

**THE SHARI'AH COURT PROCEDURE IN MINDANAO
– PHILIPPINES: AN UNDERSTANDING**

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ABSTRACT

In this study, the researcher seeks to understand and to describe the Shari'ah Courts procedure in Mindanao – Philippines. Especially, this study find the answer to the following questions, namely: firstly, what is the origin of Shari'ah Courts in Mindanao – Philippines?; Secondly, what are the Shari'ah Courts in Mindanao – Philippines?; Thirdly, what are the basic jurisdictions of the Shari'ah Courts in Mindanao – Philippines? And Finally, what are the Special Rules of Procedure governing the Shari'ah courts in Mindanao – Philippines? The main objective of this study is to cater the need of Shari'a Students and prospective candidates to the Special Shari'a Bar Examinations in the Philippines.

This research uses of Descriptive and Qualitative research method. This study is also a kind of library research where the research data and information obtained from major books which are related to this research. This study was conducted at Sultan kudarat, Cotabato City, where the researcher resides on second semester of academic year 2014 – 2015. However, since the researcher was studying at MUHAMMADIYAH UNIVERSITY OF SURAKARTA, Indonesia, It was presented and defended to the said university on September 17, 2014. In the case of this study, descriptive and qualitative research approach in gathering, evaluating and handling data was utilized. Through applying descriptive and / or qualitative methods can ensure reliability in the research. In this research, an inductive approach was used. It is an approach that searches for a specific data related to this research from a variety of data sources in order to acquire essential knowledge and information. To assess the validity of the instruments used in this research such as review of related literature and review of related studies content validity was established where a recognised experts in the area of study (Thesis adviser, Thesis proposal professors, and other qualified persons) was asked to give their opinion on the validity of the tool.

To answer the problems mentioned above in this study scientifically, hence the researcher uses in – depth reading and fact - finding on the following data sources: first, the data sources from a binding law such as P.D. 1083 otherwise known as the Code of Muslim Personal laws of the Philippines, from the Special Rules of Court Procedure governing Shari'a Courts in Mindanao - Philippines and from the Rules of Court in the Philippines;

Second, the data sources as a results of study through many literatures, books, magazines, journals, newspapers, and thesis. Third, the data sources explanations from primary and secondary materials such as encyclopedia and dictionary. The qualitative data taken from the data sources was analysed through a logical analysis. Finally, the information from the document review could also give clarity to the research questions.

From the data analysis result, the establishment of the Shari'a Courts in the Philippines has been originally conceived in the 1976 Tripoli Agreement entered into by and between the Philippine Government and the Moro National Liberation Front under the auspices of the Organization of Islamic Conference. It has been agreed, among other things, that in the areas of autonomy, the Muslims shall have the right to set up their own Courts which implement the Islamic Sharia'h Laws. In addition, there are three levels of Shari'a Courts in the Philippines, namely: Shari'a Appellate Court, Shari'a District Court and Shari'a Circuit Court. Moreover, The Shari'a courts of the Philippines are courts of limited and special jurisdiction because their jurisdiction is confined to the class of cases enumerated by PD 1083 otherwise known as the "Code of Muslim Personal Laws." They do not exercise the power conferred upon a court of general jurisdiction, i.e., Regional Trial Court, which has the power to take cognizance over all cases not falling under the exclusive original jurisdiction of any court, tribunal, board or officer. Furthermore, the Special Rules of Procedure Governing the Shari'a Courts were promulgated by the Supreme Court pursuant to Articles 148 and 158 of the Code of Muslim Personal Laws. These special rules of procedures take effect immediately, Approved unanimously on September 20, 1983.

Keywords: Shari'ah Court Procedure, Islamic Court Procedure, and Special Rules of Procedure governing Shariah Courts

1. INTRODUCTION

Laws need courts to apply and interpret them. Courts, in turn, must be guided by rules in the application and interpretation of the laws. Without rules, the courts are but useless instruments that only embellish and impress. The Shari'a Courts in the Philippines are creations of the Philippine legislature. The special rules of Procedure Governing the Shari'a Courts, though it has Islamic features, is Philippine adjective law. The basic Islamic procedural principles under which it

was promulgated stand still; but civil procedure that applies in a suppletory character keeps on changing.¹

The Special Rules governing Shari'a Court is applicable to the Shari'a Courts in the Philippines, which were created by local legislation for the enforcement of the legal system of the Filipino Muslims.² The recognition of the Muslim legal system as part of the laws of the Philippines and the creation of the Shari'a courts as part of its judicial system necessitate the promulgation of rules that would govern the proceedings of these courts.³

On 20 September 1983, the Supreme Court promulgated the "Special Rules of Procedure Governing the Shari'a Courts "(Ijra-at al-Mahakim al-Shari'a)" hereinafter referred to, for brevity, as Special Rules.⁴ The Special Rules which is almost summary in nature provides for an expeditious and inexpensive determination of the cases brought before the Shari'a courts.

