

Chapter I

INTRODUCTION

1.1 - Background of the Study

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)"

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

² Ibid.

³ Ibid.

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 supplementary 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.

Moreover, The Origin of Shari'a in the Philippines, and An overview of 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.

1.1.1 The Origins of Shari'a in the Philippines

While Muslim traders began visiting the Philippines from as early as the ninth Century, the first documented Islamic settlement in the country was recorded in the 1200s, in the southern island of Sulu.⁶

⁴ Ibid.

⁵ Ibid.

⁶ Stephens, Matthew, "Islamic Law in the Philippines: Between Appeasement and Neglect" 2011, pp. 5-6.

By the fourteenth Century, the Sulu Sultanate had been established, with others following in Central Mindanao over the next century. Islam brought the benefit of trade links with the rest of Southeast Asia, and the promise of a system of norms that could promote equity, order and security. It would also come to serve as a unifying form of identity for the thirteen distinct ethno-linguistic communities living in Muslim areas of Mindanao.⁷

1.1.2 Islamic Legal and Judicial System in Southern Philippines: An overview

Before the coming of the Muslim Missionaries to the Philippines, about the latter part of the 13 Century A.D., particularly to Sulu and Cotabato, the people in these places had no known legal system much less system of administering justice beside their aged old custom or usages of Indo-Malay and Hindu origin handed down from generation by their ancestors. Law, therefore, and administration of justice is in accordance with their customs and usages administered by the chief of the tribe, or in consultation with the elder members of the tribe. In Sulu for example, these headmen are called the “Panglima”, and the elders of the community are called the “Tao-Maas”.⁸

With the introduction of Islam to Sulu and Cotabato by the early Muslim Missionaries, Islamic Laws both canonical and secular found their ways into the lives of the inhabitants of those principalities which in the course of time got infused with the custom (ada) of the people and became their legal system, although in practice, in case of

⁷ Ibid.

⁸ Arabani, “Islamic Legal and Judicial System in Southern Philippines”, Philippines.

conflict the Muslim law prevailed over custom. And the administration of these laws was patterned after the Islamic judicial system.⁹

The local legal system came to be known as “Sara Agama”, the word “Sara” is taken from the Arabic word Shari’a and while, “Agama” is a Sanskrit word of one of the ancient Hindu tribes of India which means religion. Consequently, since that the implementation of that law is considered a religious duty as a law from God, the judicial authority that implement that law, in the course of time, had come to be known the “Agama”, meaning Islamic Court.¹⁰

With the introduction of Islamic law, the Chief of the tribe would now usually have an missionary or one learned in Muslim laws (Ulamas) as an adviser (Mufti) who therefore, exercised a strong influence in the political and religious affairs of the state. Consequently , the Islamic law concept of sovereignty, that it resides in God, also crept into the system of the government of the Sultan, and which came to be observed especially, when these early Muslim Missionaries were themselves made by the local Chief of the tribe to take over their Sultan or head of state. For example in Sulu, Rajah Baginda, the native Chief, proclaimed Sayyid Abu Bakr, an Arabian Missionary that came to Buansa the seat of government then of the local Chief of Sulu, as Sultan and gave him the title of Paduka Masahari Al-Sultan Al-Shariful Hashim and vested him with him with the powers and authority as the new ruler of the Islamic Theocratic state. In Maguindanao, Shariff Muhammad Alawi, papurarly known Shariff Kabungsuwan, likewise propagated Islam and Islamic law. Thus, following the Islamic concept that

⁹ Ibid.

¹⁰ Ibid.

sovereignty resides in God, whose viceroy on earth is the Head of State or the Sultan, the latter therefore, has the authority to implement Islamic law and justice. The Sultan, pursuant to that authority, appoints delegates to administer Islamic law and justice in the persons of the Qadis (judges) and the Wazirs (learned in Islamic law). In the outskirt localities, the custom of referring the dispute to the local headmen, the “Panglima” continued, only this time they have to be appointed likewise by the Sultan. The Panglima, in Sulu or Pandetas in Maguindanao, who were not necessarily learned in Islamic law, generally the local system in the adjudication of disputes, unlike the Qadis who observed the Shari’a or Muslim Law.¹¹

The Qadis exercise both civil and on criminal jurisdiction, and the procedure in the hearing of cases is patterned after the Islamic system of administering justice which is characterized as essentially inquisitorial in form and where oath is resorted to, in the absence of evidence, to resolve the issue. The decision of the Qadi is appeal able to the Sultan whose decision is final and executory.¹²

Thus, for centuries, the Muslim of the Philippines were governed by Islamic law and justice, which remained unaffected by the Spanish colonization of the other parts of the archipelago, except Sulu and other parts of Muslim Mindanao. When the American took over of the Philippines from the Spaniards, the new colonizer likewise failed to subjugate completely the Muslim, and in Sulu, due to the firm resistance of the Sultan and his subjects, the American government had to contend itself by entering into a treaty of peace with the Sultan, the “Bates Treaty”, which was followed by another treaty.

¹¹ Ibid.

¹² Ibid.

