

■ PROGRAM ON ISLAMIC STUDIES

ON SHARI'AH IMPLEMENTATION IN THE PHILIPPINES

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EXECUTIVE SUMMARY

This policy brief on the implementation of shari'ah in the Philippines is drawn from the following fora on shari'ah education and other concerns conducted by the University of the Philippines Center for Integrative and Development Studies (UP CIDS) and the University of the Philippines Institute for Islamic Studies (UP IIS) in November 2024:

1. Shari'ah Education Campaign for Barangay Officials and LGU Muslim Affairs held on 10 November 2024 at the University Hotel, Guerrero Street corner Aglipay Street, University of the Philippines, Diliman, Quezon City.
2. Shari'ah Forum on Harmonizing Roles, Addressing Challenges, and Moving Towards a Common Direction held on 18 November 2024 at the UP Center for Integrative and Development Studies, Lower Ground Floor, Ang Bahay ng Alumni, Magsaysay Avenue, University of the Philippines, Diliman, Quezon City.

The details of these fora and their participants are in the reports attached to this policy brief.

AREAS OF POLICY CONCERN

Systemic Perspective

Shari'ah in the Philippines represents an entire legal system that is rooted in the Qur'an, or the Words of Allah SWT, and the sunna of the Prophet Muhammad (SAW), which are considered primordial, permanent, and immutable. This is the point of the lecture of Professor Darwin Absari when he says, "The goal (of the codification of Muslim personal law) was to recognize the legal system of the Muslims and ensure their effective administration and enforcement."

Thus, when shari'ah or its elements are introduced and implemented in the Philippine legal system, the same requires a methodology that is based on the concept of legal pluralism that is now practiced in the Philippines and other legal jurisdictions worldwide. This concept and the sensitivity that it promotes serve as the perspective of the policy analyses and recommendations in this paper.

A team headed by former UP Institute of Islamic Studies Dean Macrina Morados, SCL, and composed of academics, lawyers, and shari'ah counselors from the University of the Philippines are presently undertaking a study of the shari'ah courts and justice system by engaging with the Supreme Court, shari'ah court judges, legal practitioners, concerned agencies and private sector representatives.

According to lawyer Patrick “Abdulmalik” Velez, the study participants, respondents, and interviewees, ventilated common recurring concerns on shari’ah practice and court responsiveness, accessibility, adaption to modern technology, integration with the rest of the law profession, underutilization, lack of educational and knowledge upgrading, and institutionalization of structures and procedure, among others. These multifaceted concerns also need corresponding multi-approach solutions.

Continuing Legal Education

The concept of continuing legal education in the Philippines is now being implemented to keep lawyers abreast with developments in the legal field. This should also be made part of shari’ah counselors’ learning and updating of their knowledge and practice through seminars sponsored by the Supreme Court or the Integrated Bar of the Philippines, which should also treat shari’ah counselors as special members of the IBP, en route to becoming regular members of the IBP in the near future.

The other aspect of continuing shari’a education is orienting the public at the grassroots level on Islamic law in general, and as practiced in the Philippines; the benefits of recourse to shari’ah counselors and shari’a courts; and the procedure of access to these courts. These should be presented and explained in a manner that is simplified, comprehensible to laypersons, and beneficial to potential clients.

In the forum on 18 November 2024, the National Commission on Muslim Filipinos revealed that per Supreme Court instruction, it was allocated a ₱5 million budget for its shari’ah education campaign. This enhances the shari’ah education thrust of the national government for areas outside the BARMM and strengthens the mandate to contribute to shari’ah education and awareness nationwide.

Public and Client Awareness

Closely related to continuing legal education is fostering public and client awareness and confidence in the shari’ah legal system; its substantive and procedural nuances; and the benefits resulting from its proper use in the adjudication process. There have been earlier shari’ah education and awareness seminars at the community or barangay levels, but they remain localized with limited

logistical support. State policy should institutionalize shari’ah education campaigns on a barangay-wide level, implemented by knowledgeable instructors, at least in areas where there are sizable Muslim populations.

