THE RIGHT TO ABORTION: A COMPARATIVE STUDY BETWEEN PENAL CODE AND SYARIAH LAW

Ву

Rafika Shari'ah bt. Mohd Hassan (2003643149)

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

Universiti Teknologi Mara
Faculty of Law

October 2007

The students confirm that the work submitted to them is their own and that appropriate credit has been given with reference has been made to the work of others

ACKNOWLEDGEMENT

In the name of Allah, Most Gracious and Most Merciful, I thank Him for His guidance to be in the right path in doing this study. Without His will, I could not succeed with this research.

I would like to take this opportunity to thank the staffs of Law Library, Universiti Malaya, for all the help given by them in the accessing the thesis and resources needed for completing this research.

Secondly, my special gratitude goes to my beloved mother, Puan Hajah Siti Hasnah, for her endless support and encouragement, financially and emotionally.

Also, I would like to thank my supervisors, Cik Haryati and Puan Norha, who have helped me by providing the guidelines for this task, as well as useful advice for the completion of my research.

My thanks also goes to my cousins, Ahmad Kamil bin Noh, Ahsana Aqilah binti Ahmad and Ahmad Ishak bin Mohammad Hassan from Universiti Islam Antarabangsa Malaysia, for assisting me in finding and borrowing relevant references for this research, which were mainly written in Arabic. Thank you for translating the important chapters to English and the precious explanations which were crucial to my understanding of this

ABSTRACT

The research is conducted to compare the legal rights of abortion specifically in the area of the rights conferred on woman to abort the pregnancy, the issue of illegal abortion and to determine the punishments for abortion from the Penal Code and the Syariah law. The research is also providing alternatives and suggestions to remedy abortion particularly the punishments for illegal abortion.

TABLE OF CONTENT

Acknowledgement	ii
Abstract	iv
Contents	v
List of Cases	ix
List of Reference	x
CHAPTER 1 · INTRODUCTION	
1.0 Introduction	2
1.1 Problem Statement	3
1.2 Objective of Study	4
1.3 Research Question	4
1.4 Significance of the Study	5
1.5 Limitations of the Study	5
1.6 Scope of the Study	5
1.7 Methodology	6
CHAPTER 2 LITERATURE REVIEW	٠.
2.0 Literature Review	7
CHAPTER 3 ABORTION: AN INTRODUCTION	
3.0 Introduction	13
3.1 What is an abortion?	13
3.2 The phenomenon behind abortion	15
3.3.1 Factors of abortion	15

	3.3.2 Other circumstances for abortion	16
3.4	Methods for abortion	16
3.5	Conclusion	21
СН	APTER 4 ABORTION IN ISLAM	
4.0	Introduction	22
4.1	The five rulings of Syariah Law	22
4.2	The concept of offences for abortion	24
4.3	The sources and bases for abortion	25
	4.3.1 Evidences from Al-Quran and Al-Hadith (Dalil Al-Nakli)	25
	4.3.2 Opinions from the Islamic Schools of Thought	27
4.4	The stages of fetus	33
4.5	The fetus' rights	36
4.6	Abortion in Syariah Law	39
	4.6.1 Verdicts according to the stages of fetus	39
	4.6.1.1 Before the soul is given	39
	4.6.1.2 After the soul is given	43
4.7	Situations where abortion is permitted	44
4.8	Punishment for the offender	47
4.8	3.1 Types of punishment under Syariah Law	50
	4.8.1.1 Ghurrah	50
	4.8.1.1.1 Measurement of Ghurrah	51
	4.8.1.2 Kaffarah	52
4.9	Conclusion	54