However, notwithstanding those treaties, the Sultan of Sulu never abdicated completely his sovereign to rule his subjects according to its own personal laws, hence in the Bates Treat, the U.S. government recognized the government of the Sultan and its authority to enforce its own personal laws for its subjects according to the Philippine government.¹³

1.1.3 BASIS OF THE MUSLIM LEGAL SYSTEM

1.1.3.1 Muslim Legal System

The Philippine legal system is aptly described as a blend of customary usages, the Roman (civil law) and the Anglo-American (common law) systems. But in some Southern part of the islands, Islamic law is observed. This aspect of Islamic law is the result of the immigration of Muslim Malays in the 13th century or before the subsequent colonization of the islands by Spain and the United States.¹⁴

The legal system of the Muslims in the Philippines has sometimes been called by scholars as the Sara Agama System being based upon Islam as religion. Attorney Musib Buat opines that:

"The word Agama has come to be known as practice or system. Among the Muslims, it is synonymous with the word "ideology." Agama is a Sanskrit word for Religion. The reason for this is perhaps due to the general concept of law and policy among Muslims. The Muslims do not distinguish law as either secular or divine, canon or civil law. "

¹³ Ibid.

¹⁴ CPRM Consultants. (June 2004). Institutional Strengthening of the Shari'a Justice System: (Phase I). Final Report on the SC-UNDP Project: PHI/01/001. Submitted to the Supreme Court of the Philippines. Used with permission by the SC-PIO. (http://www.muslimmindanao.ph/sharia_system.html)

The legal system of the Muslims, both customary (adat) and Islamic is quite comprehensive. It embraces all legal, social, political and civil relations. ' ¹⁵

1.1.3.2 Non-State Courts and the Judicial Role of Political Rulers

"Non-state" courts were manned by functionaries known in the Sulu archipelago as the panglima and the pandita in Mainland Mindanao. According to Prof. Mastura, the legal scholars conceived their legalist role as advisers to the political rulers, the qadis as practitioners. The recognition of an apprentice's legal aptitude took place from agama court practices that derived naturally from the theory of reputation in trial apprenticeship. This came about because the specific institutional feature of customary handling of disputes resided in the chief magistrate (datu kall} who presided over sessions to hear the "process of law" argued by a set of paired jurors (wazirs) and advocates (wakils) representing the party litigants.¹⁶

1.1.3.3 Sources of Muslim Customary Laws

The sources of customary or adat law are basically three-fold: (1) Ancient Malay adat law; (2) Indian-Hindu law and (3) Shari'a or Islamic Law. The natives embraced Islam, mixed Adat law with Shari'a or at least Shari'a blended with pre-Islamic practices or Hukum Shari'a. The sanction of customary law is in the Agama Court. Sometimes the Muslim Ecclesiastical Authority or Agama leaders like the Sultan, datu and panglimas enforced customary law.¹⁷

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

1.1.4 BEGINNINGS OF MORO COURTS

1.1.4.1 Organization of Ward Courts

The Ward court was the counterpart of the justice of the peace courts of the Insular Government system. Under this new setting, the district governor presided over the bureaucratic systems and the ward court included the district secretaries as ex officio justices and such auxiliary justices as needed.¹⁸

1.1.4.2 CODIFICATION OF MUSLIM PERSONAL LAWS

1.1.4.2.1 Precursors of the Code

The codification of Muslim personal laws goes back in Philippine history to the promulgation during the Sulu Sultanate of the Diwan Taosugas the principal personal law codex of Sulu. Around the middle of the eighteenth century, the Sultan of Maguindanao promulgated a more comprehensive codex, the Luwaran sa Magindanao. (Mastura 2005)¹⁹

The CMPL was enacted to: Recognize the legal system of Muslims in the Philippines as part of the law of the land, Make Islamic institutions more effective, Codify Muslim personal laws, Provide for an effective administration and enforcement of Muslim personal laws among Muslim Filipinos. (Art. 2)²⁰

After the Commonwealth government in the Philippines and during the period of the Republic, several laws were enacted recognizing certain aspects of Muslim personal laws. Republic Act No. 386 or the New Civil Code recognized marriages among Muslims

¹⁸ Ibid.

¹⁹ “Policy Brief of Code of Muslim Personal laws of the Philippines”.

²⁰ “A Premier on Code of Muslim Personal Laws in the Philippines”, Produced under the “Project: Development of a Comprehensive IEC Plan for the Shari’a Justice System” funded by The Asia Foundation, Grant No. 30394-26-330-26-29804.

or mixed marriages between a Muslim male and a non-Muslim female. Article 78 thereof provides that marriages between Mohammedans or pagans who live in 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 persons solemnizing these marriages be obliged to comply with Art. 92. The second paragraph provides that twenty years after the approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provisions of this Code unless extended by the President.²¹

Article 79 of the same Code provides for mixed marriages between Muslims and Christians. In case the male is a Christian, the general provisions of the Civil Code apply but if the male is a Muslim, it may be performed in accordance with the provisions of Article 78 if the contracting parties so desire. After the expiration of the 20-year period stipulated in Article 78, Republic Act No. 6268 was approved on June 19, 1971 which extended the applications of Article 78 for another ten years. Republic Act No. 394 was passed recognizing divorce among Muslims.²²

On December 13, 1974, President Ferdinand Marcos issued Executive Order No. 442 creating the Presidential Code Commission to Review the Proposed Code on the Administration of Philippine Muslim Law. On August 29, 1975, the Commission submitted the Code of Muslim Personal Laws to the President, which was finally promulgated as Presidential Decree No. 1083 on February 4, 1977.²³

²¹ Ibid.

