

LEGAL REVIEW OF THE DISPOSAL OF NEWBORN CHILDREN IN THE PERSPECTIVE OF ISLAMIC LAW

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ABSTRACT

From an Islamic legal perspective, abandoning a newborn baby is forbidden and a major sin. This act is considered a serious violation because it goes against God's mandate, contradicts Islamic teachings on compassion and protection for children, and violates the child's right to life. Islamic law categorizes the crime of abandoning a newborn baby as *crime* (crime) which can be in the form of neglect or murder, with consequences of punishment *ta'zir* (punishment handed over to the ruler) or, in the case of murder, may be imposed *qisas* (equitable punishment) depends on the differences of opinion of the scholars. Law enforcement against the crime of abandoning a newborn baby according to Islamic law can be categorized as a crime of murder (*murder crime*) if it causes death, or as a harmless measure if the baby is disposed of in a safe place. For perpetrators, the punishment varies depending on the perpetrator's intentions and his sect. If the intent was to kill, there are differing opinions regarding punishment *qisas* or *diyat*. If there is no intention to kill, the perpetrator can be punished *ta'zir*.

1. Introduction

Children are the most precious gift to every family, the heirs and successors of their parents. A mother, on the other hand, is a loving and compassionate figure, willing to sacrifice anything for her children. However, these days, news stories of stillborn babies found in plastic bags are frequently reported in the media.

Infanticide not only violates fundamental human values but also degrades human dignity, as the inherent religious morality of a person also plays a significant role in the crime of infanticide. Therefore, according to Barda Nawawi Arif, criminal law is most closely aligned with spiritual values or morality.

From an Islamic legal perspective, abandoning a newborn baby is forbidden and a major crime (*jarimah*) because it violates the fundamental principles of Islam regarding the protection of life and humanity. Islam forbids abandoning a baby, and such an act can be categorized as murder if the baby dies, or as another crime with an unspecified penalty (*ta'zir*) if the baby is found alive.

Islam highly values human life. Abandoning a baby is tantamount to demeaning and ignoring the value of life, which must be protected and cared for. This act also constitutes a disregard for dignity and humanity, especially for innocent and vulnerable infants.

Islam emphasizes the obligation of parents to care for and raise their children. Abandoning a child constitutes a neglect of this responsibility. Although no verse in the Quran or Hadith explicitly mentions "abandoning a child," Islamic law classifies the act as a punishable crime. Punishments vary depending on the intent and the condition of the baby when found. The punishments are intended to uphold justice, provide a deterrent effect, and educate society to uphold moral and religious values.

Besides these reasons, there is a motivation to commit a crime because the mother is afraid of being found out that she has given birth to a child, because the child is a child from an illicit relationship or an unwanted child. In addition to these reasons, the time of the act of taking the child's life is carried out, namely at the time the child is born or shortly thereafter, in this case the benchmark is whether or not there are signs of care, cleaning, cutting the umbilical cord, or being given clothing. The time of the crime is associated with the emotional mental state of the mother where in addition to shame, fear, hatred, confusion and pain are mixed together so that the act is considered to be done in a mental state that is not calm, conscious and mature calculation

2. Research Method

This research is descriptive in nature. Descriptive research aims to provide the most accurate data possible. This descriptive study begins with collecting data related to the discussion above, then organizing, analyzing, and interpreting the data to obtain a clear picture of the phenomenon being studied.

In accordance with the research problems and objectives, the type of research used is normative legal research. The type of research used in this study is normative legal research by examining library materials or secondary data materials which include books and legal norms contained in laws and regulations, legal principles, legal rules and legal systematics as well as reviewing statutory provisions, court decisions and other legal materials relevant to the formulation of the research.

The type of research conducted in compiling this thesis uses the normative legal research method (normative juridical). Normative juridical research is legal research that refers to legal norms contained in legislation. It examines literature

or secondary data covering the principles of legal systematics, levels of vertical and horizontal synchronization, comparative law, and legal history

3. Results And Discussion

Abandoning a baby is strictly prohibited under Islamic law and is considered a major sin (jarimah), especially if it results in death, as it violates the fundamental principle of protecting the soul (hifz al-nafs). This act can be categorized as murder or child neglect.

Islam strictly forbids all forms of abuse, neglect, and even murder of children, whether born or unborn. The cruel practice of burying baby girls alive (wa'd al-banat), which was widespread in pre-Islamic Arabia (Jahiliyah), was completely stopped by the teachings of the Quran.

The crime of abandoning babies is discussed in Fiqh Jinayah (Islamic criminal law) because it fulfills the elements of a crime against fellow human beings.

