

OQUBAAT ENFORCEMENT IN BANGSAMORO AS PERCEIVED BY SELECT ULAMA AND PROFESSIONALS IN MARAWI CITY

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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 “Oqubaat Enforcement in Bangsamoro¹ as Perceived by Select Ulama and Professionals in Marawi City” to support the *Bangsamoro* Organic Law (BOL) which is the main objective of the framework of peace agreement between the Philippine government and the Moro Islamic Liberation Front (MILF) in order to promote peace, order and development in the county. A survey was conducted thru a guided questionnaire to collect the insight of selected respondents to weigh their experiences and perceptions. This study aimed to assess the level of understanding and insights of the respondents towards enforcement of Islamic Penal Law after the creation of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). Since understanding *Oqubaat* Enforcement and its concepts, theories, values and implications will help pave the way for mutual respect, avoid "enmity and antagonism" or clan feuds, the researcher endeavored to conduct a study on this particular issue, with added hope that it contributes something to the educational field. Specifically, this study is significant to the following: (1) Professionals - They can gain a better understanding on how *Oqubaat* Enforcement is perceived deeply in the Islamic law; (2) *Meranaw* People - The study may help them broaden their life-style and understanding on this subject matter; (3) Overseas Workers - This study is useful to these workers abroad particularly those assigned in Muslim countries to gain knowledge on the *Oqubaat* Enforcement under Islamic penal law; and (4) Students and Researchers - This study may guide them on how to use ideas and references in establishing values implication in order to achieve peace and development. The study suggests that a conception of an intervention program

¹ ***Bangsamoro People***. The term refers to those who at the time of conquest and colonization were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent Islands including Palawan, and their descendants, whether or mixed or of full blood, shall have the right to identify themselves as *Bangsamoro* by ascription or self-ascription. Spouses and their descendants are classified as *Bangsamoro*. (BBL-Republic act No.6734)

that will be conducted by other nation which are well experienced in Islamic Law.

Keywords : Oqubaat, Bangsamoro, Meranaw.

INTRODUCTION

The writer has a detailed argument on the legal structure of punishments in Islam – Hadd (fixed punishment), Qisaas (retaliation) and Ta'zeer (discretionary punishment) – and their respective constituting elements, conditions, juristic characteristics and their modes of execution. Punishments in Islam have been classified into three kinds in order to protect the five essential core value which is life, religion, lineage, intellect, and property. Some of the punishments are fixed as per their nature and quantum while others are variable. This classification is one of the basic requirements of an ideal penal system to provide justice and make society a peaceful place.

The principal purposes of the study are prevention from acts that are harmful to humanity. In pursuance of this objective, fixed penalties must be carried out in public in order to prevent others from committing the same offence. There is, however, a wide spread conviction that a person who has been subjected to a fixed penalty will no longer be punished for the same offence in the Hereafter.

Tantawi (2000) mentioned that in order to protect the five important indispensables in Islam: religion, life, intellect, progeny, and property. Islamic Law has provided a worldly punishment in addition to that in the hereafter. Islam has, in fact, adopted two courses for the preservation of these five indispensables: the first is through cultivating religious consciousness in the human soul and the awakening of human awareness through moral education; and the second is by inflicting deterrent punishment, which is the basis of the Islamic criminal system.

Since the punishments of crimes vary from situation to situation, the respective punishments should also vary in dealing with the crime. Legal philosophers and criminologists believe that it is an essential requirement for a viable system to be inclusive of both fixed and variable elements in its penal postulates. In the Islamic history, Islam has provided a unique penal system which perfectly fulfils the stipulated requirements of law as outlined and elaborated by legal experts and theoreticians.

The objective of Islamic law is to preserve the purposes of Shari'ah and to protect public interest and to spread peace and development of the society and humanity. The Oqubaat Enforcement is a way to defend and to protect the five essential values: life, religion, honor, intellect, lineage, and property. This

is a development in civilization that allows a person to fulfill his every spiritual, intellectual, and material need and promote every aspect of his life. (Khan Nyaze'e, 2000)

STATEMENT OF THE PROBLEM

This study analyzed and looked into the real factors that cause and generate Oqubaat Enforcement to have a deeper view of it and its possible help in achieving peace and development in the community and society through Islamic analysis, theories and the perception of the selected respondents from Ulama and professionals in Marawi City. Particularly, the Thesis answered the following questions:

1. What is the soci-economic profile of the respondents?
2. How the respondents knowledgeable in Islamic Penal Law?
3. What are the perceptions of the selected Ulama and Professionals in Oqubaat Enforcement among Muslims in Bangsamoro homeland?
4. What are the implications of the study that can be drawn?

