“CRITICAL REVIEW ON MUSLIM CODE PD1083: A BASIS FOR A NEW ENACTMENT OF EXPANDED ISLAMIC CODE OF THE MUSLIM PERSONAL LAW IN THE BARMM”

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ABSTRACT

This study aimed to find out the views of the Meranaw, Tausog and Maguindanaon who are Ulama and professionals in the enactment of expanded Islamic code of the Muslim Personal Law in the Bangsamoro Autonomous Region in Muslim Mindanao. The study was done through survey method by distributing questionnaire to 300 respondents. To determine the number of participants, purposive sampling technique was used in collecting the samples, and random sampling in selecting the number of respondents involved in the study. The major findings of the study showed that most of the respondents claimed that because of the absence of some of the Islamic laws in PD1083, it is hard for them to incorporate the true teachings of Islam in their field of work and expertise in relations to some of the issues and facts in PD 1083 which are un-Islamic. Being religious leaders, they have heavy burden of guilt as they think of the sin it is coupled in some of the provisions in the Code which have to be amended. In fact, the secular law is still the main basis and the law being used which is opposite to the penal law. Also, an emphasis on the need to incorporate in the enactment of expanded Islamic Code of the Muslim Personal Law in the BARMM the possible Islamic laws such as in the aspects of Islamic Criminal law, Islamic Judicial System and Islamic Finance. Findings further denote on the considerations of all the possible problems that will be encountered in the enactment of expanded Islamic Code of the Muslim Personal Law in the BARMM. Thus, it is hereby recommended that in the critical review on Muslim Code in the enactment of the expanded Islamic code of the Muslim Personal Law in the Bangsamoro Autonomous Region in Muslim Mindanao, that the Congress has its own role, say and participation as to the approval on the total enactment of the said expanded Islamic Code, and there approval should be in the affirmative side. Also, an emphasis that the enactment is
applicable only to Muslims without prejudice to Non-Muslims, and this has to reach the National Level assuring all the Islamic laws to be incorporated. Also, it is recommended to integrate Islamic Criminal Law on Hudud and Qisas like death penalty for those crimes fall on this punishment, the same with the cutting of hands to those proven thieves beyond reasonable doubt, and not only Ta’zir punishment. Also, it is recommended for the need of Judicial System in the BARMM and in the High Court and District Court. Additional recommendation is for the Supreme Court to have representatives who are truly knowledgeable in the Qur’an and Sunnah of the Prophet Muhammad (S.A.W.), and in English or Secular law, those who are both cognizant in the areas of learning and teaching in both fields. Moreover, an emphasis on the establishment of Islamic Windows, Islamic Banking, Islamic Insurance, Islamic Cooperatives, Islamic Pawnshop and others in the recommendation of the incorporation of Islamic Finance in expanded Code. Finally, a rationale on the passage of the recognized revision is far recommended, and the full support of its people in its realization.

Key Words: Muslim Code, PD1083, Enactment, BARMM

INTRODUCTION

The promulgation and signing of PD1083 known as Code of Muslim Personal Laws of the Philippines was on February 4, 1977 pursuant to Presidential Decree No. 1083 by the late President Ferdinand E. Marcos. The Code itself recognizes the legal system of the Muslims in the Philippines as part of the law of the land which provides for an effective administration and enforcement of the Muslim personal laws among Muslims. This is also in consideration with the customs, traditions, beliefs and interests of all the groups in the Philippines including the Muslim group.

Clearly, there are some inconsistencies to some of legal provisions of the Muslim Code that need much attention, along with the possible Islamic laws to be incorporated in the BARMM which the Code failed to comprise. This is with the reality that Islamic law should not only include laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses, but other Islamic laws as well. This study then, is in response to some of the provisions added in PD1083 where in Islamic law, it does not exist.

Thus, the passage of BARMM or Bangsamoro Autonomus Region in Muslim Mindanao wherein they can amend the PD1083 for its new enactment is a solution for this long awaited other enactments of the new expanded
Muslim Personal Law for the benefit of the Muslims, and the people of the Republic of the Philippines in general.

MATERIALS AND METHODS

The descriptive method of investigation was used in this study to get both quantitative and qualitative data. This study collected data from the respondents which include their demographic profile, the issues and facts in PD1083 which are unislamic, the possible Islamic laws to be incorporated in the BARMM in terms of Islamic criminal law, Islamic judicial system and Islamic finance, and the possible problems that will be encountered in the enactment in the BARMM.

This study was conducted in the select places in the Bangamoro Autonomous Region in Muslim Mindanao. This includes Lanao del Sur, Maguindanao Province and Sulu Province. In Lanao del Sur, Marawi City is its capital. Marawi was known as Dansalan when it served as a capital of the undivided Lanao provinces from 1907 to 1940. Dansalan in Meranaw is a place where ships berth – a port of entry. Within the province of Lanao del Sur, there is a beautiful lake, known in a local dialect as “Ranao” where an ethnic identity “Meranaw” is derived, which means “people of the lake”. Marawi City was originally the capital of Lanao before it was divided into two provinces such the Province of Lanao del Sur and Lanao del Norte. Maguindanao is a province in the People’s Republic of Mindanao. Since 2014 the provincial capital is Buluan, but the legislative branch of the provincial government, the Sangguniang Panlalawigan, convenes in the old provincial capitol in the town of Sultan Kudarat. Cotabato City is part of Maguindanao province where the researcher went to distribute his questionnaire. It is formerly part and the Regional Center of Region XII. However, due to the ratification of the Bangsamoro Organic Law, it is now part of BARMM. Another part of the locale is the Sulu province in the Sulu Archipelago. Its capital is Jolo on the island of the same name.

