

CHAPTER III

EVOLUTION OF ISLAMIC LAW IN THE PHILIPPINES

A. The advent of Islam in the Philippines

Although the coming of Tuan Masha'ika in the Philippine archipelago particularly in the islands of Sulu is of scanty record, it is very significant in the history of the evolution of Islamic Law in this country because it marks the first man who brought the islamic faith as well as Islamic Law in the country. The Sulu genealogy (Tarsila) failed to provide the date of his coming.¹ It did not determine also whether or not he was a Muslim.² But it may be inferred in the following circumstances that he was a Muslim. First, his name alone "Tuan Masha'ika" signifies that he was a Muslim: Tuan is a Moro, term for "Muslim religious leader." Masha'ika is derived from the Arabic word Shaik which means "Muslim tribal leader." Tuan as used by the Moro, as well as Shaik in Arabic, are never used by non-Muslims. Second, it was reported in the Sulu Historical Notes that he begot a certain Muamin, a term which is derived from the Arabic term Mu'min which means, believer.³ It was reported as such because he had children, Tuan Hakhim and Aisha, who were all Mu'min (believers).⁴

History records that in 1380 A.D.,⁵ the first Muslim missionary, an alleged noted Arabian Judge, named Karim ul-Makhdum who was later called as "Tuan Sharif Aulia" landed in Sulu and propagated wisely and peacefully the islamic faith. He was the first Muslim who built a masjid (mosque) in the area.⁶ It was also stated that when he came "people from all different parts flocked to him."⁷ This goes to show that there were already Muslims in the area. This also strengthens the allegation that Tuan Masha'ika was a Muslim.

Ten years after the arrival of Makhdum, a dashing Muslim prince from Menangkabau, Sumatra, Rajah Baguinda, with his warriors and settlers came (1390 A.D.) and they settled at Buansa.⁸ Thus, they increased

the population as well as strengthened the islamic consciousness in the area.

In 1450 A.D., Sayyid Abubakr, an Arab missionary and a jurist came.⁹ He married Princess Paramisuli, a daughter of Rajah Baguinda.¹⁰ Later, he become a Judge in Rajah Baguinda's Court. Finally, because Baguinda had no son, he appointed Abubakr as his successor.¹¹ Thus, his expertise in Islamic Law and jurisprudence came into play.¹² He founded the first Sultanate of Sulu, assuming the title of Sultan Sharif Al-Hashim.¹³ He led like a Caliph: he appointed ministers (wazirs) and governors (panglimas) and instituted reforms within the framework of the Shari'ah: he administered justice and settled cases in accordance with Islamic Law and jurisprudence.¹⁴ Therefore, it was to his credit that the evolution of the islamic legal system in the area reached the point or degree of a state law.

The islamization of Mindanao was credited to Sharif Muhammad Kabungsuwan and his brother Sharif Alawi.

Kabungsuwan with his warriors landed at the mouth of Pulangi River, now Cotabato River, in what is now Maguindanao in 1475 A.D.¹⁵ It was reported that he not only entered into marriage ties with some of the daughters of the local leaders (local datus)¹⁶ but also he entered into alliances with the said local leaders which strengthened his political position.¹⁷ Later, he propagated the islamic faith and finally he founded the first Sultanate of Maguindanao in the same fashion as Abubakr in Sulu.¹⁸

As to the islamization of Lanao, the Maranao *salsila* (genealogy) says that Sharif Kabungsuwan and Sharif Alawi were not merely the proponents of the propagation of Islam in the area but also the ascendants of some of the Maranaos.¹⁹

The Maranao Salsila says:²⁰

Sharif Kabungsuwan married Potri Tomanina. His daughters were Potri Maamor, Potri Miraganding and

Potri Baibatula. Their descendants were the five "Noni"...

Then Sharif Kabungsuwan married Angintabo and his son was Saripada Macaalang sa Maguindanao...

Sharif Alawi married Asinalong. Ayaon and Landa were their children...

Sharif Alawi married Binidaya Salbo sa Lumbacah Lupa sa subangan a alongan...

This shows that each of them has at least twice married in Lanao.

It is, therefore, not erroneous to say that the islamization of Lanao was attributed to the joint efforts of the two brothers who came from the north on one hand and the south on the other hand. Sharif Alawi landed in Tagoloan, Misamis Oriental in the northern shores of Mindanao and from there he propagated Islam to the people around Lake Lanao on one hand²¹ Sharif Kabungsuwan, who stayed in Maguindanao in the southern shores of Mindanao, went to Lanao and propagated Islam there, on the other hand. The two efforts met and blended together to the extent that the work of one cannot be distinguished from that of the other.

