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Indexing



The Lanao Sultanate Today: Its *Adat* Laws and Islamic Law on Fornication with Special Reference to the Islamic Perspectives of al-Māwardī

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Abstract

The *Pat a Pangampong sa Ranao* is the archaic name of the four states of Lanao. These four states are Bayabao, Masiu, Unayan, and Baloi which are collectively called the confederate states of Lanao, known as the Lanao Sultanate. This Sultanate was founded by the Lanao chieftains when they seceded Lanao from the Magindanao Sultanate in the 17th century which still exists today. This Sultanate had the traditional laws i.e. *Adat* laws and Islamic laws. Its political structure consists of traditional leaders and the forty-three sultans who ruled the *pagawidan* (supported) states and *pagawid* (supporting) states. Fifteen of these sultans were the executive bodies of the fifteen royal houses of the Lanao Sultanate, while twenty-eight of these sultans were called *m'babaya ko taritib* who were the legislative bodies and governors of the twenty-eight supporting states of Lanao Sultanate. Today, the Lanao Sultanate operates like the sultanates in Malaysia and Indonesia. Studies specifically dealing from the *Sunni* Islamic perspective on punishment for *Zina* (fornication) of the Lanao Sultanate are not represented in literature. This explains why there is a huge research gap on the *Sunni* Islamic perspective on punishment for fornication in the said sultanate. To fill in this research gap, this paper will explore in-depth the practices of the Royal Court of the said sultanate on punishment for fornication. The findings will be cross-referred to the Qur'ān and Ḥadīth injunctions on punishment for fornication; as well as on al-Māwardī's Islamic perspectives on punishment for *Zina*.

Keywords: *Adat* laws, fornication, Lanao Sultanate, *m'babaya ko taritib*, *pagawid*, *pagawidan*

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Introduction

The founders of the Lanao Sultanate were inspired by the verses in the Qur'ān on establishing an Islamic community with Islamic leadership. This paper addresses these problems: what were the practices of the Royal Court of the Lanao Sultanate on punishment for fornication? And, what are the Islamic perspectives of al-Māwardī on punishment for fornication? The objectives of this study are to highlight the practices of the Royal Court of the Lanao Sultanate on punishment for fornication, and to explore the *Sunni* Islamic perspectives of the Lanao Sultanate on punishment for fornication with special reference to the Islamic perspectives of al-Māwardī on punishment for fornication.

This study is significant in filling the research gap in the literature on the foundation of the Lanao Sultanate in Mindanao in the Southern part of the Philippines with specific emphasis on Islamic governance. It broadens the narratives on the practices of the Royal Court of the Lanao Sultanate on punishment for fornication as well as the Sunni Islamic system on punishment for fornication. This serves as a reference material for the researchers and promotes open and constructive debates on how applied Islamic governance facilitated the development of the civil and religious life of the natives in the Philippines today. This provides input for the state policymakers in the promotion of better Islamic governance in the Muslim regions in the Philippines.

2. Research Purpose

This study contributes to the body of knowledge on Islamic civilization in Southeast Asia as well as on the significant contributions of the Lanao Sultanate in the lifeways of the Maranao communities. Hopefully, the results of this study will (1) show and broaden the narratives on the practices of the Royal Court of the Lanao Sultanate on punishment for crime i.e. fornication. (2) Show how applied Islamic governance shaped the civil and religious lifeways of the Maranao natives in the Philippines today. (3) Provide original inputs for the state policymakers for the promotion of better Islamic governance in the Muslim dominated areas in Mindanao, Philippines. (4) See from these research findings of its relevance to the existing sultanates in Lanao, thus the incumbent sultans may reflect on the research findings to enhance their leadership and by so doing to affect socio-cultural, political and religious consciousness and construct of the Muslim community. This might lead to the cooperation between the sultans and the local government units in the Lanao areas.