²² Ibid.

²³ Ibid.

1.2 - Statement of the Problem

The researcher strived for explaining the Shari'ah Courts in Mindanao – Philippines. Specially, the researcher seeks out to answer the following, namely:

1. What is the origin of Shari'ah Courts in Mindanao – Philippines?
2. What are the Shari'ah Courts in Mindanao – Philippines?
3. What are the basic jurisdictions of the Shari'ah Courts in Mindanao – Philippines?
4. What are the Special Rules of Procedure governing the Shari'ah courts in Mindanao – Philippines?

1.3. Scope and Limitations of the Study

This research explained the Shari'ah Court Procedure in Mindanao – Philippines. Since there is no much time allotted to the researcher, this study was only limited to the Shari'ah Court Procedure in Mindanao – Philippines. However, due to man's beyond control, although it is motivating to cover some of the Court Procedure in Philippines, it was only limited to the Special Rules of procedure Governing the Shari'ah Court Procedure.

1.4 - Objective of the Study

The objective of this study is very important. Among the Objectives of the present study are as follows:

1. To clarify and define the plight of the Shari'ah Courts in Mindanao Philippines to the student and to those who love to seek about it.
2. To know the origin of Shari'ah Courts in in Mindanao – Philippines.
3. To identify the different Shari'ah Courts in Mindanao – Philippines.

4. To find out the basic jurisdictions of Shari'ah Courts in Mindanao– Philippines.
5. To determine the special rules of procedure governing the Shari'ah Courts in Mindanao – Philippines.

1.5 - Significance of the Study

This part of the study discusses the importance of knowing and understanding the Shari'ah Courts in Autonomous Region in Muslim Mindanao (A.R.M.M.) – Philippines practically and theoretically.

1.5.1 Practical

This section will provide brief description on the various significances of the study practically to the following:

1. **Teacher:** The study will help teachers to have a deeper understanding on the Shari'ah Courts in Autonomous Region in Muslim Mindanao (A.R.M.M.) – Philippines.
2. **Student:** The study will educate students regarding the Shari'ah Courts in Autonomous Region in Muslim Mindanao (A.R.M.M.) – Philippines.
3. **Practicing Shari'a Lawyers:** The study is important to the practicing shari'ah Lawyers. They will be aware of the origin, different kinds, basic jurisdictions and special rules of procedures governing the Shari'ah Courts in Autonomous Region in Muslim Mindanao (A.R.M.M.) – Philippines.
4. **Society:** By this research and/or study, community at large will be informed about the Shari'ah Courts in Autonomous Region in Muslim Mindanao (A.R.M.M.) – Philippines where they can file and complain their concerns regarding their personal affairs.

1.5.2 Theoretical

This section will provide brief description on the various significances of the study theoretically to the following:

1. ***As a Reference:*** The study can be used as a reference and / or review materials towards the Shari'ah Courts in Autonomous Region in Muslim Mindanao (A.R.M.M.) – Philippines.

2. ***As a Guide:*** The study will benefit and help the future researchers as their guide in studying the field of Shari'ah Courts in the Philippines. This study can also be used in future study of the future researcher. They can likewise gain new perspective by being aware of the said study.

3. ***As a basis for Decision Making:*** findings of this study can serve as a basis for decision making and in the formulation of policies on matters related to Islamic Court Procedure.

1.6 - Previous Studies

1.6.1 Introduction

This section is divided into two parts. Studies conducted abroad are classified as foreign studies. Those that were conducted within the country are classified under local studies. Foreign studies consist of studies on Shari'ah Courts. Likewise, local studies are also consists of studies which give the reader some ideas on the plight of Shari'ah Courts in the Philippines.

1.6.2 Foreign Studies

Abikan said in his study on “*The application of Islamic law in civil cases in Nigerian Courts*” that God created man and endowed him with all the faculties necessary for the fulfilment of his needs and requirements to make life worth living. He also make available in his means for achieving his ends in co-operation with other men for a reconstruction of prosperous life. Shariah stipulates the Law of God in the most comprehensive manner with the object of showing to man the best way and means to fulfil his needs in the most successful and most beneficial way, not only in this life but also in the hereafter. The comprehensiveness of Islamic Law, both civil and criminal, is attributable to the broad the divinely revealed book, the Sunna sayings deeds and tacit approval of the Prophet, which are its primary sources, it also has an all-encompassing secondary sources which translates to its dynamism, affording man the opportunity to adapt the residual laws to changing conditions and circumstances. (Abikan, 2002:02)²⁴

Barnes and Harun stated in their studies on “The Rise and Fall of Mogadishu’s Islamic Courts” that the establishment of the Islamic Courts was not so much an Islamist imperative as a response to the need for some means of upholding law and order. The Islamist agenda in the Courts was not particularly ‘programmatic’; they were not presided over by expert Islamic judges, nor were they adherents to any specific school of Islamic