The Sultans of the Sultanate of Tagoloan in Balo-i claim their descent from Sharif Alawi²² and the Sultans of the Sultanate of Butig claim their descent from Sharif Kabungsuwan.²³

Side by side with the islamic propagation, every community dominated by the Muslims became an agama, a term which denotes an islamic community.²⁴

Then as soon as an agama was established, the Muslims installed their leaders, known as Sultans, and built their *masjid* (mosque), the house of worship. Thus, an agama connotes not only a Muslim community ruled by a sultan but also a community that has a masjid.

Later on, as the islamization flourished, various agamas cropped up with the installation of their corresponding sultans.

Out of these various sultans, the Taritib and Igma (customary law) recognized only the sixteen Grand or Royal Sultans which are unproportionately distributed among the “four federated states of Lanao” or “Pat a Pangampong a Ranao.”

In a nutshell, it is worth emphasizing that the founders of the sultanate government were Arabs who had deep insight on Islamic Law and jurisprudence: Abubakr, the first Sultan of Sulu was an Arab missionary, preacher, judge and a noted jurist; Sharif Kabungsuwan, the first Sultan of Maguindanao was the son of Zain al-Abidin of Hadramaut, Southern Arabia, whose ascent can be traced up to the family of the Holy Prophet Muhammad (S.A.W.).

These Arabs came and brought in a new faith, that is, Islam; a new law, that is the Islamic Law or Shari’ah; and established a new form of government, that is the Sultanate patterned after the Orthodox Caliphate.

It is also probable that when they came, they brought with them, apart from copies of the Holy Qur’an and Hadith, other copies of islamic treatises like the Minhaj, Taqrib al-Intifa, etc. These were their other references in running their government.

At this juncture, it is deemed not erroneous to say that before the coming of the Spaniards in 1521 A.D., Islam was the way of life in the area; the sultanate was the form of government,²⁵ and Islamic Law was the legal system administered by the Sultans with the help of the Cali or Qadi (Judge), the most learned in Islamic Law and jurisprudence.

B. Islamic Law or Shari’ah - the law of the land

From the founding sultans such as Abubakr of Sulu and Sharif Kabungsuwan of Maguindanao down to the succeeding sultans including the sultans of the sixteen Royal Houses of the “Pat a Pangampong a Ranao” as well as the sultans of the various agamas (communities), every

sultan exercised executive, judicial and legislative functions. He led like a caliph, taking the four Orthodox Caliphs as the model. He legislated ordinances based on the Islamic Law and jurisprudence particularly the Shafi'i school of law. He tried and settled cases with the help of the Caliph or Qadi.

As a consequence, Islamic legal terms found their way into the native tongues like *adat* (Arabic, *ada*) customary law; *taritib* (Arabic, *tartib*) order or protocol; *igma* (Arabic, *ijma*) consensus. Terms in Islamic criminal law were absorbed into the local languages. Such words as *diyat* (Arabic, *diyah*) or compensation; *radiam* (Arabic, *rajm*,) or stoning in a crime of adultery; *kitas* (Arabic, *qisas*) or retaliation; and many others were loaned from Islamic criminal terminology.²⁶

C. Islamic Jurisprudence come into existence

Despite the fact that the Philippines had been colonized by the Spaniards (1521-1889) and later by the Americans (1889-1935) and then occupied by the Japanese (1941-1946) with their constant attempt to subjugate the Muslims, these Muslims with the help of Allah (S.W.T.) have not merely survived but they have become even stronger than before.

Besides the Qur'an and Hadith which are the divine and immutable law of the Muslims, Islamic jurisprudence in the archipelago came into existence when the Muslim laws such as the *Diwan Tawsug* and the *Luwaran* of Maguindanao were codified.

In Sulu, as early as 1740 A.D., Sultan Azimuddin (1735-1773) promulgated the first Sulu Code.²⁷ Then another Code which was more consistent with the Qur'anic legal injunctions was promulgated by Sultan Muhammad "Pulalon" Fadl (1842-1862).²⁸ Thereafter, there was the principal Sulu Code promulgated during the reign of Sultan Jamalul (Alam) Azam (1862-1884) which was most welcomed for the innovations it made on severe punishment provided in the earlier Code.²⁹ The same Code was used without any modification by Sultan Harun ar-Rashid (1884-1894). The new Sulu Code was issued in 1902 during the reign of Sultan Jamalul Kiram II (1894-1936).³⁰ The latest Sulu Code was

promulgated by Ismail Kiram on December 30, 1950.³¹ All these Sulu Codes promulgated by the Sulu Sultans are known as Diwan.