3. Research Methodology

The historical narratives for this research were obtained through library research, government documents and archives. Secondary data sources i.e. books, theses, dissertations, and journals were used. Semi-structured interview was used in data gathering. The Qur'ānic and Hadīth teachings on punishment for fornication will be scrutinized vis-à-vis in addressing the Islamicity of the Lanao Sultanate practices on

punishment for fornication. The findings will be cross referred with al-Māwardī's treatises on punishment for fornication.

4. The Foundation of Lanao Sultanate

The Lanao Sultanate was founded when it separated from the Magindanao Sultanate during the preparation of the enthronement rites of Kudarat to be enthroned as sultan of Magindanao.¹ According to Ruurdje Laarhoven, Sultan Kudarat began his reign as Sultan of Magindanao in 1616, this date was based from Dutch source.² Basing on the Dutch source as stated above, it is therefore, that the Lanao Sultanate was founded in 1616, respectively.

Today, the Lanao Sultanate is located in Lanao del Sur in the Bangsamoro Autonomous Region in the Muslim Mindanao (BARMM) in the Southern part of the Philippines. There are four provinces that surround Lanao del Sur, namely, (1) Lanao del Norte in the northwest, (2) Bukidnon in the east, (3) Magindanao, and (4) Cotabato in the south. Lanao del Sur is bordered by Illana Bay to the southwest. It is teemed with hills and volcanoes and endowed with green forests, wildlife, flora and fauna. The majority of its land area is covered in thick forests. Its area is further divided into production forest and agricultural land (2,540.7 km²), and alienable and disposable land, which includes a land area for production, protected areas, and land areas for development.³

5. The Geo-Political Characteristics of the Lanao Sultanate

The Lanao Sultanate is a collective leadership to promote unity and strong brotherhood and the equality of the Maranaos. It is also a consultative Monarchy which is equivalent to Monarchical Democracy. The Lanao Sultanate was divided into divisions and each division was then divided into sub-division. There were fifteen sultanates which were ruled by fifteen *panoroganans*. *Panoroganans* were sultans from the fifteen *pagawidan* (supported) states. The four states of the Lanao Sultanate had divisions which had sub-divisions. These sub-divisions were ruled by the twenty-eight sultans from the twenty-eight *pagawid* (supporting) states. The sultans from *pagawidan* and *pagawid* states were inter-dependent on one another based on their traditional laws.⁴

¹Sohayle M. Hadji Abdul Racman, "The Political Legitimacy of Lanao Sultanate in the 17th Century with Special Reference to the Political Theory of al-Māwardī" (PhD diss., Sultan Omar 'Ali Saifuddien Centre for Islamic Studies, Universiti Brunei Darussalam, 2020), 378-379.

²According to Ruurdje Laarhoven (1986:34-35), based on a Dutch source, Sultan Kudarat was said to have started his reign as sultan of Magindanao in 1616. See the work by R. Laarhoven, "We are Many Nations: The Emergence of Multi-Ethnic Maguindanao Sultanate," In *Philippine Quarterly of Culture and Society* 14, no. 1 (1986): 32-53.

³Republic of the Philippines, the Province of Lanao del Sur, Mindanao official website: <https://lanaodelsur.gov.ph/about/history/>. Accessed, August 1, 2017.

⁴Sultan Monsing Macabando, *Brief History of the Maranao Mindanao, Maranao Salsila (Genealogy) Their Origin*, Vol. 1 (Marawi City, Philippines: Marawi Sultanate League, 2008), 18.

The fifteen supported sultans of the fifteen royal houses were being assisted by the twenty-eight houses of peers or policy or lawmakers from the twenty-eight *pagawid* states. The main function of the houses of peers is “to legislate local customs, traditions and laws but subject to the joint concurrence of the royal houses, the council of elders and the board of advisers.”⁵ The council of elders and the boards of advisers are both advisers to the royal houses and houses of peers.⁶ The decision-making process in the Lanao Sultanate is not a monopoly of the sultans but it is based on the consensus of the council of elders, the boards of advisers, and the other traditional leaders.