²⁴ Abikan, Abdulqadir Ibrahim, “The application of Islamic law in civil cases in Nigerian Courts”, Journal of International and Comparative Law (June 2002) 6 JICL Pages 88-115

law. The enforcement of the Courts' judgments depended on militias recruited from the local clan. (Barnes and Hassan, 2007:152)²⁵

Kayaalp argued in his study on "*The Use of Islamic Court Records in the Study of the Status of Women in Ottoman Society*" that Islamic Court Records serve as an important. However, much relevant information is missing in these documents and what is contained therein cannot be taken at face value. By limitedness means that the records of the Islamic courts are specific to a particular time and place, say, an early sixteenth-century Syrian town or a given district in late nineteenth-century Istanbul. By irregularity means that these records do not constitute a monolithic body of material and display important variations concerning content and format. To illustrate, while some court registers include each case that came before the court, others record only special categories of transactions and litigations. Similarly, some court registers include numerous imperial decrees and other types of correspondence from the central administration while others contain none of such documents. Still others list more important matters in the front of the register and lesser ones at the end. (Kayaalp, 2012:157)²⁶

Kutty claimed in his study on "*The Myth and Reality of Shari'a Courts in Canada: A Delayed Opportunity for the Indigenization of Islamic Legal Rulings*" that the various schools and groupings within the ummah must be encouraged to grapple with the existing traditions of Islam and to work with its tool box of legal and political theory to start

²⁵ Barnes, Cedric and Hassan, Harun, "The Rise and Fall of Mogadishu's Islamic Courts", Journal of Eastern African Studies Vol. 1, No. 2, 151160, July 2007

²⁶ Kayaalp, Pinar Ph.D., "The Use of Islamic Court Records in the Study of the Status of Women in Ottoman Society", American International Journal of Contemporary Research Vol. 2 No. 1; January 2012 p. 157

devising a more Canadian version of Islam and Islamic law. The least we can do is to allow the communities as a whole to negotiate and work out their own norms, rather than attempt to impose values and judgments. (Kutty, 2010:561)²⁷

Powell mentioned in her study on “*Islamic law states and the International Court of Justice*” that the International Court of Justice (ICJ), as the principal judicial organ of the UN, plays an important role in peaceful resolution of international disputes. Traditionally, relations between Islamic law states, international law, and courts have been relatively tense due to the inherent link between Islamic law and the Islamic faith. Yet, several Islamic law states recognize the ICJ’s compulsory and compromissory jurisdiction. (Powell, 2013:01) ²⁸

Today, most Muslim countries adopt only a few aspects of sharia, while a few countries apply the entire code. Most predominantly Muslim countries have not adopted hudud penalties in their criminal justice systems. The harshest penalties are enforced with varying levels of consistency. Since the early Islamic states of the eighth and ninth centuries, sharia always existed alongside other normative systems.

In September 2008, newspapers in the United Kingdom stated the government had "quietly sanctioned" the recognition of sharia courts. This refers to situations where both sides in a legal dispute freely choose a sharia court as a binding arbitrator rather than taking a matter before the official courts. The decision did not break new ground: the decisions of similar Jewish *beth din* court arbitrations have been recognized in England

²⁷ Kutty, Faisal, “The Myth and Reality of Shari’a Courts in Canada: A Delayed Opportunity for the Indigenization of Islamic Legal Rulings”, University of St. Thomas Law Journal Volume 7, Issue 3, Article 7, 2010 p. 561

²⁸ Powell, Emilia Justyna, “Islamic law states and the International Court of Justice”, Journal of Peace Research 00(0) 1–15, 2013 p. 1

for over 100 years. Sharia law is officially recognised by the justice system in Israel in matters of personal status of Muslims if they choose a sharia court (e.g. marriage, divorce, guardianship). Judges' salaries are paid by the state. Lebanon also incorporates sharia law for Muslims in family matters only. Some states in northern Nigeria have reintroduced sharia courts. In practice the new sharia courts in Nigeria have most often meant the reintroduction of harsh punishments without respecting the much tougher rules of evidence and testimony. The punishments include amputation of one/both hands for theft and stoning for adultery.

http://en.wikipedia.org/wiki/Sharia#Application_by_country, retrieved 22 June 2014, Sunday, 10:31 pm

Wikipedia (2014) the other system of Justice in Brunei is the shariah courts. It deals mainly in Muslim divorce and matters ancillary to a Muslim divorce in its civil jurisdiction and in the offenses of khalwat (close proximity) and zina (illicit sex) amongst Muslims. The shariah court structure is similar to the common law court structure except that it has no intermediate court and that the Court of Appeal is the final court of appeal. All magistrates and judges in both the common law courts and the shariah courts are appointed by the Government. All local magistrates and judges were appointed from the civil service with none thus far being appointed from the private practice.

