

Administrative Leadership of Shari'a Courts in Central Mindanao: Issues and Challenges

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ABSTRACT

The Shari'a Courts in the Philippines are creations of Philippine legislature. People inside the said courts, are also administrative leaders because they are the one leading people by promulgating and ordaining Shari'a laws as far as their jurisdiction and applications are concerned which has been stipulated under P.D. 1083 also known as The Code of Muslim Personal Laws of the Philippines. This paper sought to find out the issues and challenges as regard to the administrative leadership of Shari'a Courts in Central Mindanao. The study utilized qualitative descriptive-evaluative method using interview guide questions to the 12 participants who were Shari'a judges, clerks of court, Shari'a counsellors or lawyers, and selected clients. From the interviews made, it is revealed that Shari'a Courts are experiencing several issues and challenges and these are the following: The lack qualified Judge applicants resulted to lack of presiding judge; Lack of required capability or competency to be Shari'a Counsellor or Lawyer; The overriding objective by non-Muslim Husband conversion to Islam; and Some Muslim individuals seem not interested in bringing their dispute before the Shari'a Courts. It is indeed a challenge for them to constantly revisit the rules and laws stipulated and regulated under Shari'a Courts.

Keywords: Administrative leadership, Central Mindanao, Presidential Decree No. 1083 or The Code of Muslim Personal Laws of the Philippines, Shari'a District Courts, Shari'a Circuit Courts.

INTRODUCTION

Leading a court is no different from leading any other organization. People inside the court create, implement and perform different tasks with the best of their skills and who at once, protect and maintain routines and take risks. In addition to being faced with administrative leadership challenges, they are urged on focusing upon achieving legal solutions because people outside have high expectations for how they will be treated during their encounters with the judicial system.

Administrative leaderships referred to be the leaders of public agencies, no matter whether they are the chief executive officers or employees functioning as lead workers (Pearce and Conger, 2003). One important thing to remember when talking about administrative leadership is that, it focuses on non-elected leader functions in public agencies. (Van Wart, 2003)

In court administration, leadership may serve as the energy behind every system and accomplishment. Every organization faces challenges in realizing its vision and mission. That is why we need continuity of leadership. As said, "It is standard to practice for courts to have a chief or presiding judge and court personnel as well. Regardless of how these positions are filled, the administrative leadership role is defined primarily by the person in the position." (Solomon, Steelman, et al. 2002)

The Shari'a Courts in the Philippines are creations of Philippine legislature. People inside the said courts, are also administrative leaders because they are the ones leading people by promulgating and ordaining Shari'a laws as far as their jurisdiction and applications are concerned. Shari'a Courts are courts of limited and special jurisdiction because their jurisdiction is confined to the class of cases enumerated by Presidential Decree No. 1083 otherwise known as Code of Muslim Personal Laws of the Philippines. 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 executive original jurisdiction of any court, tribunal, board or office. The special rules of procedure governing the Shari'a Courts were promulgated by the Supreme

Court pursuant to Articles 148 and 158 of the Presidential Decree No. 1083 (P.D. 1083) otherwise known as the Code of Muslim and Personal Laws of the Philippines.

It is in this wise that the researcher takes the painstaking effort to research on this humble work with the hope that it will help the Shari'a courts to disclose their concerns and experiences and the government to scrutinize the conditions of the said court, and the public to express their ideas based on their experiences. Specifically, this paper sought to find out the issues and challenges experience by the implementers and the recipients on the service of the Shari'a Courts.

METHODOLOGY

This study was conducted with the objective to find out the issues and challenges as regard to the administrative leadership of the Shari'a Courts in Central Mindanao. The research participants consisted of 12 who were Shari'a judges, Clerks of court, Shari'a Counsellor or Lawyers, and selected clients. The researcher used interviews guide questions, and open-ended questions to obtain information from the research subjects or participants. The study was conducted in Shari'a Courts in Central Mindanao. There are five (5) Shari'a Circuit Courts and one (1) Shari'a District Court in Central Mindanao. Four (4) Shari'a Circuit Courts in province of Sultan Kudarat, one (1) in Cotabato City and one (1) Shari'a District Courts in Cotabato City. The target participants were the Judges, Clerk of Courts, Shari'a Counsellors or Lawyer, and also with the participation of Shari'a Court clients. Furthermore, the researcher assured the degree of neutrality in the research since findings were based on participants' responses and not any potential bias or personal motivations of the researcher.