This becomes more imperative due to the growing Muslim population in Metro Manila and other urban centers and the recent establishment of shari’ah courts in Luzon and the Visayas. The 10 November 2024 forum stressed the need to educate Muslims, through their barangay officials and city Muslim coordinators, on Presidential Decree (PD) No. 1083. This must be pursued in relation to the preceding discourse on continuing legal education on shari’ah matters.

Substantive and Procedural Reforms

Congress and the Supreme Court are at the legal forefront of instituting substantive and procedural reform in the practice of shari’ah in the Philippines. Republic Act (RA) No. 12018, passed on 12 August 2024, created three additional Shari’ah Judicial Districts and 12 Shari’ah Circuit Courts; namely, the 6th Shari’ah District in Davao with five Shari’ah Circuit Courts; the 7th Shari’ah District in Cebu with three Shari’ah Circuit Courts; and the 8th Shari’ah district in Manila with four Shari’ah Circuit Courts. The Supreme Court shall establish all these district courts based on geographical contiguity and accessibility.

Two earlier laws passed were RA No. 10817 or the Philippine Halal Export Development and Promotion Act of 2016 [enacted 16 May 2016] and RA No. 11439 or the Islamic Banking Act [enacted 22 August 2019]. A new regional autonomous law, RA No. 11054, was also passed paving the way for the establishment of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), and repealing RA No. 6734 as amended by RA No. 9054 of the ARMM Organic Law.

In the 18 November forum, the representative of Senator Robinhood Padilla, Attorney Mary Denyll Bunal, gave an update on the Muslim-related bills Senator Padilla filed. Among these bills was Senate Bill (SB) No. 2613: Equitable Access to Shari’ah Courts, amending RA No. 9997, also known as the National Commission on Muslim Filipinos Act of 2009. It seeks to improve access to shari’ah courts by enhancing the commission’s powers, streamlining court submissions, and introducing digital transformation for shari’ah court services. Additional provisions include statistical data collection on Muslim

Filipinos and annual reporting requirements. The bill is currently pending second reading.

The procedural aspect involving the rules of court and other judicial proceedings is the concern of the Supreme Court as the constitutionally mandated institution that oversees the operation and manning of Philippine courts. As such, it has formulated a Strategic Five Year-Plan for Judicial Reforms from 2022 to 2027, which includes the shari'ah justice system. Along this line, the Supreme Court is in the process of amending the procedural rules governing shari'ah court adjudication to establish a comprehensive procedure for litigation of shari'ah cases. Policy direction in this area must be based on practical operation-related issues, which can be drawn from the experiences of judges and court practitioners, as shown by the relevant performance reviews.

Institutional and Logistical Support

Inadequate courtrooms and lack of basic facilities for court operation have always been a problem of shari'ah courts in many parts of Mindanao. Both legislative and administrative support are needed to upgrade and facilitate needed structural and logistical support for the shari'ah courts. In the forum on 18 November 2024, it was recommended to formalize an interagency body that can monitor the foregoing needs, and appropriately guide policy building and implementation, possibly led by the Supreme Court insofar as judicially practicable. Strengthening shari'ah courts is critical amid the burgeoning halal and Islamic finance field that has expanded into a global multibillion-dollar industry.

In relation to the lack of infrastructural and logistical support, Attorney Velez also noted that of the 51 shari'ah courts, only 21 are filled up. Twelve judges from the 21 courts are due to retire in 2025, thereby creating a future problem in the dispensation of justice due to lack of judges. A review on the policy of selection and appointment of shari'ah judges must therefore be undertaken, including immediate manning and staffing of new and existing courts.

Improvements in court operation can address the present problem of shari'ah court underutilization, which is mainly due to parties preferring to settle their legal disputes before traditional leaders partly because of the perception that shari'ah courts often lack the necessary infrastructure and resources to function properly.