The Center for Security Policy's report (2011), Shariah Law and American State Courts: An Assessment of State Appellate Court Cases evaluates 50 Appellate Court cases from 23 states that involve conflicts between Shariah (Islamic law) and American state law. These cases are the stories of Muslim American families, mostly Muslim women and children, who were asking American courts to preserve their rights to equal

protection and due process. These families came to America for freedom from the discriminatory and cruel laws of Shariah. When our courts then apply Shariah law in the lives of these families, and deny them equal protection, they are betraying the principles on which America was founded. The study's findings suggest that Shariah law has entered into state court decisions, in conflict with the Constitution and state public policy. Some commentators have said there are no more than one or two cases of Shariah law in U.S. state court cases; yet we found 50 significant cases just from the small sample of appellate published cases. Others have asserted with certainty that state court judges will always reject any foreign law, including Shariah law, when it conflicts with the Constitution or state public policy; yet we found 15 Trial Court cases, and 12 Appellate Court cases, where Shariah was found to be applicable in these particular cases. The facts are the facts: some judges are making decisions deferring to Shariah law even when those decisions conflict with Constitutional protections. Shariah Law and American State Courts: An Assessment of State Appellate Court Cases includes summaries of several cases in which the court's application of Shariah law appears to be in direct conflict with Constitutional liberties and the public policies of the state.

Wajihuddin (2011) MUMBAI: The city is set to get its first Darul Qaza or Shariah court to settle civil and marital disputes in the Muslim community. The court, set up by the All India Muslim Personal Law Board, will be inaugurated on Monday at Anjuman-i-Islam, near CST, and will serve to fill a long-felt need of the community. Shariah courts already function at many places in the country, such as Hyderabad, Patna and Malegaon. Here qazis appointed by the AIMPLB hear the community's various disputes, barring criminal cases, and deliver judgements. "This court will function to settle mainly family

disputes pertaining to marriage, divorce and inheritance. Marriage disputes will be settled quickly and the couples will be told to either reconcile or separate if reconciliation is not possible. It will save the community much time and money as fighting cases in civil courts is expensive and time-consuming," said AIMPLB secretary Maulana Wali Rahmani. For a dispute to be heard by a Shariah court, both the parties in the dispute will have to approach the court. If one of the parties has approached a civil court, then it will have to withdraw the case for the Shariah court to accept the matter. Rahmani said Shariah courts do not compete with the civil courts. "On the contrary, Shariah courts will lower the burden of the civil courts where thousands of cases are pending and the judges are overworked," he said. Senior advocate and head of AIMPLB's legal cell Yusuf Muchalla called the city's Shariah court a "significant alternative dispute settlement mechanism". "This court will decide within the framework of Muslim personal laws and mainly deal with matrimonial disputes. This is a kind of domestic tribunal set up by the Muslim community." He added that district and high courts in Bihar, Jharkhand, Bengal and Orissa have upheld several decisions given by the Shariah courts established by the Imarat-e-Shariah (House of Shariah) headquartered in Patna. Muchalla maintained that the Shariah courts were well within the law of the land. 'Shariah courts don't compete with civil courts' For a dispute to be heard by a Shariah court, both the parties in the dispute will have to approach the court. If one of the parties has approached a civil court, then it will have to withdraw the case for the Shariah court to accept the matter. AIMPLB secretary Maulana Wali Rahmani said Shariah courts do not compete with the civil courts. "On the contrary, Shariah courts will lower the burden of the civil courts where thousands of cases are pending and the judges are overworked," he said. Senior advocate

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Asia Sintinel (2010) Indonesia having a secular Constitution, devoutly Muslim Aceh was allowed to adopt parts of ghariah law, presumably to prevent the Acehnese from joining the rebellious Free Aceh Movement (GAM). In 1999, then-President BJ Habibie signed a special law on Aceh that, among other things, granted the province a special status and the right to partly implement shariah. However, the law did not stipulate how Islamic law would be implemented. Two years later, President Megawati Sukarnoputri signed into law an autonomy package that included comprehensive regulations on establishing Shariah courts and Shariah bylaws. Based on these two pieces of legislation — that were drafted, discussed, and approved in Jakarta, Aceh established its first shariah court in 2003, and publicly caned its first violator in 2005.

(Government of Singapore 2006) The Syariah Court was established in 1955 as a result of a study done by a Select Committee set up by the Singapore Government. This Select Committee was made up of lawyers, kadis and local religious leaders. From the study, an Act known as the Muslims' Ordinance came into effect on 30 May 1957. This is the Act that the Syariah Court derives its jurisdiction from until 1966. In 1966, the Administration of Muslim Law Act (AMLA) was introduced, repealing the Muslims' Ordinance. This Act was created to enhance the system of administration governing the Muslims in Singapore. In 1999, AMLA was refined to meet a few technical problems that

arose since. The Syariah Court is now better equipped to settle divorce cases and the ancillary issues in a more expedient and effective manner.

Jeong Chun Hai and Ibrahim, and Nor Fadzlina Nawi. (2007) The Syariah Court system is one of the two separate systems of courts which exist in Malaysian legal system. There is a parallel system of state Syariah Court, which has limited jurisdiction over matters of state Islamic law (Shariah). The Syariah Courts have jurisdictions only over matters involving Muslim, and can generally only pass sentences of not more than three years imprisonment, a fine of up to RM5, 000, and/or up to six strokes of the cane. Article 145 of the constitution says the Attorney General of Malaysia has no power over matters related to the Sharia courts.