RESULTS AND DISCUSSION

This part of the paper presents the results and analysis of data based on the interviews made by the researcher. The presentation discusses the information obtained from the participants, respectively.

Issues and Challenges experience by the Implementers and the Recipients of the Service of the Shari'a Courts

From the interviews made, it is found out that Shari'a Courts are experiencing several issues and challenges, which were being revealed by the participants. And these are the following: The lack of Judge in Shari'a District Court and lack of qualified applicants; The lack of required capability or competency to be Shari'a Counsellor; The overriding objective by non-Muslim Husband conversion to Islam; and Some Muslim individuals seem not interested in bringing their dispute before the Shari'a Courts;

Lack of Judge and Qualified Judge Applicants

First, the lack of Judge in Shari'a District Courts. The research findings revealed that out of five (5) Shari'a District Courts, there is only one Shari'a District Judge, the said judge is stationed in Fourth Shari'a District but acting as judge in first to fifth stations of the Shari'a District Courts. This is in contrast to the rule stipulated under Article 138 of P.D. 1083 that each Shari'a District Court shall be presided over by one judge.

Participant 5 revealed that:

Participant 5: *'There is only one (1) Shari'a District Judge in the five (5) Shari'a judicial districts. Said judge acts as Acting Presiding Judge in the four (4) Shari'a District Courts, thus, cases at this time takes longer time to be heard and thereafter resolved.'*

The participants further revealed that there are applicants for judge, but lack of qualified. The participants were further asked about the reasons behind the issue, thereafter, the participant mentioned to the researcher the rule

under Articles 140 and 152 of Presidential Decree No. 1083 also called the Code of Muslim Personal Laws of the Philippines”, provides that:

“Article 140. Qualifications. – No person shall be appointed Shari’a District Judge unless, in addition to the qualifications for judges of Courts of First Instance fixed in the judiciary Law, he is learned in Islamic law and Jurisprudence.

Article 152. Qualifications. – No person shall be appointed judge of the Shari’a Circuit Court unless he is a natural born citizen of the Philippines, at least twenty-five (25) years of age, and has passed an examination in the Shari’a and Islamic jurisprudence (fiqh) to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the Shari’a Courts.”

Moreover, the said participants mentioned and showed the researcher about the Rules of the Judicial and Bar Council to further understand the reasons behind the insufficiency of judges. The following are the Rules of the Judicial

“Whereas, under the Constitution, the authority to nominate appointees to the Judiciary (Constitution, Art. VIII, Section 8) and to the offices of the Ombudsman and his Deputies (Constitution, Art. XI, Section 9) is vested in the Judicial and Bar Council.”

Under Rule 2, Sections 1, 7 and 9 of the said Constitution or the Constitutional and Statutory Qualifications for Appointment provides that:

Section 1. Qualifications applicable to all Members of the Judiciary and the Ombudsman and his deputies. – (a) No person may be appointed Member of the Supreme Court or any lower collegiate court or as Ombudsman or deputy Ombudsman unless he is a natural-born citizen of the Philippines (Constitution, Art. VIII, Section 7, par. 1; Id., Art. XI, Section 8).

(b) No person may be appointed judge of any court lower than a collegiate court unless he is citizen of the Philippines (Constitution, Art. VIII, Section 7, par. 2).

(a) A Member of the Judiciary must be of proven competence, integrity, probity and independence (id., id., par. 3) and a member of the Philippine Bar (id., id., par. 2).

Section 7. Additional qualifications of Judges of the Regional Trial Courts. – No person shall be appointed Judge of the Regional Trial Court unless he is at least thirty-five (35) years of age, and, for at least ten (10) years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (B.P. Big. 129, Section 15).

Section 9. Additional qualifications of judges of Shari’a courts. – in addition to the qualifications for Members of Regional Trial Courts, a judge of the Shari’a District Court must be learned in the Islamic Law and Jurisprudence. (P.D. No. 1083, Article 140).