The political structure of the four states of Lanao is like the political structure of the Philippines national government which has an executive branch, legislative branch, and judiciary branch. The fifteen sultans of the fifteen *pagawidan* states were the executive bodies of the four states of Lanao, and the twenty-eight houses of peers or the *duwa pulo ago walo a m'babaya ko taritib* were the policy or law makers or the legislative bodies of the four states of Lanao. The house of the '*ulamās*' carries the judiciary powers of the four states of Lanao. The four states of Lanao have the house of the council of elders which is equivalent to an executive secretary and judiciary, the house of four landmark sultanates, the house of the ladies, and the house of board of advisers.⁷ The four landmark sultanates were the places of intersection and demarcation of sultanates, known as the *pat a inged a kiasosol'daan o bangsa o pat a pangampong sa ranao*.⁸ The house of the ladies were the titled ladies i.e. *bai-a-labi*, *potri-[maamor]*, *paramata*, *bai-a-labi-a-gaus* (princess or *sultanah*). *Bai-a-labi* was the highest ranking title among the royal titles for ladies.⁹ “The '*ulamā*' were classified into three groups: *imāms*, *kalis* (Arabic *qādīs* for judge), and *gurus*.”¹⁰ The *imāms*, *kalis*, and *gurus* officiate the spiritual, social and religious affairs of the four states of Lanao. They were also the religious and spiritual leaders of the community.¹¹ The four states of Lanao had *askars* (army).¹² They were the military units and the peace keeping forces of the four states of Lanao, and by the 20th century, the *askars* were replaced by the military of the National government. Nagasura T. Madale says that the four states of Lanao have *pananalsilas* who were the reciters, keepers and writers of genealogy.¹³ The *pananalsilas* wrote and kept the genealogy of the ruling classes of the

⁵Ibid., 9.

⁶Ibid.

⁷Brecht-Drouart Birte, “The Influences of the National Question and the Revival of Tradition on Gender Issues among Maranaos,” (PhD diss., Goethe Universität, Frankfurt Am Main, 2011) B. Brech), 213.

⁸Ibid., 181.

⁹Ibid., 214.

¹⁰Ibid., 213.

¹¹Hadji Abdul Racman, “The Political Legitimacy of Lanao Sultanate in the 17th Century with Special Reference to the Political Theory of al-Māwardī,” 2020.

¹²Ibid., 4-15.

¹³Nagasura T. Madale, *Maranao* (Manila, Philippines: National Commission for Culture and the Arts, 2002), 3.

Lanao Sultanate. This genealogy was known as *salsila*. The *pananalsilas* memorized the content of the genealogy and they recite the lines of descent in the genealogy during the crowning ceremony of the royalties and royal wedding ceremony. The members of the ruling class and the commoners refer to their *salsila* to trace up the roots of lineage and the blood-line connections of a prospective bride and groom.

Structural Chart of the four Pangampongs

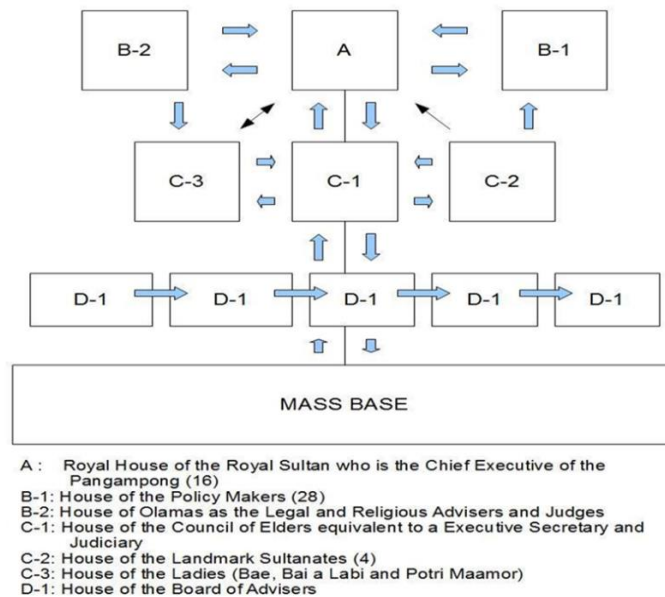


Figure 1. The Structural Chart of the Lanao Sultanate. Source: Sultan Monsing Macabando, Chairman of the Marawi Sultanate League, 2017

