retaliation prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. Moreover, for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from the Lord. He who transgresseth after this will have a painful doom.” (Q.S.: Al-Baqarah:178).

⁶² Hasan, “Qanun Man'i al-Maysir Fi Wilayati Aceh.”

⁶³ Wahbah al-Zuhaily, *Fiqh al-Islami wa al-Adillatuh* (Damaskus: Dar al-Fikr, 2008). Vol.9, 711.

*Indonesia is one of the countries that still maintain the death penalty as a sanction for certain crimes, although the pros and cons of the death penalty continue to occur in this country. In the Draft Criminal Code, which the DPR RI will soon ratify, the legality of the death penalty is still recognized as one of the criminal sanctions. Based on Law Number 2 PNPS of 1964, the implementation of the death penalty in Indonesia no longer uses the provisions in Article 11 of the Criminal Code; the implementation of the death penalty is then explicitly regulated in the National Police Chief Regulation Number 12 2010. Perhaps it is stated that the death penalty is carried out by shooting the heart. The firing squad convicted them.*⁶⁴

Baby Dumping in Malaysia and Indonesia According to State law and Islamic Law

According to the information mentioned before, it can be known that the problem of baby dumping in both Malaysia and Indonesia has been prevented by issuing the special Law for baby dumping's cases.

In Malaysia, the regulation of baby dumping's cases started as murder cases according to Section 302 Kanun Keseksaan, which carries a mandatory death penalty. In addition to attempted suicide under section number 307, the same Law carries a maximum prison sentence of 20 years. Therefore, the Malaysian government has implemented the Law, even set it as a murder case in Islam can be given the same punishment as being killed (*qisas*). However, these baby dumping cases are still happening, increasing every year. Then the cooperation of all parties and aspects must be involved to reduce baby dumping's cases.

In Indonesia, baby dumping's cases have been regulated in the Criminal Code article 305, 306, 307, 308. In article 308 of the Criminal Code, it wrote, if a mother,

⁶⁴ Fariz Farrih Izadi, "Penerapan Hukum Pancung Bagi Terpidana Mati di Provinsi Aceh dalam Prespektif Hukum Positif dan Hukum Islam", *Jurnal Tahkim*, Vol.2, No.1, 2019, p. 20.

fear of being known about the birth of her child shortly after giving birth, places her child to be found or leaves him with the intention of breaking away from him, then the maximum penalty referred to in articles 305 and 306 reduced by half.⁶⁵

This Law explained in article number 306. When the child/baby gets a severe injury, the guilty person is threatened with a maximum imprisonment of seven years and six months (KUHP 90). However, if a baby is dumped found in death, the guilty person shall be punished by a maximum imprisonment of nine years.⁶⁶ This regulation mentioned classifications of the punishment in Indonesia based on the case's investigation. This act looks at both perspectives of the perpetrator and the baby's condition, who throw away.

In addition, according to the perpetrator, if the guilty person is the baby's parent, then the punishment specified in articles number 305 and 306, then the punishment can be increased by one third, as mentioned on KUHP 35, number 305, and 359.⁶⁷

So, the problem disposing of babies occurs in Indonesia and Malaysia has been handled by implementing laws related to this matter. In Indonesia, using laws and regulations that refer to the criminal code of Law, as well as the Law of the Republic of Indonesia number 35 of 2014 concerning the crime of child disposal. Meanwhile, Malaysia has implemented a law related to the prohibition of throwing away the baby in the qanun on torture. One of the countries in Malaysia, namely Negeri Kelantan, has made a rule that enforces Islamic Law with qanun *qisas*. This solution is to overcome the problem of disposing of babies, which is still rampant.

Meanwhile, Islamic Law states that the baby dumping problem is not new. In the pre-Islam era, there

⁶⁵ “Kitab Undang-Undang Hukum Pidana, Pasal 308.”

⁶⁶ “Kitab Undang-Undang Hukum Pidana (KUHP) Pasal 306.”

⁶⁷ “Kitab Undang-Undang Hukum Pidana (KUHP) Pasal 307,” n.d.

was also infanticide babies by burying alive. However, after Islam, this custom was forbidden. In addition, according to Islamic Criminal law, baby dumping include one of the *ta'zir* cases. Although the Law of the killer is killed (*qisas*), the regulation of punishment for baby dumping cases still refers to the government and *Qadhi*, who can decide whether to be given prison or a fine. Even then, this case will classify a murder, underage or adult due to a state system that adheres to the Republican system and democratic in Indonesia and the royal system in Malaysia. The lack of sanction also affects the problem of baby dumping in both countries.

Conclusion

The result of this research shows that Malaysia and Indonesia have similarities and cultures and customs, more or less these habits affect the way of treat women's pregnant without legal married, less sexual education, feel ashamed, fear out, even not ready to become a parent are included in the factors of baby dumping problems.

Meanwhile, to reduce the cases, governments have been tried to implement the state laws of baby dumping. In Malaysia, applied Criminal Laws, the perpetrator of baby dumping will imprison for two years, according to *Kanun Keseksaan* article Number 318; however, if baby dead, the section increase to imprisoned ten years. In addition, in 2011, Malaysia issued a regulation that baby dumping cases will punish as murder, kill will kill. Or prison ten years and fine, or imprisonment 20 years and death.

On the other hand, Indonesia also has arranged the criminal laws of baby dumping cases. The Criminal Code mentions that the perpetrator of baby dumping can punish a prison for at least seven years if the baby throws getting injured, and if the baby is found dead, the sanction raises to be imprisonment for nine years. Furthermore, it can be included as a death punishment if the murder is to kill the baby deliberately.

Compared to Malaysia, Indonesia provides lighter sanctions to baby dumping cases. However, both countries have implemented the laws as a way to reduce this problem.

In Islam, baby dumping is one of *jarimah ta'zir* (where the governments have the power to punish the perpetrator); although the case of baby dumping can include a *qisas*, the Law of *qisas* is still not applied for baby dumping cases.

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