It is very clear that the rule set forth by the Judicial and Bar Council stated that the Shari’a District judge must possess the

qualifications of the Regional Trial Court and must be learned in Islamic Law and Jurisprudence, therefore, the judge of the Shari’a District Courts must be a passer of Philippine Regular Bar and Philippine Shari’a Bar Examination. And this is definitely the main reason why only the Fourth District of Five (5) Shari’a District Courts has its presiding judge which lead to delay of hearing of the cases or to resolved.

Participant 9 said that:

Participant 9: *“Wala masyadong qualified na maging judge ng Shari’a District Courts dahil sa mataas ang qualifications. Parang double blade, Philippine Regular Bar Passer pati Philippine Shari’a Bar passer dapat.”*

Translation:

(‘Lack of qualified Judge because of the qualifications needed. He must be Philippine Regular bar passer and Philippine Shari’a bar passer’)

Lack of Required Capability or Competency to be Shari’a Counsellor.

Second, the lack of required capability or competency to be Shari’a Counsellor. The research findings revealed that the 45-day training for Shari’a Bar candidates is not sufficient to adequately prepare them to be effective Shari’a Counsellors, especially when conducting legal counselling clients.

Participant 8 said that:

Participant 8: *“I admit, hindi tlga sapat ung training namin na 45 days lang pati ung pagkapasa namin sa Shari’a Bar para maging fully-equipped na counsellor kami. Minsan nagtatanong pa kami sa judge kung anu ang tamang gawin.”*

Translation:

“I admit, the 45-day training and passing the Shari’a Bar is not guaranteed to be fully-equipped counsellor. Sometimes, we consult the judge on what is the right thing to do before giving counsel to client.”

Participant 5 observed that:

Participant 5: *“Technicalities by the lawyers should not be utilized, for the role of the lawyer is to assist the court in finding the truth.”*

It seems that standard to become Shari’a lawyer were set low to build up a number of qualified lawyers which may result to low quality of service.

Conversion to Islam by a Non-Muslim Husband

Thirdly, the conversion to Islam by non-Muslim male causes rumours to the public according to a participant, the case is like this:

A non-Muslim male is converting to Islam from a non-Muslim religion. The said male is married with non-Muslim female in accordance with civil code of the Philippines. However, the wife remains to be non-Muslim for she refused to convert to Islamic faith. Accordingly, the said husband aimed to contract another marriage and uses the conversion to Islam to be his alternative option. Undoubtedly, under Code of Muslim Personal Laws Article 27 on subsequent marriages provide that:

“Article 27. By a husband. Notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined in Islamic law and only in exceptional cases.”

The rule stated that subsequent marriage is allowed under Muslim Code and according to the observations of some participants, the overriding objective of a husband who converted to Islamic faith is to contract another marriage without any legal impediment and liability. Some men are treating Islamic faith as an alternative to be free from any cases that might be thrown to them when remarrying another woman. But the Code of Muslim Personal Laws clearly stated in Articles 13 paragraph 1 and 2 provides that:

(1) The provision of this Title (Code) shall apply to marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

(2) *In case of marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.*

Another, under Article 178 of the Code of Muslim Personal Laws stated that:

“Article 178. Effect of Conversion to Islam on marriage. The conversion of non-Muslim spouses to Islam shall have the legal effect of ratifying their marriage as if the same had been performed in accordance with the provisions of this Code or Muslim law, provided that there is no legal impediment to the marriage under Muslim law.”

Therefore, the law is very clear that Husband who converted to Islam and Wife who remained to be non-Muslim and their marriage under Civil Code is still subsisting, the Civil Code of the Philippines shall apply. For this reason, in the case of the said husband, he is not allowed to contract another marriage because polygamy is not allowed under Civil Code. Moreover, some participants observed that:

Participant 11: *“There are judges of Shari’a Court who grant the marriage of the husband who converted into Islam and the wife remains to be non-Muslim and their marriage is solemnized not in accordance with Muslim Code or Muslim rites. But I will not mention the name of the Judge.”*

Participants 11 added that:

Participant 11: *“When both of them converted to Islamic faith, then Article 178 of P.D. 1083 will prevail.”*

Article 178 provides the Effect of Conversion to Islam on marriage, that, the conversion of non-Muslim spouses to Islam shall have the legal effect of ratifying their marriage as if the same had been performed in accordance with the provisions of this Code or Muslim law, provided that there is no legal impediment to the marriage under Muslim law. As revealed by the participant from the book of Muslim Code.