6. The Traditional Laws and Islamic Laws of the Lanao Sultanate

The Agama Court of the Maranaos in the Philippines today differs from the *Sharī'ah* Court in other countries where *Sharī'ah* (Islamic law) is enforced. The Agama Court of the Maranaos applied both the customary laws and Islamic law in settling cases judicially. The sultan and the *datu* administered the Agama Court. Usually, the Sultan appoints a deputy such as *radia-muda* and *datu-kali* or *kali* (Arabic *qādī*, for judge) to assist him in settling judicial matters.¹⁴

The procedure before Agama Court was rather simple to follow. The complainant may either file his case orally or in writing. If the *kali* found sufficient cause for action, the *kali* called the defendant to appear before the Agama Court so that he will be asked to answer

¹⁴Musib M. Buat, "Survey of Filipino Muslim *Adat* (Customary Law) and Role of Agama Court," in *Mindanao Journal*, Mindanao State University (1977): 104.

the complaint filed against him. Trial and hearing were marked by simplicity. The plaintiff will be asked to state his case and present evidence. In any case, if the plaintiff cannot produce any witness or evidence to support his claim, then the defendant, if he denied the claim will be required to take an oath.¹⁵ In the old days, on judgement and execution, the *datu* or *kali* executed judgement due to their power and influence. If and when the decision of the Agama Court was contrary to the law and custom. Appeal may be lobbied by the defendant to higher *datu*, and sultan.¹⁶

According to Mamitua Saber and Mauyag T. Tamano, there are two laws governing the Maranao society: “(i) The *Adat* laws which are customary laws, and (ii) the *kitab* or Islamic laws [Sharī‘ah laws which was] introduced to the society along with their religion.”¹⁷ *Adat* laws are composed of *taritib* and *igma* (Arabic, *ijmā*). Mamitua Saber and Mauyag M. Tamano defined *taritib* as “ordered ways” or “established ways” while *igma* as “ordinance.” *Adat* laws, *taritib* and *ijmā* are synonymous and interchangeable.¹⁸ Collectively, both *taritib* and *igma* refer to the *Adat* laws which govern the social, political, and cultural aspects of the Maranaos. The *Adat* laws also define the social and cultural relations of different villages.

Mamitua Saber and Mauyag M. Tamano explain that *kitāb* is composed of “(i) the *purkan* meaning “pathway” (i.e. the right way) containing the legal and moral provisions of the holy Qur’ān; and (ii) the *minahad* containing the codes based upon the *purkan* by Prophet Muhammad (SAW). The *kitāb* is shared by the Maranaos with the rest of the Islamic world.”¹⁹ In this respect, *kitāb* refers to the divine teachings of Allāh (SWT). *Sharī‘ah* is a universal law which guides the social, moral and spiritual aspects of the Muslims. Mamitua Saber and Mauyag M. Tamano state that “there are provisions of the *taritib* and *igma* which are enforced in all the “four states” of Lanao of the Maranaos. Still others have very limited application to a state or to an *agama* unit.”²⁰

The provisions of *taritib* and *igma* are being enforced within the four states of Lanao. Mamitua Saber and Mauyag M. Tamano explain that the Islamic court used *Qias* as their legal reference in settlement of case. *Kias* refers to a precedent in the settlement of a previous case. In the past, the ruling *datu*s may legitimately request an accused to appear before the Agama Court for the investigation of the case in which the accused was involved. Prior to the inception of modern government, the widespread punishment imposed by an aggrieved party was: *saop* (vengeance); and *rabai* (pillage). Mamitua Saber and Mauyag M. Tamano argue that “the former” [i.e. vengeance] is still rampant when the modern

¹⁵Ibid., 99.

