ISSUES IN MEDICAL LAW AND ETHICS

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Abu Hanifta Mohamed Abdullah

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Medical Law and Ethics Unit
Law Centre
Ahmad Ibrahim Kulliyyah of Laws

الجامعة الإسلامية العالمية ماليزيا

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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ABORTION AND CAUSING MISCARRIAGE (AL-IJHAD): ISLAMIC MEDICAL PERSPECTIVES

Nasimah Hussin

Introduction

In this paper, I propose to deal with some issues related to medical ethics i.e. the issue of abortion and the liability of a medical practitioner who performs an abortion. All the discussions would be based on the viewpoint of Islamic Law.

The question arises as to whether the pregnancy of a woman can be terminated in any of its stages, whether abortion is allowed in Islam. Another related question is whether the medical practitioner has the right to perform abortion.

It is agreed by all jurists that medical practice is an imperative duty, i.e. *fard kifayah* based on social necessity. The doctor or physician has to carry out his duty without fail and he will not be held liable for the consequences of performing his duty as long as he fulfils the following conditions,[1] i.e.;

a. The doctor should be a qualified practitioner. It means that he must have a qualification to practice the medical profession. Without the necessary qualification, he will be held accountable for whatever he does. The Prophet (p.b.u.h.)said:
    "Whosoever gives medical treatment to someone and he is not known as a practitioner before that, will be held liable".[2]

b. The doctor must carry out his duty in good faith, i.e. with the intention of curing his patient.

c. The treatment should conform to the principles of medicine and medical practice. His act must not contradict the normal medical practice.

d. The treatment must be given with the permission of the patient. Permission may be given by the guardian or the relevant competent authority where necessary. However, this rule does not apply in the