Also, added by the Participant 11 is the rule set forth in Article 34 (4) of the Family Code provides that bigamous marriages are void from the beginning.

The Islamic faith seemed to be abused by some men that converting their faith to Islam is not sincere but to be free from being sued against bigamy.

Participant 11 also said that:

Participant 11: *“Sana wag natin sirain ang image ng Shari’a. Wag gamitin bilang option para makasal sa another woman. Magpaconvert kau ng may sincere at mag-shahada. At tayo naming mga nasa position, wag tayo lumayo sa kung anu ang nasa batas. Laging nating tatandaan na ang primary sources ng Shari’a ay Qur’an at Prophet’s Sunnah.”*

Translation:

“We hope that we could maintain the good image of the Shari’a. Don’t use it as an option to marry another woman. You convert to Islam with sincerity and profess true belief. And those who are in position, we must stick to the law. Always remember that the primary sources of Shari’a are Qur’an and the Sunnah of Prophet.”

Muslims Not Interested in Bringing Dispute Before the Shari’a Courts

Finally, the research findings revealed that some Muslim individuals seem not interested in bringing their dispute before the Shari’a Courts. Participant 10 observed that:

Participant 10: *“Some women are not comfortable using the court to resolve issues.”*

The participants also revealed that some are not comfortable using the court to resolve issues especially cases relating to marriage, the reason according to Participant 10 might be:

Participant 10: *“They are afraid that their husband will grant that easy by the court to contract subsequent marriage.”*

Another observation by the participants why some Muslim individuals are not bringing their dispute to court is that, they are afraid that they may not afford the docket fees. Also, as observed by the participants, some Muslims are not familiar with the legal rights stipulated under the Shari’a Courts.

Moreover, one of the participants revealed to the researcher about Republic Act No. 9054 or the ARMM Organic Law. The said participant showed to the researcher the contents of the R.A. No. 9054, that, under R.A. 9054, Article III Section 5 provides that *“The Regional Assembly, in consultation with the Supreme Court and consistent with the Constitution, may formulate a Shari’a legal system including the criminal cases, which shall be applicable in the region, only to Muslims or those who profess the Islamic faith”*

Also, under R.A. 9054, Article IV Section 3(e) provides: *“Administration of Justice. It may, however, legislate on matters covered by the Shari’a. The Shari’a shall apply only to Muslims. Its application shall be limited by pertinent national legislation that promotes human rights and the universally accepted legal principles and precepts.”*

And lastly, still under R.A. 9054, Article VIII Section 6 provides that: *“There is hereby created a Shari’a Public Assistance Office. The Office shall be staffed by a director and (2) lawyers who are members of the Philippine Shari’a bar. They may be assisted by such personnel as may be determined by the Regional Assembly. Unless otherwise provided by regional law, the compensation of the director and the Shari’a Lawyers shall be equivalent to the salary grade of a Director III and a trial lawyer of the Public Assistance Office, respectively. The Shari’a Public Assistance Office is hereby established in each of the Shari’a judicial districts to provide free legal assistance to poor or indigent party litigants.”*

Participant 3 observed that:

Participant 3: *“Scrutinizing what is in the ARMM Organic Law or the Republic Act No. 9054. The ARMM, particularly its Regional Legislative Assembly, plays a crucial role in the development and promotion of Shari’a Law in the Philippines.”*

The participant revealed that the Regional Legislative Assembly has not enacted any single legislation on the Shari’a Law.

CONCLUSIONS

The Shari’a Courts is under the administrative supervision of the Supreme Court. Shari’a Courts are composed of two levels namely Shari’a District Courts and Shari’a Circuit Courts which, each has its own exclusive jurisdiction as provided in Presidential Decree No. 1083 otherwise known as the Code of Muslim Personal Laws of the Philippines. The issues and challenges experienced by the Shari’a Courts which were being revealed by the participants hampers the Shari’a Courts in their operation and in achieving better perception among Muslim communities. It is indeed a challenge for them to constantly revisit every rules and laws stipulated and regulated under Shari’a Courts to avoid the aforementioned issues.

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