¹⁶Ibid., 100.

¹⁷Mamitua Saber, and Mauyag M. Tamano, “Decision-Making and Social Change in Rural Moroland,” in *Mindanao Journal*, Mindanao State University (1986-87): 116-117.

¹⁸Ibid., 117.

¹⁹Ibid.

²⁰Ibid., 117.

authority failed to interfere or when the traditional offices lost control of the feuding families. Islam outlaws the sinful acts of vengeance and pillage.”²¹

7. Penalties for Crimes and Penalties for Fornication

In the past, penalties imposed for crimes and fornication were *Kitas* (death penalty by execution); *Olol* (enslavement for women convicts of high crimes); *Radium* (stoning of convicts in adultery and incest crimes); and *Kapangangawid* (“honourable” settlement with fine and compensation).²²

The penalty for *zina* or fornication and incest is *radiam* (stoning to death) of the perpetrators. However, according to Mamitua Saber and Maanyag M. Tamano, *kitas*, *olol* and *radiam* are no longer practiced “except in very rare cases in isolated areas.” While, *kapangangawid* “is still popular and often tolerated or accepted in the extra-legal settlements by the modern constitutional officers of the law.”²³

It is likely that *kitas*, *olol*, and *radiam* were used as punishments for specific crimes since the inception of the Lanao Sultanate, these punishments were no longer in use when the modern government was introduced in the Philippines during the American regime.

On settling criminal cases before the introduction of the Philippines government, the Agama Court of the Maranaos has officials, “...composed of a council of *datus*, one of whom is a law-consultant called *kali*, and the contesting parties are represented by counsels called *wakils*.”²⁴ This means that the Maranaos had established an institution responsible for settling criminal cases and disputes.

8. Al-Māwardī: Life, Works and Experiences

8.1. Biography of al-Māwardī

After the death of al-Fārābī, then later a quarter of a century, al-Māwardī was born in 972 A.C. in the city of Basra, presently in Iraq. This city was known as one of the great centers of learning and education in the Islamic world during the Middle Ages. Al-Māwardī whose full name was Abū al-Ḥasan ‘Alī Ibn Muḥāmmād Ibn Ḥabīb al-Māwardī prepared himself to be a jurist in the Shāfi‘ī School. Owing to his vast knowledge on Islam, he took the position of Chief Justice.²⁵ Al-Māwardī passed away in 1058 in Basra, his birth place. He was a *Sunni* scholar who made a theory on public administration from the perspective of *Sunni* Islam. He worked as a teacher as well as appointed as a judge in Baghdad.²⁶

²¹Ibid., 118.

²²Ibid.,

²³Ibid.,

²⁴Ibid., 162.

²⁵Muhammad Qamaruddin Khan, “Al-Mawardi,” in *A History of Muslim Philosophy*, ed. by M. M. Sharīf (Wiesbaden: Otto Harrasowitz, 1963), 718.

²⁶*Maverdii Constitutiones Policae* (Bonn: Adolp Marcus, 1853).

He wrote many books including *Al-Aḥkām al-Sultāniyyah*. In this book, he states that, “the supreme leadership is intended as vicarate of the prophecy in upholding the faith and managing the affairs of the world. Its establishment is unanimously considered to be obligatory on the community.”²⁷ Wafāa’ H. Wahba quotes Māwardī’s views on caliphate which he wrote in the preface of his book *Al-Aḥkām*, the caliphate “is symbolic of the entire politico-religious system, the law of which is the *Sharī‘ah* which is binding to all, rulers and ruled alike. It provides the basis of any system of government for all sects of the Muslims i.e. moderate, extremist, modernist or conservative. The sacred law of Islam guides men in all departments of life: spiritual and secular.”²⁸