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 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 Ulama and Professionals in the Bangamoro Autonomous Region in Muslim Mindanao were in Marawi City a capital of Lanao del Sur. 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.

The above described place was 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 researcher to further emphasize the Islamic Penal Law 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 (200) 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 ethnical 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

Profile of the Respondents

AGE

Indicator	Frequency	Percentage
25 below	19	9.5%
25-30	91	45.5%
31-35	67	33.5%
36 above	23	11.5%
Total	200	100%

The data implies that the majority of the respondents are 25-30 years old which is the average age of a respondents in Marawi City. Given that they can truly give a reliable response as they attain the age of puberty.

GENDER

Indicator	Frequency	Percentage
Male	123	61.5%
Female	77	38.5%
Total	200	100%

The data showed that the male were the majority respondents of the study which implies that male should be the head of the family and has the

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responsibility of finding economics means under the Islamic concept of family supervision.

INSTITUTION

Indicator	Frequency	Percentage
Government Institution	128	64%
Private Institution	72	36%
Total	200	100%

Majority of the respondents were government institution which imply that this study communicated the right individuals whom have the access on every information and news globally.

EDUCATIONAL DEGREE

Indicator	Frequency	Percentage
Education	48	24%
Engineering	23	11.5%
Islamic and Arabic Studies	60	30%
Public Affairs	44	22%
Social Sciences	25	12.5%
TOTAL	200	100%

The researchers decided at least 20 or more respondents on this study from every targeted department in the City of Marawi from different institution. This implies that majority of the respondents are Ulama and almost of the respondents 95% have good enough knowledge and awareness of the Islamic Law and they were favor in Islamic Penal Law Enforcement in Bangsamoro home-land because, it is a way to eradicate crimes and family feuds. The Muslims in the Southern Philippines since time immemorial have been aspiring to become true faithful Muslims by living in accordance with Islamic teachings.

DISCUSSION ON THE RELATED LITERATURE AND STUDIES

Oqubaat Enforcement presents the reality of punishments of the crimes in order to achieve the main purpose of Islamic criminal law which is to protect people and their concern; as (Sabek, 1971) mentioned that “the objective of Oqubaat or Islamic penal law is to preserve public interest, Allah the Almighty did not set any law legal rule except for the reason of public welfare.

Oqubaat in Islamic Law has three categories: The first and most severe type of punishments are known as the Hudood (singular Hadd) meaning a thing which restrains or prevents since a punishment prevents a man from doing

crimes. However, it is a strictly defined penalty which is mentioned in the Holy Qur'an or the Hadith and it includes adultery or fornication, false accusation of unchastity, theft, robbery, drinking liquor, apostasy, and people of transgression, though there are some disagreements on whether one or two are technically described as 'Hudood', because of the decisive nature of Hadd, its strictness, its firmness and its correctness in the rules of evidence", it has considerably limited the severest penalties.

The second category of punishment, known as Qisaas (retaliation or equitable retribution), is inflicted for deliberate killing or wounding of a person. Unlike Hadd, the penalty could be waived by the victim or his heir in lieu of blood-money (Diyah), but for unintentional homicide or wounding there is no retaliation and only compensation is paid.

The third category of punishment is known as Ta'zeer (discretionary punishment) and it is a sentence or punishment whose measure is not fixed by the Shari'ah neither as to the offence nor the penalty. It helps to meet varying circumstances (e.g. if a definition element is short in a Hadd offence) and the punishment that was generally inflicted in the past was whipping, though other alternatives such as a warning, fines and imprisonment could be given, but the quantum of punishment for Ta'zeer is generally much below that of Hadd (e.g. ten lashes).

Therefore, the objective of Oqubaat enforcement is to protect society from the dangers of crime, to reform the criminal, and the punishment is a recompense for the crime, because Shari'ah protects and defends life, property, honor, religion, intellect and all aspects of life. Hence, the object of all penal systems is to punish the offender and protect society from reoccurrence of the crime. Punishment serves as an educational purpose, as well as a form of crime deterrent and prevention and the system used must achieve this aim. However, if societies were to rely only upon their systems of punishment, they would fail miserably. An environment of healthy morality and faith must be the norm, where to do right is encouraged by all and to do wrong is discouraged and found difficult. In fact, encouraging right and forbidding wrong is a foremost duty in Islam.