They added that there are three levels of the courts: Appeal, High and Subordinate. Unlike the civil courts in Malaysia, which is a federalised court system, the Syariah Court is primarily established out of state law. Similarly Syariah or Islamic law is a matter of state law, with the exception of the Federal Territories of Malaysia, as provided in Article 3 of the Constitution. Thus syariah law in one state might differ to that of another state. There are 13 state syariah law departments and 1 syariah law department for the Federal Territories.

1.6.3 Local Studies

Arabani stated in his study on “Islamic Legal and Judicial System in Southern Philippines” that Islamic law considered “Justice” (adal) as an attribute of Allah and Administration of justice as the performance of a religious duty. The ideal of justice set

up by the Holy Qur-an is the “Mizan” or “balance of justice” and justice has been placed next to piety. (Arabani: 586)

Gubat claimed in his study on *“Ijra-at Al mahakim - Rules of Procedure Governing Philippine Sharia Courts”* that the principle that laws constantly change is generally repulsive to Islamic law. It has been said that the elements constituting the doctrines, principles, tenets and articles of faith as well as the ideology shaping the Islamic system and making it quite distinctive are not subject to change. 'That was the Way of Allah in the case of those who passed away of old; and you will not find any change in the Way of Allah.' (Holy Qur'an, 33:62) (Gubat: 09:1995)

Gubat also mentioned in his another work on *“Reviewer in Islamic Procedure and Evidence Governing Philippine Sharia Courts”* that With the periodic administration of the special Shari'a bar examinations by the Supreme Court of the Philippines at biennial interval and the absence of a comprehensive review material on Islamic Procedure and Evidence, such a benevolent advice deserves consideration. This review material is a virtual transformation of my work into a "Question and Answer" form. However, innovations brought about by the 1997 Rules of Civil Procedure adopted by the Supreme Court on April 8, 1997 are taken into consideration. As an added feature, suggested answers to Shari'a bar questions in Procedure and Evidence are incorporated herein to give prospective candidates the vicarious feeling of an actual bar examination. The Code of Muslim Personal Laws, pertinent provisions of the Organic Act for the Autonomous Region in Muslim Mindanao, and relevant circulars of the Supreme Court are included in this meager volume as appendices. (Gubat: 05:1998)

1.7. Conceptual Framework

This study explore and describe the relationship between the Binding law from P.D. 1083 on Shari'ah Courts in Mindanao – Philippines and the Binding law from Civil Code of the Philippines on Shari'ah Courts in Mindanao – Philippines (Independent Variable). It will also take into account on the History of Shari'ah Courts in Mindanao – Philippines, Overview of Shari'ah Courts in Mindanao – Philippines, and its basic jurisdictions (dependent Variable).

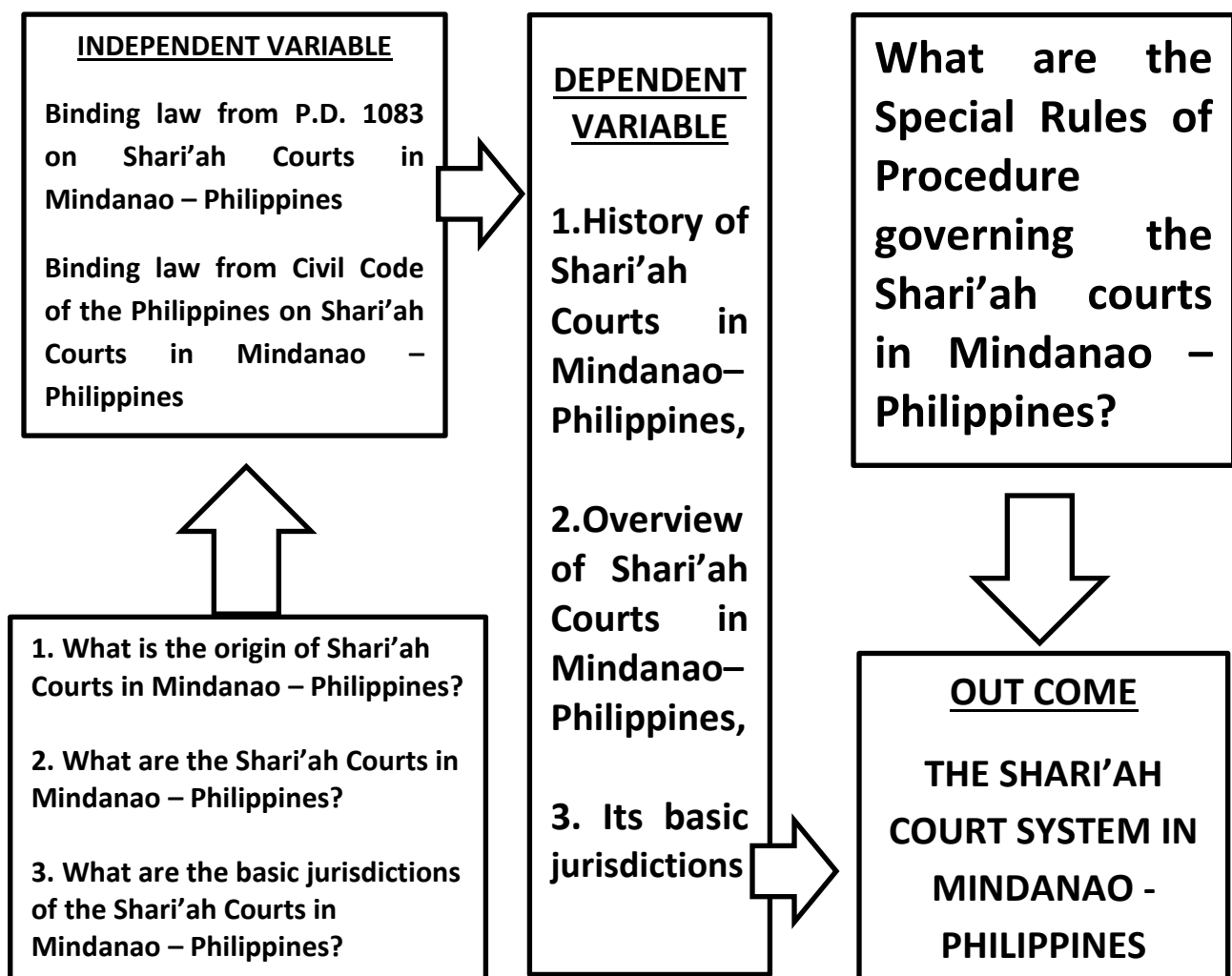
In addition, It can be presumed that with the present study, the research questions especially on the Special Rules of Procedure governing the Shari'ah courts in Mindanao – Philippines pertains to the Comprehensive outcome on THE SHARI'AH COURT SYSTEM IN MINDANAO – PHILIPPINES.

