

MUSLIM LAW OF MARRIAGE AND DIVORCE :
STUDY OF ISLAMIC LAW IN THE PHILIPPINES

BY
ASNAWIL G. RONSING

A DISSERTATION SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE
HIGHER DEGREE OF MASTER OF COMPARATIVE
LAWS

KULLIYYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
P.O. , SELANGOR, DARUL EHSAN,
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1991/1992

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ASNAWIL G. RONSING

A Dissertation submitted in partial
fulfilment of the requirements for the
Higher Degree of Master of Comparative
Laws.

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In the Name of Allah, Most Gracious, Most Merciful.

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Kulliyyah of Laws/
Post Graduate School
International Islamic University
P.J., Selangor, Darul Ehsan,
Malaysia.
June 8, 1992

ASNAWIL G. RONSING

DEDICATION

In the Name of Allah, Most Gracious, Most Merciful

"And among His Signs is this, that He created for you spouses from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are signs for those who reflect".
(al-Qur'an, Surah al-Rum(30):20)

to:

my wife, Bai Moki-in M. Ayo-Ronsing,
the greatest joy of my life.

my children:

Aisha-Aziza, Muhammad Kamal-Hassan,
Maruhom-Jalaluddin, (the triplet)
Alixander, Potri-Tomanina, and
Zulqarnain,
the apples of my eyes.

"Our Lord: grant unto us wives and offsprings who will be the comfort of our eyes and give us (the grace) to lead the righteous".
(al-Qur'an, Surah al-Furqan (25):74)

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CHAPTER I

INTRODUCTION

A. Background of the study

The circumstances behind the enactment of the Code of Muslim Personal laws of the Philippines¹ is a chronicle of resistance, battles and struggles.

History records that since the coming of the Spanish invaders in the Philippines in 1521 A.D., the Muslims who were called by the Spaniards as Moros resisted and fought for the preservation of their identity as Muslims, for the preservation of their way of life which is Islam, and for the preservation of their homeland. The same reasons why they resisted and fought against the American colonizers and later the Japanese invaders. These were also the underlying reasons why there were waves of Moro juramentados² of Sulu against the military expeditions launched by the American government during the American regime and the Philippine government after the Philippines gained independence; the series of Muslim rebellions which were led by Kamlon in Sulu and Tawantawan in Lanao; the series of fortress-battles (Cota-fights) one after the other in the Muslim ancient villages around the beautiful Lake Lanao; the declaration of the Mindanao Independence Movement led by the former

governor of Cotabato Datu Utog Matalam; and recently the emergence of the secessionist groups such as the Moro National Liberation Front and the Moro Islamic Liberation Front.

For four-hundred seventy-one years ago, generation after generation, the Moros have been struggling with their lives and blood for their passionate love for the preservation of Islam as their way of life.

On the other hand, since the Philippines gained independence in 1946, the Philippine government introduced programmes and policies, and a series of laws were enacted, all aimed to preserve the sovereignty of the Philippines as a sovereign state as well as its territorial integrity.³

One of the sweet fruits of the bitter, long and lasting struggle of the Muslims on one hand and the Philippine government on the other hand is the enactment of the Muslim Code. This is the kind of law that is self-gratifying to both sides. To the Muslims, it is their victory that the Islamic law is given to them. To the Philippine government, it is the wise measure that brings the Muslims into the

mainstream of the national body politics through unity in diversity.

B. Aims and objectives of the study

The enactment of the Muslim Code is significant to both Muslims and Christians. It serves as an instrument to enhance development - after long years of neglect and retrogression; it foster better understanding among Muslims and non-Muslims; it serves as a guidance to all Muslims for a better tomorrow; and most importantly it serves as catalyst to facilitate the integration of the Muslims into the mainstream of the national body politics to ensure unity in diversity. Against this backdrop, this dissertation analyses and surveys the provisions of the Muslim Code to bring to the fore its features which necessitate commentary and interpretation for better understanding and application. It also humbly seeks to pinpoint which part of the law that requires modification to make it more responsive and attuned to the changes of times.

C. Statement of the problem

The promulgation of the Muslim Code brought a new dimension in the Philippine Legal System. This is

the first codified Islamic law recognized as part of the Philippine legal system. Though Islamic law was ahead for more than a century in the Philippines than the Common law and the Civil law, yet, it is the last among them to be incorporated in the Philippine legal system. Thus, its promulgation in 1977 made the Philippine legal system the melting pot of the three world legal systems.