8.2. Life of al-Māwardī

Abū al-Ḥasan ‘Alī Ibn Muḥāmmād Ibn Habīb al-Māwardī was not only a scholar but he was also a great ambassador and was respected both by the Caliphs and the Buyids who were Shi’ite Persian family of army commanders in Baghdad. The Caliphs and the Buyids resorted to him to hold negotiations with their political rivals.²⁹ According to Hamilton A.R. Gibb, an extensive examination of his works show that he was not a philosopher nor a mere observer-jurist. In reality, his experiences in the administrative post as *wazīr* (minister) to the Buyids, and as chief justice to the caliph had greatly affected his writing. Consequently, his experiences in the administration show that both political and legal speculation took little part in his writings. To some extent, he developed, systematized and expanded the views of his predecessors.³⁰ In addition, it reveals that he was not a mere recorder of facts which were handed to him by the earlier *Sunni* jurists.³¹

8.3. Works of al-Māwardī

Abū al-Ḥasan ‘Alī Ibn Muḥāmmād Ibn Habīb al-Māwardī Abu worked as a teacher in Basra and Baghdad. He then migrated to Nishapur and worked there as a *qādī* (judge). He returned to Baghdad where he worked as a juridical adviser at the court of the *khalīfa* (caliph).³² His immense knowledge of *fiqh* (Islamic jurisprudence) provided him great opportunities to work as a judge in many districts of Iraq. For this reason, he received an honorary title ‘*Aqdā al-Quḍāt*, “judge par excellence” to recognize his great work on jurisprudent. His other areas of interest and writings are the Qur’ān interpretation, religion,

²⁷Wafaa H. Wahba, *Al-Māwardī, The Ordinances of Government, Al-Aḥkām al-Sultāniyya w’al-Wilāyāt al-Dīniyya* (UK: Garnet Publishing Ltd, 1996), 3.

²⁸*Ibid.*, xv.

²⁹*Ibid.*, 3.

³⁰Hamilton A. R. Gibb, *Studies on the Civilization of Islam* (Boston: Beacon Press, 1958), 153.

³¹Erwin I. J. Rosenthal, *Political Thought in Medieval Islam, An Introductory Outline* (Cambridge: Cambridge University Press, 1962), 30.

³²Patrick Bannerman, *Islam in Perspective: A Guide to Islamic Society, Politics and Law* (London: Routledge and New York, The Royal Institute of International Affairs, 1988), 267.

government, public and constitutional law, language, ethics, and belles-letters. In religious matters, he was known as a typical mujtahid (independent writer).³³

8.4. Experiences of al-Māwardī

Al-Māwardī wrote a book *al-Aḥkām al-Sultāniyyah w'al-Wilāyāt al-Dīniyya* (Book of the Principles of Government) in the 10th century. He set out his theory of government and the rights and duties of the ruler and the rules of delegated authority. *Al-Aḥkām* was written by al-Māwardī with emphasis on integrating the divergences thoughts of the Shāfi'ī school along with Mālikī and Hanafī and adds in his thesis the traditions and reports from the companions of Prophet Muhammad (SAW) and his successors, the four rightly guided caliphs.³⁴ *Al-aḥkām al-Sultāniyyah* was published more than a 100 years ago by Maximilian Enger in 1853.³⁵ The Orientalists have regarded *Al-Aḥkām al-Sultāniyyah* as a key in unlocking the theory on Islamic political thought and governance. The book is a work of primary importance which caught the attention of the Orientalists.³⁶ The book is a manual of governmental ordinances and “it is a first book of *fiqh* to be devoted exclusively to the government, so that its importance lies in its priority and originality.”³⁷

9. Findings and Discussions

9.1. On Penalties for Crimes and Penalties for Fornication

The basic objective of Islam is to establish law and order. The Qur'ān emphasizes the protection of life, property and dignity of man. In the Islamic state, a system of security must be established to prevent the proliferation of criminal activities so that the life, property, and dignity of man is secured. The people who are engaging in criminal activities must be caught and punished so that national security, peace and order is established. The Islamic state must enforce the penalties imposed by Allāh which are laid down and specified in the Holy Qur'ān. In the modern era, national security, peace and order, and social stability are essential needs of every state. These needs are geared towards achieving justice, social progress, scientific, and economic development. Likewise, the citizens in an Islamic state must abide by Islamic laws, national policies, and respect the rights of other citizens to establish peace and order, and harmony between individuals and the state at large.