The schematic shows the relations between the identified variables. There are 2 boxes at the left side, 1 box at the center and 2 boxes again at the right side. On the left side, under the heading Independent variable, there would be one box labelled as Binding law from P.D. 1083 on Shari'ah Courts in Mindanao – Philippines and the Binding law from Civil Code of the Philippines on Shari'ah Courts in Mindanao – Philippines. Below of it is another box contains of three research questions.

Moreover, there is an arrow pointing up towards the Independent Variables. At the center, under the heading Dependent Variables, there would be one box labelled as the the History of Shari'ah Courts in Mindanao – Philippines, Overview of Shari'ah Courts in Mindanao – Philippines, and its basic jurisdictions.

Furthermore, To the right of this box, at the upper part of it, is a box contains of a research question. Below it would be an arrow pointing to a box on the down – left side. Here, under the heading out come, would be one box containing this text – “THE SHARI’AH COURT SYSTEM IN MINDANAO - PHILIPPINES”. Meanwhile, figure 1 on the next page shows a paradigm of the conceptual framework of the present study.

Figure 1. A Conceptual Framework of the Shari’ah Court Procedure in Mindanao – Philippines: An Understanding



1.8 – Methodology and Research Design

1.8.1 Introduction

This chapter deals with the methodology or processes used in this study. This chapter presents a detailed description of the design of the study, where and how the study was conducted, the material used is mentioned and how the data were collected and analysed.

1.8.2. Research Design

This research uses of Descriptive and Qualitative research method. Aquino gives this definition. Descriptive research is a fact – finding with adequate interpretation. (Aquino, pp. 7 – 8). 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.

Table 1. The Shari'ah Court Procedure in Mindanao – Philippines: An Understanding – Research Design

Research Question	Data	Source	Method	Instrument	Data Analysis
1. What is the origin of Shari'ah Courts in Mindanao – Philippines?	Primary Data: (a) History of Shari'ah Courts in Mindanao – Philippines (b) Overview on Shari'ah Courts in Mindanao – Philippines	Primary Data: (a) Binding Law • P.D. 1083 • R.A.9054 • Rules of Court in the Philippines • Others Secondary Data: (b) In – depth reading and fact - finding on: • Books • Thesis • Journals • Articles • Reports • Others Tertiary Data: (c) explanations from primary data such as: • Encyclopaedia • Dictionary	Qualitative Method • In – depth Reading and fact- finding (Document Review) • Inductive Approach	(a) Related Literature (b) Related Studies	(a) Logical Analysis