FINDINGS

Based on the data gathered, the following findings obtained:

- 1) The respondents of this study are selected Ulama and Professional in Marawi City; some of them are college graduates; and the others are graduates of Master 's and Ph.D. Degrees;
- 2) The majority of the respondents favored the Oqubaat Enforcement in Bangsamoro homeland; they believed that Oqubaat Enforcement in terms of Hudood and Qisaas should be implemented step-by-step, because it

would be implemented if there is an Islamic governance; they pointed out also that Ta'zeer punishment should be strengthened and enforced in the Bangsamoro society;

- 3) Generally, the respondents pointed out in their response that Oqubaat Enforcement in Bangsamoro homeland would eradicate crimes and evil deeds in the society. It will promote socio-economic, development and peace of the country;
- 4) The respondents agreed upon that lack of spiritual and moral training and unsuitability of socio-economic conditions are the basic factors which may render the psychological make-up of a person to become criminal;
- 5) Majority of the respondents understood that Allah did not set any law or legal rule except for the reason of public interest. This is that they believed that Oqubaat Enforcement is highly needed. The teachings of Islam seek to protect people from harm and mischief and serve their interest through the effective use of Allah-given resources. These objectives must be achieved within the framework of justice, dignity, and benevolence.
- 6) Islamic law divides crimes into four different categories depending on the nature of the right violated: Hadd, violation of the commandments of Allah; Qisaas, violation of the mixed right of Allah and of an individual in which the right of the individual is considered to prevail; Ta'zeer, violation of the right of an individual; and Diyyah is compensation paid to the heirs of a victim.
- 7) Islam makes the state accountable for providing opportunities for work, considering this to be one aspect of its general accountability to promote the general welfare. It enlarges the individual from childhood to have faith in Allah and to rely upon Him. It teaches him the value of integrity, modesty, graciousness, love for others, cooperation, and participation in society. In this way, it wipes out the seeds of abhorrence and offense before they can take root in the heart.
- 8) 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.

CONCLUSION

Based on the findings of this research, the following conclusions were drawn:

- 1) Acceptance of Islam as a mode of social conduct, establishing a dignified relation with Allah the Almighty, with oneself, with other people, and other creations of Allah the Almighty through moral excellence.
- 2) Islam is a complete way of life that does not distinguish between the spiritual and the mundane, the religious and secular, the ethical and the legal, and one of the most important objectives of Islam is the realization of human welfare and the avoidance of what is harmful. Islam, thus, protects the lives of people as well as their rational faculties, wealth, honor, and reputations.
- 3) Part of Islamic teachings is to comprehend Islamic law, and part of Islamic law is Islamic Criminal law which is ordained by Allah the Almighty to mankind in order to spread peace and tranquility, because Islam is beneficial not only to Muslims but also to the whole of humanity.
- 4) Oqubaat Enforcement explains that Ta'zeer (discretionary punishment) is restriction to protect individual rights. The Hudood are deterrents to protect loss of sanity, life, religion, honor and property, and lineage. Qisaas (retaliation) protect lives. Diyyah (blood money) protects human relation.
- 5) The Oqubaat Enforcement is aimed at preserving the five universal needs: to preserve life, it prescribed the law of retribution; to preserve religion, it prescribes the punishment for apostasy; to preserve reason it prescribes the punishment for drinking liquor; to preserve lineage, it prescribes the punishment for fornication; to preserve wealth, it prescribes the punishment for theft; and to protect all of them, it prescribed the punishment for highway robbery.
- 6) The implementation of Islamic penal law in the Bangsamoro homeland should be step-by-step and in accordance with Holy Qur'an and the (Sunnah) Prophetic tradition.
- 7) The Oqubaat Enforcement in the Bangsamoro homeland is subject to the following: (a) to have a responsible and qualified leader who has enacted the basic principles that governs Islamic leadership such as consultation, transparency, justice, freedom of thought, dealing one another with right conduct, and the principles of Islamic Law were stated in the Holy Qur'an and the Prophetic traditions; (b) to support Shari'ah Justice System in the Bangsamoro; (c) It is subject to the pre-requisites which is educational reform, moral reform, social reform, economic reform, and political reform; and (d) regular consultation in implementing Oqubaat and to give priority to the nation's welfare and to deal with people in a good manner.

RECOMMENDATIONS

Based on the findings, conclusions of this study, the researcher is strongly recommending the following:

- 1) The conduct of a series of seminars and workshop on Islamic law especially in the field of Oqubaat Enforcement in Bangsamoro homeland.
- 2) There is a need for true integration of Islamic belief, moral values and Islamic criminal law in the school curricula to increase upright community in a democratic civilization.
- 3) To support and to upkeep the Bangsamoro Organic Law (BOL). Otherwise, the Federal forms of government.
- 4) It is recommended to integrate Islamic Criminal Law on Hudood 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'zeer punishment
- 5) It is further 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.

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