

**THE LEGAL FRAMEWORK AND IMPLEMENTATION OF BABY
HATCH IN MALAYSIA**

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Submitted in Partial Fulfilment of the Requirements
for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA

Faculty of Law

December 2013

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

Abstract

This research would focus on the legal framework and implementation of Baby Hatch in Malaysia. The reason for us to take on a journey upon such research is due to the fact that there are no single law or regulation governing the administration of Baby Hatch in Malaysia. Our research is an attempt to explain why Malaysia need such system to manifest itself, in comparisons with Baby Hatch's laws around the globe such as those implemented in the United States of America, Japan and Germany.

In Malaysia, the only law governing abandoned babies are the Penal Code, Child Act 2001 and the Adoption Act. It is provided under the Penal Code that the act of a mother or birthparents abandoning a child under the age of twelve years old is a criminal offence. It further states that abandonment must occur at unsafe places in order for the mother or the birthparents to be prosecuted upon successful charges. However, it does not specifically provide as to what construe 'unsafe places', does Baby Hatch considered as unsafe place? Hence, the main aim of this research is to clarify any vague areas in the nation's legal context.

Apart from that, the laws governing adoption in Malaysia is immensely procedural and swarming with bureaucracy, making an application to apply for citizenships for these unfortunate babies a tedious job. Hence, by suggesting how Malaysia can improve its adoption processes, we hope to expedite the departure of these babies to a loving and caring family.

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CHAPTER ONE

INTRODUCTION TO THE RESEARCH

1.0 Introduction

On 29 May 2010, for the very first time in Malaysian history the first Baby Hatch was opened in Kampung Tengku, Petaling Jaya. Its local founder, a non-governmental organisation by the name of OrphanCARE took a daring and bold approach by introducing the controversial Baby Hatch; working closely with the Ministry for Women, Family and Community Development and the Department of Social Welfare Malaysia to mainly assist to expedite the adoption process and to help in areas where issues of adoption from the orphanage arises as well as reducing the number of death tolls on cases of baby dumping.¹

Historically, Baby Hatches' existence in our modern society can be dated back all the way to the 18th and 19th century,² where back then, it was more commonly referred to as the Foundling Wheels. The aim of its establishment by the churches was to provide unfortunate women a better alternative to give away their unwanted babies instead of killing or abandoning them, which was considered a great sin in during that period of time. However, then the Baby Hatches have been silent and eventually the practice stopped, it was only in the year 2000 it was reintroduced in the city of Hamburg, Germany, and along the subsequent years, many countries such as the United States, Austria, Belgium, Czech Republic, Hungary, Pakistan and Japan began to embrace the concept of Baby Hatch as one of the ways and a necessary alternative or solution to the ever-growing cases of infanticide and baby dumping. Currently, Baby Hatches are gaining popularity within countries which are the members of the European Union, with 11 out of 27 countries in the European Union incorporated Baby Hatches as one of their effort to counter baby dumping and to save more babies from dying, particularly during the cold winter.³

Going back to the research at hand, there are currently no statutes or laws governing and regulating the implementation of Baby Hatches in Malaysia. Due to this situation we wanted to conduct a research on OrphanCARE as they may be working under the grey areas without any

¹ ("Baby Hatches to open in Kota Baru and JB," 2012)

² (Sesana, 2012)

³ (Browne, 2013)