Institutional Accessibility

In the 18 November 2024 forum, the participants acknowledged limited access to the shari'ah courts. In the words of NCMF Acting Director of Cultural Affairs Attorney Michael Ali, "Aside from the challenges brought by funding constraints, one of the challenges highlighted is the access to shari'ah courts." The Supreme Court is now addressing this issue through its 2028 mission for better access and inclusivity. This has been partly addressed by legislation that created three shari'ah judicial districts, located in Davao in Mindanao, Cebu in the Visayas, and Manila in Luzon.

In addition to territorial accessibility, there is also the new problem spawned by the limitation on the jurisdiction of shari'ah courts when it comes to litigating disputes where the other party or other parties are non-Muslims. In the 10 November forum, Professor Morados briefly discussed Article X of the Bangsamoro Organic Law (BOL, RA No. 11054), specifically the jurisdictional provisions of the Shari'ah Circuit Court, Shari'ah District Court, and Shari'ah High Court in sections 5, 6 and 7, respectively of Article X, which now require voluntary submission by a non-Muslim to the jurisdiction of the shari'ah courts for said courts to be able to exercise jurisdiction over shari'ah cases involving non-Muslims. This requirement severely restricts access to shari'ah courts by a Muslim who litigates with a non-Muslim, because the latter can refuse the jurisdiction of the shari'ah court over his or her person. Institutional accessibility, therefore is not just limited to territory or distance, but may also be affected by overprotective substantive jurisdictional rules.

The addition of shari'ah courts in Luzon and Visayas and the Davao provinces, may solve the territorial accessibility problem that has perennially plagued the shari'ah courts, but this should be matched by manning support, and removing unwarranted limitations to shari'ah court jurisdiction.

Linkages and Coordination Concerns

Linkages and coordination are functions of all offices and agencies that play a role in shari'ah implementation in the Philippines. These institutions are presided over by the Supreme Court as far as the judicial aspect is concerned, and affected by Congress insofar as reform legislations are needed. In the executive branch of government, agencies handling shari'ah-related functions can affect the judicial needs of Muslims. The

halal industry is a concern of the National Commission on Muslim Filipinos (NCMF); the Department of Trade and Industry (DTI), the Department of Agriculture (DA), and the Department of Science and Technology (DOST). Meanwhile, the Department of Justice (DOJ) focuses on its prosecutorial functions. These are all just a few of the agencies that may impact the shari'ah justice system.

In legal education, one of the initiatives of the Bangsamoro Attorney General's Office (BAGO) is the tripartite agreement among the NCMF, the Legal Education Board, and the BARMM. As explained by Acting Attorney General Julkipli, these agencies are working on a model that will be adopted so that the schools can now integrate shari'ah education into their curriculum. This is also in line with the plan of the Supreme Court for shari'ah training to eventually be part of the general law curriculum. Those who intend to become shari'ah lawyers may have to be graduates of law schools offering both regular law and shari'ah courses.

Attorney Julkipli also reported the Attorney General's Office's efforts in supporting the establishment of new law schools in the BARMM. In this connection, BAGO went to Tawi-Tawi for the signing of a Memorandum of Agreement with Mindanao State University Tawi-Tawi College Law Extension Program for future areas of collaboration. However, he lamented that though BARMM also has several programs related to shari'ah, there seems to be no initiative to check if the agencies are working effectively together.

In connection with linkage and coordination concerns, Dean Julkipli Wadi of the UP IIS, aired his concern over developments that seem to divest NCMF of its usual traditional functions. For instance, the lead role for halal certification has been removed from the NCMF and transferred to the DTI by RA No. 10817. The Supreme Court, through the Philippine Judicial Academy (PHILJA), has assumed oversight functions over shari'ah training. In addition, hajj is set to be privatized if a bill being considered in Congress becomes law. This raises the critical question of whether this is the right trajectory for enhancing shari'ah-related concerns in the Philippines.

RECOMMENDED POLICY GUIDES

1. The areas and methodology of collaboration and coordination between and among public and private agencies and stakeholders in the area of shari'ah development in the Philippines must be

identified and strengthened. The foundation and thrust of development of shari'ah, being the main subject under consideration, the foundation and thrust of development should be the Qur'an and the Sunnah of the Prophet Muhammad (SAW) even as it operates in a legally pluralistic environment where the Muslims are a minority. The importance of these fundamental sources of Shari'ah is acknowledged in PD No. 1083 and RA No. 11054. The present administrative coordination between executive offices like the NCMF and the Muslim Coordinating Councils of the local government units must also be explored and optimized.