The brevity of the Special Rules creates the first impression that it needs no commentary at all. Yet, the suppletory application of the Rules of Court and the requirement that these courts should adhere to the sources of Muslim law relating to the number, quality and credibility of witnesses combined detract from such an impression.⁵ It is in this wise that the researcher takes the painstaking efforts to research on this humble work with the hope that it will cater to the need of Shari'a Students and prospective candidates to the Special Shari'a Bar examinations in the Philippines.

¹ Gubat, Mangontawar M., "Ijra-at Al mahakim", 1st edition, manila January 1, 1995.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Moreover, An overview of Islamic Legal and Judicial System in Southern Philippines, Basis of the Muslim Legal System, Beginnings of Moro Courts and Codification of Muslim Personal Laws are needed to be mentioned in this introductory part to understand the background of Shari'a Courts in the Philippines.

2. RESEARCH METHOD

This research uses descriptive and qualitative research method. A qualitative study is a research method that is looking for good variety of data, written or seen or heard. This study is also a kind of library research where the research data and information obtained from major books which are related to this research. This study was conducted at Sultan Kudarat, Cotabato City, where the researcher resides on second semester of academic year 2014 – 2015. However, since the researcher was studying at MUHAMMADIYAH UNIVERSITY OF SURAKARTA, Indonesia, It was presented and defended to the said university on September 17, 2014.

In the case of this study, descriptive and qualitative research approach in gathering, evaluating and handling data was utilized. Through applying descriptive and qualitative methods can ensure reliability in the research. In this research, an inductive approach was used. It is an approach that searches for a specific data related to this research from a variety of data sources in order to acquire essential knowledge and information. In this research, an in – depth reading and fact finding was employed in the primary, secondary and tertiary data sources. To assess the validity of the instruments used in this research such as review of related literature and review of related studies content validity was established where a recognised experts in the area of study (Thesis

Adviser, Thesis Professors, and other qualified persons) was asked to give their opinion on the validity of the tool.

To answer the problems mentioned above in this study scientifically, hence the researcher uses in – depth reading and fact - finding on the following Primary data sources: First, The data sources which are adopted as a binding law such as P.D. 1083 otherwise known as the Code of Muslim Personal laws of the Philippines, from the Special Rules of Court Procedure governing Shari’a Courts in Mindanao - Philippines and from the Rules of Court in the Philippines; Second, The data sources which are adopted as a results of study through many literatures, books, magazines, journals, newspapers, and thesis. Third, the data sources which are explanations from primary and secondary materials such as encyclopedia and dictionary. The qualitative data taken from the primary data sources was analysed through a logical analysis. Finally, the information from the document review could also give clarity to the research questions.

3. FINDINGS AND DISCUSSIONS

3.1 The origin of Shari’ah Courts in Mindanao – Philippines:

The establishment of the Shari’a Courts in the Philippines has been originally conceived in the 1976 Tripoli Agreement entered into by and between the Philippine Government and the Moro National Liberation Front under the auspices of the Organization of Islamic Conference. It has been agreed, among other things, that in the areas of autonomy, the Muslims shall have the right to set up their own Courts which implement the Islamic Sharia’h Laws.

The Tripoli Agreement was not implemented. Nevertheless, then President Marcos, in the exercise of legislative power, promulgated in 1977 PD 1083 otherwise

known as the “Code of Muslim Personal Laws” which provided, inter alia, for the creation of courts of limited Shari’a District Courts and the Shari’a Circuit Courts under the administrative supervision of the Supreme Court of the Philippines.

The 1987 Constitution mandated the creation of an Autonomous Region in Muslim Mindanao and called for the enactment of an organic act for the Autonomous Region which shall “Provide for Special Courts, with Personal Family and Property Law Jurisdiction consistent with the provisions of this Constitutions and national laws” (Sec. 15 & 16, Art. X).