On Mindanao, the Luwaran of Maguindanao was written during the reign of Sultan Maulana Hamza Khairuddin (710-1778) who was himself a noted jurist.³² The compilation was based on several Arabic legal treatises such as the Minhaj et Talibin,³³ Minhaj al-Arifin, Taqrib al-Intifa', Fath al-Qarib and Miratu al-Tullab.³⁴

D. Judicial power as a prerogative of the Sultan

The administration of justice was a prerogative of the sultan. The sultan usually appointed a deputy to assist him on judicial matters. The deputy was called Datu Kali.³⁵ The Sultan was also assisted by a *Wazir* (Minister) who performed quasi-judicial function. He received petitions and complaints. If the petition or complaint involved a very important question of law, he would refer it to the Datu Kali for decision or expert legal opinion.³⁶

E. Philippine laws recognizing islamic law

1. Spanish era

Under the Spanish regime, no Royal Decree was ever enforced in Moroland. It was a period of constant war between the Muslims and the Spaniards. A war which the Spaniards did not win.³⁷

2. American era

Under the American regime, at the first instance, there was a bitter war between the Americans and the Muslims that produced great American generals. However, when the United States government realized that the policy of war was not effective, it changed its approach into the so-called policy of attraction. Thus, the US government began entering into a peace treaty with the Muslim sultans.

On August 20, 1899, the US government through its representative Brig. Gen. John C. Bates entered into a "treaty of peace" with the Sultan of Sulu, Sultan Jamalul Kiram II. On March 22, 1915, another treaty of similar nature was entered into between the same parties. The US government was represented by Frank W. Carpenter, the Governor of the Department of Mindanao and Sulu.³⁸

These treaties recognized the religion of the Muslims, the sovereignty of the Sultan of Sulu over his dominions and the jurisdiction of the Agama Courts over all crimes committed within the territory of the Sultan of Sulu.³⁹

Apart from the said treaties, the Philippine Commission, a body serving both as Legislature and Supreme Court during the early years of the American occupation, promulgated a series of laws which recognized and respected the laws as well as the religious practices of the Muslims.⁴⁰

In view of the foregoing, the American government was able to win the support of some local datus to rally behind its regime.

3. Philippine Independence

After the Philippines was granted independence by the US government, laws were passed recognizing the validity of the marriage and divorce between Muslims, residing in non-Christian province, performed in accordance with their customs, rites or practices.⁴¹

Art. 78 of the Civil Code of the Philippines provides:

Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.

However, twenty years after the approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provision of this Code. But the President of the Philippines, upon recommendation of the Secretary of the Interior, may at any time before the expiration of said period, by proclamation, make any of the said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces.

The recognition of these Muslim marriages however, was limited to a period of 20 years after the approval of the Code. After it lapsed, the 20 years period was extended subsequently by Republic Act No. 6268 which was approved on June 19, 1971. The extension was for a period of 10 years, or up to 1979.⁴²

Republic Act No. 394, approved June 17, 1949, allowed absolute divorce among Muslims.⁴³

Section 1 thereof provides:

For the period of 20 years from the date of approval of this Act divorce among Muslims residing in non-Christian province shall be recognized and governed by Muslim customs and practices.

After it lapsed, a bill passed in the then Congress of the Philippines reviving the same was still pending until the said Congress was dissolved in 1972 when the then President Marcos proclaimed Martial law.⁴⁴

Presently, the laws on marriages and divorces among Muslims are embodied in the Muslim Code (P.D. No. 1083) which took effect on February 4, 1977.

F. The incorporation of islamic law into the Philippine Legal System

The circumstances behind the enactment of the Muslim Code is a chronicle of resistance, battles and struggles. History records that since the coming of the Spanish invaders in the Philippines in 1521 A.D., the Muslims who were called Moros by the Spaniards, resisted and fought for the preservation of their identity as Muslims, for the preservation of their way of life which is Islam, and for the preservation of their homeland. The same were the reasons why they resisted and fought against the American colonizers and later the Japanese invaders. These were also the underlying reasons why there were waves of Moro juramentados⁴⁵ of Sulu against the military expeditions launched by the American government during the American regime and the Philippine government after the Philippines gained independence; the series of Muslim rebellions which were led by Kamlon in Sulu and Tawantawan in Lanao; the series of fortress-battles (cota-fights) one after another in the Muslim ancient villages around Lake Lanao; the declaration of the Mindanao Independence Movement led by the former governor of Cotabato Datu Utog Matalam; and recently the emergence of the secessionist groups such as the Moro National Liberation Front and the Moro Islamic Liberation Front.

This is a centuries-old problem which cannot be solved by a decade of processes. However, the government of the Republic of the Philippines, through laws, provides programs and projects for this purpose. A series of laws for the Muslims had been promulgated.⁴⁶ One of these laws is the Code of Muslim Personal Laws of the Philippines otherwise known as Presidential Decree No. 1083.