This is particularly illustrated in a response by NCMF Atty. Michael Ali on proposed roles which NCMF can take: (1) equipping the NCMF through RA 9997, by allowing the NCMF to coordinate with the judiciary in relation to shari'ah courts. Instead of clients directly going to shari'ah courts, they can visit any of the 11 regional offices of the NCMF, which can facilitate document processing, particularly for civil registry matters; and (2) strengthening Collaboration with the Philippine Statistics Authority (PSA) in terms of registration of documents and census-taking.

2. The national government through the NCMF must open new areas of response where its functional specializations can be harnessed by the Executive and Judicial branches of government. As a whole, there should be new and creative solutions to hurdle the problems faced by the shari'ah courts and legal system. This is imperative due to the continued interaction between and among national and regional offices on common concerns.
3. Collaboration and coordination should be characterized by a commonality of purpose and approach so that all efforts supplement each other to create a synergy where the interaction and cooperation of different organizations combine to produce an effect greater than the sum of its component parts. Necessarily, the highest court of the land, the Supreme Court, must supervise these efforts as it is the constitutionally mandated branch of government that administers the judicial system and the practice of law. Presently, the development of shari'ah in the Philippines is part of the Supreme Court's Strategic Plan for Judicial Innovations (2022–27) which was launched on 14 October 2022.

Applied at the field level, his development should take place within a Tri-Justice Framework that the law mandates the BARMM to formulate and implement.

4. The expansion of shari'ah substantive coverage in the country is a legislative function that can now be addressed at the national (Congress) and regional (BARMM Parliament) levels. Shari'ah legislations, however, should always accord with the Qur'an and sunna of the Prophet Muhammad. Otherwise, it ceases to be shari'ah. This point is particularly important in the wake of recent shari'ah-related legislation that negates the teachings of the Qur'an and the sunna. Strengthening areas (or institutions) and methodology of collaboration and coordination entails an effective continuing education and awareness program at the grassroots, professional, and governance levels for a common and working understanding of the nature, substance, and procedure of shari'ah in the Philippine legal system.
5. Aside from the expansion of shari'ah in the Philippine legal system, there is also the identified need to rectify existing provisions in the law that are supposed to be part of shari'ah, but do not find an appropriate basis under Islamic Law. According to former Dean Morados, there is an ongoing initiative to amend PD No. 1083 by the BARMM. Under the Bangsamoro Organic Law, the BARMM Parliament is allowed to enact Islamic personal, family, property, and commercial laws, including those covering minor offenses punishable by *arresto menor* and/or fines (see RA No. 11054, art. X, §4). Assistant Professor Absari revealed that there was already an earlier attempt by a party-list member in the House of Representatives to introduce amendments to PD No. 1083. However, it did not push through after the experts they consulted informed them that the proposed revisions were not in line with the Qur'an. In sum, just like in item 4 above, substantive rectification of the present Shari'ah Code and other shari'ah concerns in the Philippines should not violate the fundamental sources of Islamic law.
6. Creating popular shari'ah awareness, not just among Muslims, but non-Muslims as well, should also be a continuing collaborative concern among private and public stakeholders if shari'ah development in the country is to gain momentum.

Assistant Professor Absari proposed that NCMF, BAGO-BARMM, and private parties or legal practitioners like Attorney Haron R. Ali, along with academic institutions like the UP-IIS, can join hands for budgetary, logistical, and administrative collaboration in promoting shari'ah education and awareness. In the BARMM, the establishment of a shari'a Academy will immensely contribute to popularizing shari'ah in Mindanao. On the national level, the NCMF has also been allotted a budget to carry out its shari'ah initiatives from its regional offices. Through a grassroots approach, education and awareness may be conducted in Muslim-dominated barangays nationwide.

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