Pursuant to this constitution mandate, Republic Act No. 6734 otherwise known as the “Organic Act for the Autonomous Region in Muslim Mindanao (ARMM)” was enacted into law. Under this Act, the Shari’a District Courts and Shari’a Circuit Courts created under PD 1083 are mandated to continue to function as provided therein. In addition, a Shari’a Appellate Court with limited jurisdiction is created by the Act. (Sec.21 Ibid.).

On February 7, 2001, the Congress of the of the Philippines passed Republic act No. 9054 expanding the Organic Act of the ARMM, and purportedly increasing the jurisdiction of the Shari’a courts. The Act lapsed into law on March 31, 2001 without the signature of President Gloria Macapagal Arroyo in accordance with Article VI, Section 27(1) of the constitutions.

3.2 The Shari’ah Courts in Mindanao – Philippines are as follows:

There are three levels of Shari’a Courts in the Philippines, namely: Shari’a Appellate Court, Shari’a District Court and Shari’a Circuit Court.

~ **Shari’a Appellate Court** ~

While the Supreme Court En Banc authorized the creation of the Shari'a Appellate Court, it has not yet been organized. Consequently, aggrieved parties can come up only to the Supreme Court in view of the rule set forth in Article 145 of Presidential Decree No. 1083, viz: Article 145. Finality of decisions. – The decisions of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.

The original and appellate jurisdiction of the Supreme Court as provided in the Constitution is not altered. Specifically, this refers to the original jurisdiction of the Supreme Court over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

It likewise refers to the power of the Supreme Court to review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in all cases in which the jurisdiction of any lower court is in issue and all cases in which only an error or question of law is involved.”

In fine, the decisions of the Shari'a District Courts may reach the Supreme Court by way of special civil action under Rule 65 of the Rules of Court if there is a question of jurisdiction, or petition for review on certiorari as a mode of appeal under Rule 45 (*Macawiag vs. Balindong*, *Ibid.*).

However, in the case of *Tomawis vs. Balindong*, G.R. No. 182434, Mar. 5, 2010, the Supreme Court acknowledged the non-organization of the Shari'a Appellate Court and declared that until such time that the Shari'a Appellate Court shall have

been organized, appeals or petitions from final orders or decisions of the Shari'a District Court filed with the Court of Appeals (CA) shall be referred to a Special Division to be organized in any of the CA stations preferably composed of Muslim CA justices. But for cases where only errors or questions of law are raised or involved, the appeal shall be to the Supreme Court by a petition for review on certiorari under Rule 45 of the Rules of Court.

~ **Shari'a District Court** ~

Equivalent to the Regional Trial Courts in rank are the Shari'a District Courts which were established in certain specified provinces in Mindanao where the Code of Muslim Personal Laws of the Philippines is being enforced. There are five Shari'a District Courts and fifty one Shari'a Circuit Courts in existence.⁶ Shari'a District Courts are courts where Muslims can file the following cases namely those which fall within the Original Jurisdiction of Shari'a District Courts and those which fall within its Concurrent Jurisdiction with existing Civil Courts.

~ **Shari'a Circuit Court** ~

Equivalent to the Municipal Circuit Trial Courts are the Shari'a Circuit Courts which were established in certain municipalities in Mindanao where the Code of Muslim Personal Laws of the Philippines is being enforced. There are five Shari'a District Courts and fifty one Shari'a Circuit Courts in existence.⁷

3.3 The Basic Jurisdictions of the Shari'ah Courts in Mindanao – Philippines:

⁶ <http://www.chanrobles.com/shariadistrictcourtsofthephilippines.htm>

⁷ <http://www.chanrobles.com/shariacircuitcourtsofthephilippines.htm>

The Shari'a courts of the Philippines are courts of limited and special jurisdiction because their jurisdiction is confined to the class of cases enumerated by PD 1083 otherwise known as the "Code of Muslim Personal Laws." They do not exercise the power conferred upon a court of general jurisdiction, i.e., Regional Trial Court, which has the power to take cognizance over all cases not falling under the exclusive original jurisdiction of any court, tribunal, board or officer.

The guiding principles and policies of RA 9054 provide:

"The Shari'ah courts shall have jurisdiction over cases involving personal, family and property relations, and commercial transactions, in addition to their jurisdiction over criminal cases involving Muslims."

"The Regional Assembly (of the ARMM) shall in consultation with the Supreme Courts, determine the number and specify the details of the jurisdiction of these courts."⁸

3.4 The Special Rules of Procedure governing the Shari'ah Courts in Mindanao – Philippines:

The Special Rules of Procedure Governing the Shari'a Courts was promulgated by the Supreme Court pursuant to Articles 148 and 158 of the Code of Muslim Personal Laws which provide:

"The Shari'a District Courts (and the Shari'a Circuit Courts) shall be governed by such special rules of procedure as the Supreme Court may promulgate."