In keeping with the purpose of the Muslim Code to make Muslim institutions more effective,⁴ and conformable to Islamic tenets and principles, this dissertation seeks to answer the following questions in order to provoke further study and intelligent discussions of the issues involved therein among Muslim scholars, lawyers and ulama to ensure better understanding of the law:

1. What are the bases of each provision of the Muslim Code from the Shari'ah or general principles of Islamic law?
2. What are the provisions of the Muslim Code which are not in conformity with the Islamic law?
3. What are suggestions, recommendations for

possible modification or amendment of the Muslim Code for its growth and development keeping in view the Philippine condition?

D. Methodology of the study

Historical, analytical and critical modes of research were employed.

Historical in the sense that we investigated not only the evolution of the Islamic law in the Philippines and the causes that led to its birth but also the history of the birth, growth and development of its sources.

Analytical in the sense that each provision of the law was examined in the light of the Islamic law.

And critical in the sense that those provisions which we found not in conformity with the Islamic law were subjected to criticism with the proper suggestion and recommendation for its possible modification or amendment for development.

E. Scope and outline of the study

This dissertation deals only with the substantive provisions of the Muslim Code pertaining to marriage and divorce. It consists of 44 articles only. It covers from Article 13 to Article 57 of the Muslim Code.

Every provision is explained in the light of the Shari'ah or the general principles of Islamic law or the general principles of the Civil law or other related laws.

More specifically this dissertation is organized as follows:

Chapter I

This chapter explains the following: background of the study, aims and objectives of the study, statement of the problem, methodology of the study, and the scope and outline of the study.

Chapter II

As the dissertation deals on the study of Islamic law in the Philippines, it is necessary that an overview

of the Islamic law shall be dealt with. This chapter consists of the following: nature of the Islamic law, development of Islamic law and the sources of Islamic law.

Chapter III

Evolution of the Islamic law in the Philippines is likewise an indispensable chapter. It consists of the following: the advent of Islam in the Philippines, Islamic law or Shari'ah - the law of the land, Islamic jurisprudence come into existence, Judicial power as a prerogative of the Sultan, Philippine laws recognizing Islamic law, and the incorporation of the Islamic law into the Philippine legal system.

Chapter IV

To have a clear idea of the proper application of the Muslim Code, the applicability clause of the said Code is herein explained.

Chapter V

In this chapter, the law of marriage is fully and exhaustively explained in the light of the Shari'ah

or the general principles of Islamic law or the general principles of the Civil law or other related laws. It consists of the following: nature of marriage, essential requisites of marriage, prohibited marriage, subsequent marriages, batil and fasid marriages, rights and obligations between spouses, and property relations between spouses.

Chapter VI

In this chapter, the law of divorce is fully and exhaustively explained in the light of the Shari'ah or the general principles of Islamic law or the general principles of Civil law or other related laws. It consists of the following: nature of divorce, forms of divorce and the law of 'idda.

Chapter VII

This part of this dissertation incorporates the findings and conclusion of the author together with his suggestions and recommendations for possible modification and amendment of the Muslim Code.

To save space, time and for typing convenience, the author made end notes rather than footnotes. Thus,

notes are placed at the end of every chapter.

Notes

1. Code of Muslim Personal Laws of the Philippines, (otherwise known as Presidential Decree No. 1083 which took effect on February 4, 1977). (To shorten the citation, this Code shall be cited in this dissertation as M.C.).
2. Juramentado is a name given by the government soldiers for Mudjahidin. They mean suicide commando.
3. See Andress H. Hagad, "Comments on the Muslim Code: A paper on P.D. No. 1083", Philippine Law Journal, vol. 52, 107 (1977).
4. M.C., Art. 2(a).

CHAPTER II
AN OVERVIEW OF ISLAMIC LAW

A rudimentary study of the fundamental concepts of Islamic law is necessary for the understanding of the rules governing Muslim marriage and divorce under the Muslim Code.

The Muslim Code has recognized the need for a reference to the sources of Islamic law in the application of its provisions. It provides that:

In the construction and interpretation of this Code and other Muslim laws, the Court shall take into consideration the primary sources of Muslim law.¹

It further provides that:

Standard treatises and works on Muslim law and jurisprudence shall be given persuasive weight in the interpretation of Muslim law.²

Muslim jurists and scholars unanimously agreed that the Holy Qur'an and the Sunnah of the Holy Prophet Muhammad (S.A.W.) are the primary sources of Islamic law. They are the divine sources which all Muslim laws must conform. Standard treatises and works on Muslim law and jurisprudence refer not only to the