The above described places were the locale of the study. As such, there are numbers of Ulama and professionals in the mentioned places. They are the respondents of this study to serve the main purpose of the researchers to further emphasize the critical review on the PD1083 as a basis for a new enactment of expanded Islamic code of the Muslim Personal Law in the BARMM.
The respondents included in this study were three-hundred (300) Ulama and professionals that will help the researchers to arrive credible results of the study.

The primary data needed in the study was gathered utilizing the survey questionnaire. However, the study followed the ethical practices in conducting research. After the validation of the research instruments, the researchers sent permission letters to the identified respondents who are all professionals and Ulama. As soon as permission was granted, the research instrument particularly the questionnaire, was given to the respondents for them to complete in within a week. Such a time frame is set to allot a longer time to them anticipating their commitments or responsibilities to attend to.

After a week, the questionnaires were collected. The researchers proceeded to the analysis of data. The statistical tools applied to analyze the gathered data from the respondents through self-made questionnaire were Simple Frequency and Percentage and Weighted Mean. It aimed to condense responses of the respondents into summary numbers through table presentation which was easily understood by the researchers. The data provided in tables were analyzed and interpreted to get the findings that served as a basis for conclusions and recommendations of this study.

RESULTS

The findings depicted that for frequency and percentage distribution of the respondents according to their age, 56 or 56% of the respondents belong to the age bracket of 40-45 years old as the highest, and the lowest percentage of respondents is 9 or 9% which is 25 up to 30 years old. Majority, 72 or 72% of the respondents are males and 28 or 28% are female respondents. Majority, 59 or 59% of the respondents are college graduate/Kuliyyah graduates, followed by 16 or 16% respondents under the category of high school graduate. Another 18 or 18% falls under Master’s degree graduate category. And a minimal 7 or 7% of the respondents are Doctorate graduate. Majority, 63 or 63% of the respondents are government employees. 29 or 29% of the respondents are private employees while only 8 or 8% are unemployed. Majority, 49 or 49% of the respondents are Meranaw, 21 or 21% of the respondents are Tausog, and the remaining 30% are Maguindanao.

On the first three (3) indicators appertaining to the issues and facts in PD1083 which are not part of Islamic law, the following indicators show their
responses with respective ranks, summations and means such as: Ranked 1\textsuperscript{st} with a summation of 75 and a 3.00 mean is statement indicator “A man whose wife died cannot marry his wife’s sister” which follow that respondents agreed on this indicator. The same on the indicator Ranked 2\textsuperscript{nd} summation of 75 and a 3.00 mean is statement indicator “Asking the consent of the first wife before the husband remarries” which likewise respondent demonstrate responsiveness on the cited indicator. On the last statement indicator Ranked 3\textsuperscript{rd} “There is a Bequest by the Operation of the Law for a Non-Muslim wife” with a summation of 75 and a 3.00 mean likewise revealed utmost agreement of the respondents to the indicators.

On the other hand, the possible Islamic laws to be incorporated in the BARMM in terms of Islamic Criminal Law, it is hereby discussed with the following indicators with respective rank, summation and mean such as: Ranked 1\textsuperscript{st} with a sum of 192 and 2.560 mean is statement indicator “death penalty has to be incorporated in the expanded Islamic code of the Muslim Personal Law in the BARMM” respondents strongly agreed on the statement given. The same on the indicator “Cutting of hands have to be incorporated in the expanded Islamic code of the Muslim Personal Law in the BARMM” ranked 2\textsuperscript{nd} with a sum of 187 and 2.493 mean fall on scale 2.34 to 3.00 which mean that respondents satisfaction on the statement given. On the last indicator ranked 3\textsuperscript{rd} “Crime of adultery or fornication has to be executed by its corresponding punishments” with a sum of 171 and 2.280 mean fall on the scale 1.66 to 2.33.

With respect to the next indicators regarding to another Islamic law to be incorporated in the BARMM is its Islamic Judicial System. Respondents agreed on the first three (3) statement indicators such as the following with its respective rank: Ranked 1 is the statement indicator “The need to fully incorporate penal laws in the Code”, Ranked 2 is the statement indicator “the need of judicial system in the BARMM and in the high court and district court”, Ranked 3 is the statement indicator “the need for representatives in the Supreme Court who are truly knowledgable both in English and Arabic.”

The following statement indicators are arranged according to their ranks as for the perspectives of the respondents on another Islamic law to be incorporated in the BARMM in terms of Islamic Finance. The respondents strongly agreed on the following: Ranked 1 is the statement indicator “The incorporation of Islamic finance will minimize Usury “Riba”, Ranked 2 is the
statement indicator “All are required to have their transactions in Islamic manners”, and Ranked 3 is the statement indicator “Islamic finance will allow people to earn their living in a fair and profitable way”.

