

Calling for merciful justice in teen mum's case



By [Salleh Buang](#) - February 21, 2022 @ 12:05am



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I was surprised when a former student, a senior syariah judicial officer in a southern state, called me recently. His primary intention was to seek my advice on his PhD studies at a local university.

Having dealt with that, he asked me for my thoughts on the recent case of a teenage rape victim who gave birth and then killed her newborn baby. In many jurisdictions, such an offence is called infanticide. He asked me whether there could be a more humane way of handling her case.

According to news reports, the 15-year-old was denied bail by the Kemaman magistrate's court after she was charged with the murder of her newborn baby (a boy).

Her lawyer, Nurainie Haziqah Shafii, told reporters that a bail application had been submitted, but it was rejected by the court. She explained that under Section 388 of the Criminal Procedure Code, the court may still grant bail if the accused is under 16, a woman or is sick.

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Nurainie said the defence would decide shortly whether to appeal against the rejection of the bail application. The case management has been scheduled for March 16.

According to Kemaman district police chief Hanyan Ramlan, on Feb 8, a newborn baby was found dead with chest injuries, believed to have been caused by a sharp object, at a house in Felcra Seri Bandi, Chukai. On Feb 9, a teenage mother was detained. The remains of the newborn were laid to rest on Feb 14 at the Seri Nandi Muslim cemetery near Kemaman.

Malaysian Medical Association president Dr Koh Kar Chai expressed disappointment at the murder charge. He urged the authorities to "revisit the case" because charging her with murder "would be a massive injustice" to the girl as she herself was a victim of a horrible crime nine months ago.

He asked whether the girl (who became pregnant as a result of the rape) had been given psychological support during her pregnancy. Apart from the trauma of rape, the teenager had to bear the burden of being pregnant and face a backlash from society. It added to her misery, leading to an increasing risk of mental illness "but also further pushing her towards unwarranted behaviours like infanticide".

"If she is already depressed during her unwanted pregnancy, the risk of developing post-partum depression is definitely higher," Dr Koh concluded.

Suhakam (Human Rights Commission of Malaysia) commissioner Professor Datuk Noor Aziah Mohd Awal said the teenage mother "should not have been detained in the police lockup". On the contrary, she should be provided "the necessary legal aid and healthcare by the authorities".

In a statement on Feb 13, Noor Aziah said while the case was being probed, detaining a 15-year-old girl who had just given birth was clearly not in the best interest of the child.

"The approach in dealing with a child who is in conflict with the law should be in line with the Convention on the Rights of the Child, to which Malaysia is a party."

She said the girl also should have been given "proper post-partum and psychological care before being taken to court".

So murder or infanticide?

Murder is defined in Section 300 of the Penal Code, and its punishment is set out in Section 302: "Whoever commits murder shall be punished by death."

Infanticide is defined in Section 309A, and its punishment is set out in Section 309B.

Section 309A states that "when any woman by any wilful act... causes the death of her newly born child, but at the time of the act, she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall be guilty of the offence of infanticide".

Section 309B states that "whoever commits the offence of infanticide shall be punished at the discretion of the court, with imprisonment for a term which may extend to 20 years, and shall also be liable to a fine".

In her commentary on the provisions of the Penal Code, (Syariah Court of Appeal Terengganu judge) Professor Datuk Dr Zaleha Kamaruddin wrote that under the Penal Code, infanticide is addressed by Section 309A, which differentiates it from murder. She said this provision seemed to echo the spirit of "post-partum disorders".

In cases of infanticide, usually no premeditation is involved. Rather, the killers react with panic and impulsiveness ("Capital Punishment for Infanticide — Are We Going in the Right Direction?", an article by Zaleha).

Hopefully, in the days ahead, the authorities will show a more humane treatment of the case. Our courts are courts of law, but they are also courts of justice.

Thomas Aquinas once said: "Mercy without justice is the mother of dissolution; justice without mercy is cruelty."