Moreover, Section 12, Article IX of RA 6734 provides that "Proceedings in the Shari'a Appellate Court and in the Shari'a lower courts as are established in the

⁸ Sec. 05, Art. III, RA 9054

Autonomous Region shall be governed by such Special Rules as the Supreme Court may promulgate.”

Furthermore, to achieve an expeditious and inexpensive determination of the cases referred to therein, the Supreme Court resolved to promulgate the Special Rules of Procedure Governing the Shari'a Courts (Ijra at Al Mahakim Al Shari'ah).

**The Special Rules of Procedure governing the Shari’ah Courts in Mindanao
– Philippines are as follows: PAR T I - GENERAL PROCEDURES**

Sec. 1. Commencement of Actions

All actions and proceedings in the Shari’a court shall commence by the filing of a complaint. This complaint shall be prepared at least in triplicate by the plaintiff (muddai) or his/her counsel (wakil) or by the Clerk of Court.

Sec. 2. Complaint

The complaint shall contain the following: 1. title of the case, case number assigned to it, and date of filing; 2. name and address of the plaintiff (muddai) and/ or his/her counsel, and name and address of the defendant (mudda’a alayh); and 3. concise statement of the cause of action and the relief prayed for.

Sec. 3. Service of Summons

Summons together with the copy of the complaint shall be served upon the defendant.

Sec. 4. Answer

The defendant shall file an answer within ten (10) days from receipt of the summons either personally or by counsel, or with the assistance of the clerk of court.

Sec. 5. Failure to Answer

Should the defendant fail to answer the complaint within ten (10) days from service, the court shall proceed to receive the evidence ex parte upon which judgment shall be rendered.

Sec. 6. Pre- Trial

- *(1) Not later than thirty (30) days after the answer is filed, the case shall be calendared for pre- trial. Should the parties fail to arrive at an amicable settlement (sulkh), the court shall clarify and define the issues of the case which shall be set forth in a pre-trial order.*

- *(2) Within ten (10) days from receipt of such order, the parties or counsels shall forthwith submit to the court the statement of witnesses (shuhud) and other evidence (bayyina) pertinent to the issues so clarified and defined, together with the memoranda setting forth the law and the facts relied upon by them.*

- *(3) Should the court find, upon consideration of the pleadings, evidence and memoranda, that a judgment may be rendered without need of a formal hearing, the court may do so within fifteen (15) days from the submission of the case for decision.*

Sec. 7. Hearing or Trial

(1) The plaintiff (mudda'i) has the burden of proof, and the taking of an oath (yamin) rests upon the defendant (mudda'alai). If the plaintiff has no evidence to prove his claim, the defendant shall take an oath and judgment shall be rendered in his favor by the court. Should the defendant refuse to take an oath, the plaintiff shall affirm his claim under oath in which case judgment shall

be rendered in his favor. Should the plaintiff refuse to affirm his claim under oath, the case shall be dismissed.

(2) If the defendant admits the claim of the plaintiff, judgment shall be rendered in his favor by the court without further receiving evidence.

(3) If the defendant desires to offer defense, the party against whom judgment would be given on the pleadings and admission made, if no evidence was submitted, shall have the burden to prove his case. The statements submitted by the parties at the pre-trial shall constitute the direct testimony of the witnesses as basis for cross-examination.

Sec. 8. Judgment

(1) The judgment shall be rendered within fifteen (15) days from the termination of the trial, or disposition of the case, should there be no formal trial or hearing.

(2) The judgment shall become final and executory upon the expiration of the period to appeal. Once the judgment becomes final and executory, the court motu proprio shall immediately issue the writ of execution for the satisfaction of the judgment.

Sec. 9. Appeal

An appeal shall be made by filing a notice of appeal addressed to the court and by paying the docket fee within fifteen (15) days from receipt of the judgment.

Sec. 10. Appeal to the Shari'a District Court

Within five (5) days from the perfection of the appeal, the clerk of court shall transmit the original record to the appropriate appellate court.

Sec. 11. Appeal to the Supreme Court

Upon receipt of the original records, transcripts and exhibits, the clerk of court of the Shari'a District Court shall notify the parties of such fact.