2. What are the Shari'ah Courts in Mindanao – Philippines?	Primary Data: (a) Binding law from P.D. 1083 on Shari'ah Courts in Mindanao – Philippines (b) Binding law from Special Rules of Procedure in Shari'ah Courts in Mindanao – Philippines. (c) Binding law from Rules of Court in the Philippines on Shari'ah Courts in Mindanao – Philippines	Primary Data: (a) Binding Law • P.D. 1083 • R.A.9054 • Rules of Court in the Philippines • Others Secondary Data: (b) In – depth reading and fact - finding on: • Books • Thesis • Journals • Articles • Reports • Others Tertiary Data: (c) explanations from primary data such as: • Encyclopaedia • Dictionary	Qualitative Method • In – depth Reading and fact- finding (Document Review) • Inductive Approach	(a) Related Literature (b) Related Studies	(a) Logical Analysis
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3. What are the basic jurisdictions of the Shari'ah Courts in Mindanao – Philippines?	Primary Data: (a) Binding law from P.D. 1083 on Basic Jurisdiction on Shari'ah Courts in Mindanao – Philippines (b) Binding law from Special Rules of Procedure in Shari'ah Courts in Mindanao – Philippines. (c) Binding law from Rules of Court in Philippines on Basic Jurisdiction on Shari'ah Courts in Mindanao – Philippines	Primary Data: (a) Binding Law • P.D. 1083 • R.A.9054 • Rules of Court in the Philippines • Others Secondary Data: (b) In – depth reading and fact - finding on: • Books • Thesis • Journals • Articles • Reports • Others Tertiary Data: (c) explanations from primary data such as: • Encyclopaedia • Dictionary	Qualitative Method • In – depth Reading and fact- finding (Document Review) • Inductive Approach	(a) Related Literature (b) Related Studies	(a) Logical Analysis
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4. What are the Special Rules of Procedure governing the Shari'ah courts in Mindanao – Philippines?	Primary Data: (a) Binding law from Special Rules of Procedure governing the Shari'ah courts in Mindanao – Philippines (b) Binding law from Special Rules of Procedure in Shari'ah Courts in Mindanao – Philippines. (c) Binding law from Rules of Court in Philippines	Primary Data: (a) Binding Law • P.D. 1083 • R.A.9054 • Rules of Court in the Philippines • Others Secondary Data: (b) In – depth reading and fact - finding on: • Books • Thesis • Journals • Articles • Reports • Others Tertiary Data: (c) explanations from primary data such as: • Encyclopaedia • Dictionary	Qualitative Method • In – depth Reading and fact- finding (Document review) • Inductive Approach	(a) Related Literature (b) Related Studies	(a) Logical Analysis
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1.8.3. Location of the Study

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.

***Sultan Kudarat** is a province of the Philippines located in the SOCCSKSARGEN region in Mindanao. Its capital is Isulan and borders Maguindanao and Cotabato to the north, South Cotabato and Sarangani to the south, and Davao del Sur to the east, and the Celebes Sea to the west.²⁹*

Sultan Kudarat is subdivided into 11 municipalities and 1 city. Three of the municipalities (Kalamansig, Lebak, and Palimbang) are coastal towns, while the rest of the province is located inland. Tacurong City is the smallest unit in the province in terms of land area, but it is the most urbanized, and is considered the province's commercial center. Other growth centers are Lebak and Isulan, the latter being the provincial capital. Bagumbayan is the largest town in terms of land area. The 11 municipalities and Tacurong City are further subdivided into 249 barangays.³⁰

²⁹ Sultan Kudarat, "http://en.wikipedia.org/wiki/Sultan_Kudarat".

³⁰ Ibid.

Meanwhile, University of Muhammadiyah Surakarta (UMS) is an institution of higher education under Persyarikatan Muhammadiyah. UMS stands by the Minister of Education and Culture No. 0330 / O / 1981 dated October 24, 1981 as a change in the shape of a Teachers' Training College Muhammadiyah Surakarta.³¹

Before becoming UMS, UMS institutionally derived from the Faculty of Teacher Training and Education (Guidance and Counseling) Surakarta Muhammadiyah University of Jakarta Branch which was established in 1957, among others, Mother of the pioneering Sudalmiyah Suhud Rais, Mr. Radjab Month Hadipurnomo, Mr. Muhammad Habib Syafa'at, Mother Gito Sulastri Atmodjo, and KH Syahlan Rosyidi.³²

On September 18, 1958, the institute was inaugurated by the mayor of Surakarta Municipality HM Salih Werdhisastro. At the time inaugurated,. The new university has 51 students, 6 and 7 lecturers employees. The capital asset inception FKIP Surakarta Muhammadiyah University Jakarta branch located at No. 60 Jalan Overste Sudiarto Surakarta.³³

As Dean (Rector of the time) is Prof. Drs. Sigit Abdullah, Professor of University of Gadjah Mada and his secretary Drs. Syafa'at M. Habib. The majors that are opened General education, General Economics and Islamic Studies-Religious Education Islam-- Bachelor level, with registered status.³⁴

³¹ Universitas Muhammadiyah Surakarta,
“http://id.wikipedia.org/wiki/Universitas_Muhammadiyah_Surakarta#Program_Magister_28S2.29”

³² Ibid.

³³ Ibid.

³⁴ Ibid.

1.8.4. Data Collection Method

Qualitative Approach is used in this current study. With the application of both descriptive and qualitative methods, this research will be valuable and reliable. An Inductive approach was also 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.

1.8.5. Data Collection Instruments

This study make used of in depth fact finding and reading in the collection of the data. The Data Collection used is through empirical observation. Most of the resources if not all are from the books, statutes and on line resources. The Related Literature and Related Studies is one of the data collection instruments in this study.

1.8.6. Validity and Reliability

In the evaluation of the Validity and Reliability of the said research, an expert of this study such as thesis advisers shall be asked about the validity of the information used in this current study.

1.8.7. Data Gathering Procedure

Before the study was conducted, the researcher attended a hearing at one of the shari'ah district courts in Mindanao to observe the flow of Sharia'h Court procedure in Mindanao - Philippines. Since the present study is a qualitative research, the researcher collected all documents that have significant support to the current study.

1.8.8. Data Analysis

This research make used of logical analysis in analysing and interpreting the gathered data. The review of related literature, the review of related studies and other informative documents related to this research has a great contribution in the interpretation and analysing the data gathered.