³³Wahba, *Al-Māwardī, The Ordinances of Government, Al-Aḥkām al-Sultāniyya w'al-Wilāyāt al-Dīniyya*.

³⁴Donald P. Little, et al., *Islamic Political Thought and Governance, Critical Concepts in Political Science*, Vol. I, *Roots of Islamic Political Thought: Key Trends, Basic Doctrines and Development*, ed. by Abdullah Saeed (London and New York: Routledge, Taylor and Francis Group, 2011), 235.

³⁵*Maverdii Constitutiones Policae*.

³⁶Little, et al., *Islamic Political Thought and Governance, Critical Concepts in Political Science*, 235.

³⁷*Ibid*.

In the past and today, when there is peace and no crime in the society, the economy of that society develops, its wealth grows rapidly and its culture flourishes. When there is peace and no criminality in the society, the people in that society attend to their work, economic, social, and educational activities safely, hence, a productive society. According to Abdulaziz Saddiq Jastaniah, crime in Islam means either the commission of the things which are prohibited in Islam and unlawful activities or the omission of obligatory acts such as prayer, payment of the tax for the poor, etc. Any citizen who commits crimes will be subject to punishment.³⁸ So what is a crime and the different forms of crime? Al-Māwārdī defines crimes as actions forbidden by religious law and discouraged by God Almighty through mandatory or discretionary punishment. They go through an accusation stage in which self-defence is required by religious policy; when the charges are proven true, a stage of implementing the legal sanctions follows.³⁹ Crimes include *zinā* (adultery), *qudhf* (false accusation of adultery), *sariqah* (theft), *fasād* (spreading of corruption on earth), *qutl* (murder),⁴⁰ robbery, land grabbing, incest, usury, etc. In this specific section, we will discuss adultery and the punishment for adulterers only.

Muhammad Iqbal Siddiqi says adultery or fornication is a form of heinous crime that a person can commit. The fornicator proves that 'his humanity has been overwhelmed by his undesirable animal instinct. A fornicator cuts the very root of human civilization. It is a sexual relation between unmarried persons.⁴¹ Qur'ān prescribes penalties on the commission of adultery, it says, "The woman and the man guilty of fornication, flog each one of them with a hundred stripes and let not any pity for them restrain you regarding a matter prescribed by Allāh, if you believe in Allāh and the Last Day, and let, some of the believers witness the punishment inflicted on them."⁴² This means that flogging of fornicators must be done in public so that the people are reminded of the penalties and outcome of doing fornication, hence, reprimands them to avoid the similar act.

The punishment of a male or female slave who fornicates is lesser than the punishment of free individual who fornicates. This finds basis in the Qur'ān, it says, "Then if they are guilty of indecency, after they have been fortified by wedlock, they shall be given half the punishment prescribed for free women."⁴³ This means that the male and female slave who fornicates receives 50 stripes only. This is an indication that slaves are vulnerable units of the society and due to their low status, they could be taken for granted by a powerful

³⁸Jastaniah Abdulaziz Saddiq, "The Islamic State in Light of the Qur'ān and Sunnah," (PhD diss., University of Colorado. Ann Arbor, Michigan, USA: University Microfilms International A Bell and Howell Information Company, 1982), 103.

³⁹Wahba, *Al-Māwārdī, The Ordinances of Government, Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya*, 238.

⁴⁰Saddiq, "The Islamic State in Light of the Qur'ān and Sunnah," 103.

⁴¹Muhammad Iqbal Siddiqi, *The Penal Law of Islam* (Lahore: Kazi Publications, 1985), 81.

⁴²Al-Qur'ān: An-Nisā, 24:2.

⁴³An-Nisā, 4:25 as quoted by al-Māwārdī.

individual for sexual favours or they could be raped by their master or anyone else who has a high status in the society.