1. If the baby dies.

This act is considered murder (qatl). The punishment is severe, possibly in the form of qisas (equitable retribution), although in some schools of thought, parents who kill their children are not subject to qisas, but rather to severe ta'zir (discretionary punishment by the judge). The perpetrator will also be held accountable in the afterlife, and the Qur'an outlines severe consequences for murderers, including the wrath and curse of Allah and the eternal punishment of Hell.

2. If the baby survives (neglect)

This includes child neglect and the failure of parents to fulfill their fundamental obligation (hadanah) to protect, care for, and fulfill the child's rights. The penalty is ta'zir (a sanction imposed by the ruler/judge, which can include imprisonment, a fine, or light corporal punishment, depending on the policy of the competent government). Child neglect is a major sin and is strictly prohibited.

Parents have a sacred responsibility in Islam to care for and educate their children. Abandoning a baby is a betrayal of that trust. In Indonesia, positive law also strictly regulates this, including the Child Protection Law and articles of the Criminal Code concerning child neglect or murder, which align with the principles of human rights protection and sharia.

Throwing away a baby in Islam is a forbidden act and a major sin. This action is contrary to the basic principles of Islamic teachings which emphasize the protection of the right to life of every human being, especially children, and the obligation of parents to care for and be fully responsible for their offspring.

Abandoning a baby is considered an act of injustice and a serious violation of Allah's commandments. The Quran strictly forbids infanticide, even for financial reasons. Every unborn child has the right to life, and all life is considered sacred in Islam. Abandoning or neglecting a child violates this fundamental human right.

Islam requires parents to care for, nurture, and provide affection to their children. Neglecting a child without urgent reason is reprehensible and forbidden. This act is seen as having extraordinary consequences of sin before Allah SWT.

In Islamic criminal law (jurisprudence), child abandonment is categorized as a crime (jarimah) that is punishable by punishment. If the abandonment is done with the intent to kill or cause death, the punishment can be more severe, depending on the intent and the consequences. Overall, Islam encourages its followers to love all of Allah's creatures, especially children as a trust and gift from Him

The criminal act of abandoning a child by a biological mother in Article 308 of the Criminal Code, the perpetrator is a woman (mother), which in terms of jinayah fiqh is called jaaniah, while the person who is the target or object of the jaaniah's actions or those who are affected by the perpetrator's actions is called mujnaa alaih or victim, which in this case is his own biological child.

The most important characteristic of child abandonment by a biological mother, as defined in Article 308 of the Criminal Code, is the deliberate intention to abandon the child, intending to abdicate her responsibilities as a parent. She then neglects the child by abandoning it.

The intention of Jaaniyah has resulted in misery, and has even resulted in death. Apart from that, this intention has violated the provisions on the rights of children which must be obtained from their mothers as stated in the text which is a responsibility that must be carried out by the mother. One of them is the right to receive AS1 (Mother's Milk). This is regulated based on the text in Surah Al-Baqarah verse 233: "The ibn should breastfeed their children for two full years, namely for those who wish to complete breastfeeding."

Another right of children is to receive a good education, which parents must provide for their children. This is contained in a hadith from Ayyub Musa, who presented this hadith through his father, which he received from his grandfather. The Prophet (peace be upon him) once said: "There is no gift that parents give their children better than a good education (Hadith narrated by Titmidhi).

Good education means that parents should teach their children how to eat, how to drink, how to get along with other people, how to make a living, and how to

get along with them. Parents must also teach their children the things that are mandatory for their children towards God and towards His creatures.

The greatest right that must be obtained by children, and is the responsibility of parents, including mothers, is the right to receive affection, because it is an obligation for Muslims to love each other, as stated in the hadith by Abdullah ibn Amr ra, that the Prophet once said: "Those who are merciful are merciful by the Most Merciful God. Be merciful to the inhabitants of the earth, and the heavens will be merciful to you."

The criminal act of abandoning a child by a biological mother has resulted in many children being abandoned, some even dying. Based on this, the crime of abandoning a child falls within the provisions of the discussion of Jinayah fiqh. This is based on, "in jinayah fiqh, every human action that is considered a violation or crime against others, whether the violation or crime is physical or non-physical, is discussed in jinayah fiqh"

Another reason that is the basis for the crime of abandoning a child being included in the discussion of Islamic jurisprudence is because it fulfills the elements of an act that can be categorized as a crime, namely:

1. The existence of Nash who forbids actions and threatens punishment against "formal elements" (rukun Syar'i). In the text there is no mention of punishment for people who throw away their children.

The status of children is a mandate from Allah that must be protected. This is what is stated by some sources in Durrotun Nasihin, page 634. In this case, the Qur'an explains that children are a mandate from Allah that must be protected based on Surah At-Tahrjm verse 6: "O you who believe, protect yourselves and your families from the fire of hell..."