Sec. 12. Legal Opinion (Fatwa)

Before judgment is rendered, any court may seek the opinion (fatwa) of the Jurisconsult of Islamic Law created under the Code of Muslim Personal laws in matters concerning difficult questions of Muslim Law and Jurisprudence (fiqh).

Sec. 13. Pleadings and Motions Disallowed

The court shall not allow the filing of the following pleadings, petitions or motions, namely:

- (a) Motion to dismiss or to quash;
- (b) Motion for a bill of particulars;
- (c) Motion for extension of time to file pleadings or other papers;
- (d) Motion to declare defendant in default;
- (e) Reply, third- party complaints, or intervention;
- (f) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
- (g) Petition for relief from judgment;
- (h) Motion for new trial or reopening of trial; and
- (i) Any dilatory motion for postponement.

PAR T II - OATH (YAMIN)

Sec. 14. Administration of Oath

(1) An oath (yamin) legally binding in a manner and form observed under Muslim Law may, by order of the court, be administered upon any of the parties who are Muslims to establish a fact, or to affirm any evidence presented. Such oath may constitute as proof in the absence of any other evidence.

(2) No person shall be allowed to take an oath unless he is qualified under Muslim law and is fully aware of the solemnity of the oath or the import of the solemn affirmation. Any person who is to take an oath or solemn affirmation in accordance with Muslim Law shall be given reasonable time to think it over.

(3) The court shall set an appropriate time, date and place of oath-taking or of solemn affirmation by such person. If, at any time before such appointed date, the party who is required to take an oath or a solemn affirmation refuses to do so (nukul), the court, may in its discretion direct the person, if he is the plaintiff, to withdraw his claim, or in case of the defendant, to admit the claim of the plaintiff.

Sec. 15. Mutual Oath (Tahaluf)

In case of claims and counter-claims where neither of the parties would give way at the pre-trial, the court may, in its discretion, require both parties mutual oath (tahaluf) on any particular fact or facts upon which the court may render judgment.

Sec. 16. Mutual Imprecation (Li'an)

If a Muslim husband accuses his wife of adultery and fails to prove the same in accordance with Muslim Law, the court may require the husband and the wife, if she is a Muslim, to perform the prescribed acts of imprecation (li'an) and, thereafter, the court shall dissolve the marriage by issuing the appropriate divorce decree in accordance with the provisions of the Code of Muslim Personal Laws.

PAR T III - SUPPLEMENTAL PROCEEDINGS

Sec. 17. Supplemental Rule in Civil Cases Muslim Law On Evidence

The court shall adhere to the sources of Muslim Laws relating to the number, status, or quality of witnesses (adala) and evidence required to prove any fact. Except as herein provided, the Rules of Court shall apply in a suppletory manner.

Sec. 18. Suppletory Rule in Special Offenses

Subject to the next preceding section, all special cases or offenses cognizable by the court may be filed in such form and head in such manner as prescribed by the applicable laws and the Rules of Court. However, the court may apply, in a suppletory manner, the principles of Muslim Law.

PAR T IV-ARBITRATION PROCEEDINGS

Sec. 19. Argama Arbitration, How Conducted

The Agama Arbitration Council, after its constitution pursuant to the provisions of the Code of Muslim Personal Laws, shall conduct the arbitration proceedings in accordance with the method it deems appropriate, taking into consideration the circumstances of the dispute, the conciliation of the parties, the interests of the children, if any, and other third parties involved,

and the need for a speedy settlement of the dispute. However, no arbitration proceedings shall take place ex parte.

Sec. 20. Effectivity

These special rules of procedures take effect immediately, Approved unanimously on September 20, 1983.

4. CONCLUSION

In conclusion, Shari'a courts, which were created specifically for the effective administration and enforcement of the Code of Muslim Personal Laws, are subject to the administrative supervision of the Supreme Court. It can be said that The Shari'ah Court procedure in the Philippines is not entirely Islamic origin but partly of Philippine procedural law. The Philippine Shari'a courts have been an integral part of the challenge to make autonomy work in southern Philippines and the historical struggle of Muslim Filipinos for self-determination.

It is important to note that findings of this study and errors from misconstruction or inaccurate presentation of the law, jurisprudence and opinions are the researcher's own alone.

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STATUTES

Special Rules of Procedure Governing Philippine Shari'a Courts

Code of Muslim personal Laws of the Philippines (CMPL)

RA 9045 - otherwise known as the "Act To Strengthen and Expand the Organic Act of the Autonomous Region in Muslim Mindanao"

Rules of Court in the Philippines