In the possible problems that will be encountered in the enactment of the BARMM, majority, 85% of the respondents agreed on the following statement indicators: Ranked 1st is statement indicator “The enactment of Islamic Criminal Law such as cutting of hands, implementation of Kisas, stoning to death, etc. towards Muslims who committed the sins might be criticized by others and the Non-Muslims as deprivation of human rights”. The same on the indicator Ranked 2nd is statement indicator “BARMM is still under the Philippine Constitution and the Congress might not recognize some of its policies, rules and regulations created under the parliament system of the BARMM”. On the last statement indicator Ranked 3rd is statement indicator “The dilemma on Islamization of the financial process such as salary of the employees, budget of BARMM’s projects and other related matters.”

DISCUSSION

The study made used of descriptive research design of investigation utilizing a combination of qualitative and quantitative approached in the interpretation of data. Data gathering involved the use of self-made questionnaires.

The Code of Muslim Personal Laws of the Philippines as stated in Article 7, paragraph (i) provides that all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses as provided for in the Code.

Now, in the Bangsamoro Autonomous Region in Muslim Mindanao, it highlights the critical review on the PD1083 as their will be new enactments to the Islamic Rules of law such as the Islamic Criminal Law, Islamic Judicial System and Islamic Finance.

With the question provided for the respondents as to their demographic profile in terms of their age, majority or 56% of the respondents belong to the age bracket of 40-45 years old, 72 or 72% of the respondents are males, 59 or 59% of the respondents are college graduate/Kuliyyah graduates, 63 or 63% of the respondents are government employees and 49 or 49% of the respondents are Meranaw.
In the issues and facts in PD1083 which are unislamic, all the respondents agreed on the indicators provided above emphasizing that these issues are really existing, and this has to be reviewed in its truest Islamic rule/law.

On the other hand, the possible Islamic laws to be incorporated in the BARMM in the aspects of Islamic Criminal law, Islamic Judicial System and Islamic Finance, certainly they all agreed on the indicators mentioned above for the Code has to encompass not only what is stated in Article 7 of the Code, but also other laws of the land where Muslims have to observe.

Thus, in this suggested possible Islamic laws to be incorporated, it is also given that there will be possible problems that will be encountered in its enactment. And the BARMM needs a full vision of incorporating all the laws to be included in the new expanded code highlighting the importance that all laws have to be Islamically right.

CONCLUSION

It is an established fact as to the need to amend some of the provisions in PD1083. Which paved its way to the BARMM as they have now the role to reform legislations on some important matters, expand new enactments on the Islamic Code of Muslim Personal Law, and the highlight on the reality that Shari’ah should govern not within the bounds of the Secular law.

Accordingly, based on the findings of the study, the following can be concluded: The major findings of the study showed that most of the respondents claimed that because of the absence of some of the Islamic laws in PD1083, it is hard for them to incorporate the true teachings of Islam in their field of work and expertise in relations to some of the issues and facts in PD 1083 which are unislamic. Being religious leaders, they have heavy burden of guilt as they think of the sin it is coupled in some of the provisions in the Code which have to be amended. In fact, the secular law is still the main basis and the law being used which is opposite to the penal law.

Also, an emphasis on the need to incorporate in the enactment of expanded Islamic Code of the Muslim Personal Law in the BARMM the possible Islamic laws such as in the aspects of Islamic Criminal law, Islamic Judicial System and Islamic Finance.
Findings further denote on the considerations of all the possible problems that will be encountered in the enactment of expanded Islamic Code of the Muslim Personal Law in the BARMM.

Thus, it is hereby recommended that in the critical review on Muslim Code in the enactment of the expanded Islamic code of the Muslim Personal Law in the Bangsamoro Autonomous Region in Muslim Mindanao, that the Congress has its own role, say and participation as to the approval on the total enactment of the said expanded Islamic Code, and there approval should be in the affirmative side. Also, an emphasis that the enactment is applicable only to Muslims without prejudice to Non-Muslims, and this has to reach the National Level assuring all the Islamic laws to be incorporated.

Also, it is recommended to integrate Islamic Criminal Law on Hudud and Qisas like death penalty for those crimes fall on this punishment, the same with the cutting of hands to those proven thieves beyond reasonable doubt, and not only Ta’zir punishment. Also, it is recommended for the need of Judicial System in the BARMM and in the High Court and District Court.

Additional recommendation is for the Supreme Court to have representatives who are truly knowledgeable in the Qur’an and Sunnah of the Prophet Muhammad (S.A.W.), and in English or Secular law, those who are both cognizant in the areas of learning and teaching in both fields.

Moreover, an emphasis on the establishment of Islamic Windows, Islamic Banking, Islamic Insurance, Islamic Cooperatives, Islamic Pawnshop and others in the recommendation of the incorporation of Islamic Finance in expanded Code.

Finally, a rationale on the passage of the recognized revision is far recommended, and the full support of its people in its realization.

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