The verse above uses a command that means "guard," which implies a person's obligation to protect their family. Essentially, what God commands is an obligation.

The majority of Hanafiah, Shafi'iah and Muhadditsin scholars state that a command to something means forbidding not to carry out the command, this is based on the principle: "Indeed, a command to something means forbidding its opposite."

Because the command to look after the family is a mandate, Allah SWT has forbidden His servants from not looking after it, or betraying what He has entrusted, this is based on the letter Al-Anfal: 27, which reads: "O you who believe, do not betray the trusts entrusted to you, while you know."

The meaning of this verse is "O you who believe, do not betray Allah by ignoring the fardhus that He has prescribed, or violating His limits. Breaking into things that He has ordered to respect. And do not betray the Messenger by disliking the

information he conveys regarding the Book of Allah, in fact, what you like is information about your own desires.

The crime of abandoning a child, on the other hand, involves the mother's intention to sever ties with her child. This relationship in Islam is known as *silaturahmi*. In Islamic legal terms, *ar-rahim* refers to kinship. This definition is more general because it involves *ushul* (parents), *al-furu* (children), and relatives, both close and distant.

Regarding the threat to people who break off relations (*silaturrahim*) as in the following hadith, the Prophet SAW once said: Allah SWT said, I am Allah, and I am the Most Gracious God, I have created the womb and named it with part of My name. Whoever decides, I will also break with him (Turmudzi and Abu Daud's history).

Jubair ibn Muth'im relates the following hadith, stating that the Prophet (peace be upon him) once said: "No one who severs the ties of kinship will enter Paradise." This is if the person in question considers his actions permissible, even though he knows that they are forbidden. This means that he will not be able to enter Paradise with those who entered it before him, or it is a warning and threat not to do so.

Abandoning a child by a mother is prohibited in Islam because it contradicts the above provisions. Furthermore, in this act, the woman has neglected her duties as a mother, and this falls within the scope of Islamic jurisprudence (jurisprudence) because evil deeds (*jarimah*) not only involve committing acts that are clearly prohibited by law, but are also considered crimes if someone abandons an act that is legally obligated to be performed.

2. The existence of behavior that forms a crime, whether in the form of real actions or an attitude of not doing something, a material element (*rukun maddi*). The crime of abandoning a child by a biological mother is included in the crime of not doing something that should be the mother's obligation, namely protecting and taking care of a trust from Allah, and that trust is her child.

3. The maker is a *mukallaf* person, namely a person who can be held responsible for the crimes he has committed. *morals* (pillars of *adabi*).

Janiyah (mother) in this case is someone who is considered an adult according to Islam, because she is married, has given birth and has definitely experienced menstruation, which is one of the conditions in Islam for a woman to be called an adult.

If the crime of abandoning a child is seen from the perspective of the forms of *jarimah* (crimes) that exist in the *fiqh jinayah* then when seen from its implementation the crime of abandoning a child is included in the *Jarimah* form

of a mixture of jarimah ijabiyah and salabiyah (passive), or called jarimah taga'u bi thariq al-salab or in criminal law it is called delict commisionis perommisionem commisa. This jarimah can occur if there is an act and neglect in this case jaaniyah does not carry out her obligations as a mother then neglects her child by throwing him away.

Judging from its intention, it falls under the category of deliberate crime (jara-im maqsudah). This is due to the mother's deliberate act of abandoning her child to escape responsibility for its care. Judging from the object, it falls under the category of individual crime. The punishment imposed here is to protect the rights of the individual, namely the victim (child).

Judging by the motive, it falls under the category of ordinary crimes. In this crime, the mother had no political intent to disrupt the stability of the state. In terms of the severity of the punishment, it falls under the category of Ta'zir, as the punishment is not specified in the texts (the Qur'an and Sunnah).

4. Conclusion

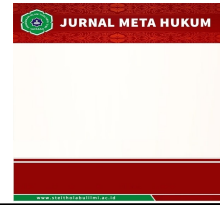
Islamic legal regulations regarding the crime of abandoning babies are categorized as crime (crime) which can be in the form of neglect or murder, with consequences of punishment ta'zir (punishment handed over to the ruler) or, in the case of murder, may be imposed qisas (equitable punishment) depends on the differences of opinion of the scholars.

Factors contributing to the crime of abandoning a newborn include shame due to an extramarital relationship, psychological pressure and mental burden, and economic and social factors. Pregnancies outside of marriage often cause the perpetrator to feel immense shame, especially if there is no support from family or society. Furthermore, emotional burdens, economic problems, and unfavorable environmental conditions also play a significant role in this case.

Law enforcement against the crime of abandoning a newborn child according to Islamic law can be categorized as a crime of murder (murder crime) if it causes death, or as a harmless measure if the baby is disposed of in a safe place

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