The Muslim Code provides:⁴⁷

Pusuant to section 11 of Article XV of the Constitution of the Philippines which provides that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of State policies," this Code:

(a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks make Islamic institutions more effective;

(b) Codifies Muslim Personal Laws; and

(c) Provides for an effective administration and enforcement of Muslim Personal Laws among Muslims.

When the Muslim Code recognizes the legal system of the Muslims as part of the law of the land, it is implied that such recognition is not limited to the codified personal laws (i.e. P.D. No. 1083) but pertains to the whole Islamic Legal System (i.e. the Islamic Law or Shari'ah) which must be observed whenever applicable and which must be enforced like any other Philippine law.⁴⁸ Further, it was only when the said Muslim Code was signed into law on February 4, 1977, that Islamic Law become part of the Philippine legal system. Thus, the Philippine legal system became the melting pot of the three world legal systems such as the Roman law or Civil law, the Anglo-American law or the Common law, and the Islamic law or the Shari'ah.

The Muslim Code also codifies the Muslim Personal Laws which include all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses, as provided for in the Muslim Code.⁴⁹

Further, it provides for an effective administration and enforcement of Muslim Personal laws among Muslims through the creation of the Courts of limited jurisdiction as part of the judicial system, to be known respectively as Shari'ah District Courts and Shari'ah Circuit Courts, which shall exercise powers and functions in accordance with Title I of Book IV of the said Code.⁵⁰

Pursuant to the mandate of Art. 148 and 158 of the Muslim Code, the Supreme Court en banc through Resolution provided the "Special Rules of Procedures" in the Shari'ah Courts (Ijaraat al Mahakim al Shari'ah) on September 20, 1983. This Special Rules of procedures is

adopted from the Islamic Procedural law as it is practiced in the Muslim Courts in Muslim countries. This is also part of Islamic adjective law being incorporated in the Philippine adjective law.

At this juncture, it is right to say that the Islamic Law has become a state law like the Civil Law and the Common Law. The Civil Law and the Common law are the laws for the Christians, while the Islamic Law is the law for the Muslims.

Islamic Law started as the law of the individual Muslims who migrated to this archipelago, then became the law of the Agama (Muslim community), then became the law of the Sultanate, and finally became recognized by the Philippine Republic as part of its legal system.

Notes

1. Datumanong Di. A. Sarangani. "Islamic Penetration in Mindanao and Sulu," Mindanao Journal, 31 (1977).
2. Ibid.
3. Macapanton Y. Abbas Jr., "The Historical, Political, Social and Legal Justification for Codification and Enforcement of Muslim Laws and adat Laws," Mindanao Journal, 110 (1977).
4. Ibid.
5. Supra Note 1.
6. Hamid Aminoddin Barra, The Code of Muslim Personal Law: A Study of Islamic Law in the Philippines, 36 (1988).
7. Ibid.
8. See Supra Note 1 at 32.
9. Ibid.
10. Id., at 33.
11. Ibid.
12. Ibid.
13. Supra Note 6.
14. Supra Note 1 at 33.
15. Id., at 35.
16. Supra Note 6.
17. Supra Note 1 at 34
18. Ibid.

19. Atty. T. Cayongcat, Knowing the Maranao, 17 (1989).
20. Ibid.
21. Supra Note 1 at 35.
22. Supra Note 19 at 16.
23. Supra Note 6.
24. Supra Note 19 at 14.
25. Supra Note 6.
26. Id., at 44.
27. Id., at 47.
28. Ibid.
29. Ibid.
30. Ibid.
31. Musib M. Buat, "Survey of Filipino Muslim Adat (Customary) law and Role of Agama Courts," Mindanao Journal, 86 (1977).
32. Michael O. Mastura, "Shari'ah and Codification: Islamic Legislation in Relation to Legal Reforms in the Philippines," Shariah Law Journal, 64 (1987).
33. Supra Note 31.
34. Supra Note 6 at 47.
35. Supra Note 31 at 98.
36. Ibid.
37. Supra Note at 48.

38. Supra Note 3 at 116.
39. Ibid.
40. Id., at 120-122.
41. Civil Code of the Philippines, (otherwise known as Republic Act No. 386 which took effect on August 30, 1950), Art. 78.
42. Edgardo L. Paras, Civil Code of the Philippines Annotated, 308 (1984).
43. Id., at 309.
44. Supra Note 6 at 51.
45. Juramentado is a name given by the government soldiers for Mujahidin. They mean suicide commando.
46. See Zenaida S. Reyes, Philippine Laws for the Muslims, (n.d.).
47. Code of Muslim Personal Laws of the Philippines, (otherwise known as Presidential Decree No. 1083 which took effect on February 4, 1977), Art. 2.
48. Supra Note 6 at 59.
49. Supra Note 47, Art. 7(i).
50. Id., Art. 137.