How fornication is committed? According to al-Māwārdī, “fornication is insertion of the glans of the penis by an adult male in the interior or posterior cavity of a person when they are not tied together by the bond of marriage or what amounts to it, although Abū Hanīfa restricts it to the intercourse to the front only. The same penalty applies to male and female offenders, each of whom may belong to the status of “virgin” or a spouse.”⁴⁴ This means that fornication is the act of sexual intercourse via penetration of man’s penis to woman’s vaginal cavity which both are not bonded through marriage.

Punishment for the unmarried people is different from the punishment for married people and slaves. Al-Māwārdī says, “A virgin male is the one who has not had intercourse with a female in marriage. The penalty for a freeman of this description is a hundred lashes evenly distributed over his entire body, except the face and parts vulnerable to mortal injury, with a whip that is neither made of iron to kill nor of completely painless rags.”⁴⁵ This means that an unmarried freeman who had committed fornication receives penalties of 100 lashes to his entire body except for his face but stoning to death penalty does not apply to him, meaning his life is saved.

There is disagreement by the authorities in terms of punishment for virgin male whether he will be exiled and flogged combine or not. Abū Hanīfa ‘rules out exile, while Māliki recommends exile for men but not for women.’⁴⁶ This means that another way of penalties for a virgin male who committed fornication is exile, this view is from Abū Hanīfa and Māliki’s view, on one hand, and a virgin woman who fornicates does not need to be exiled according to Māliki’s view. Al-Māwārdī says, “Shāfi‘ī maintains that a woman should be expelled from home for 1 year to a place that could not be reached in less than 24 hours, this is in accordance with the saying of the Prophet Muhammad (SAW)”⁴⁷ which says, “Learn this from me. God has indicated what may be done with females: a virgin female, like a virgin male, a hundred lashes and a year’s banishment, and a non-virgin female, like-a non-virgin male, a hundred lashes and stoning.”⁴⁸

Al-Māwārdī quotes al-Shāfi‘ī, according to him the penalty for a nonbeliever or a Muslim who is virgin is the same regarding flogging and banishment.⁴⁹ This means that a virgin non-Muslim woman and a virgin Muslim woman who fornicates receive flogging and banishment as a penalty. Al-Māwārdī says, “The penalty for a virgin who commits adultery with married woman, or a spouse who has intercourse with virgin is flogging for

⁴⁴Wahba, *Al-Māwardī, The Ordinances of Government, Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya*, 242.

⁴⁵Ibid., 242.

⁴⁶Ibid., 242.

⁴⁷Ibid.,

⁴⁸Ibid., 242-243.

⁴⁹Ibid., 243.

the virgin and stoning for the married party. If the former repeats the offence he suffers the same penalty again, but the punishment is administered only once regardless of the number of times adultery has been committed before being found out.”⁵⁰ This means that a virgin male or female who committed adultery receives flogging as a penalty while the married person who committed adultery with a virgin male or virgin female receives stoning to death as a penalty. It is a reality that in many societies, some married people commit adultery with unmarried ones, while some virgin or unmarried individuals commit adultery with married ones.

Al-Māwardī explains, a slave and enfranchised slave upon the death of his master (*mudabbar*) or being freed from enslavement, and the contractually enfranchised (*mukatāb*) or a concubine impregnated by his master and “bears her master a son (*um al-walad*), incurs only fifty lashes in punishment for fornication, or half of the penalty decreed for the freeborn, because of their diminished status as slaves.”⁵¹ This means that an individual who is freed from enslavement and a contractually freed slave who committed fornication receives fifty lashes only as a penalty, the same penalty applies to a concubine who fornicates regardless she gave birth to a son or an offspring of her master or not.

There is disagreement regarding the banishment of slaves. Māliki suggests to reject the banishment of slaves because it is harmful to the master. Others recommend a year of exile for slaves like the freemen. Al-Shāfi‘ī favours the reduction of exile of slave to a half year only.⁵² Slaves are expected to work and serve their master which is why most probably Māliki rejected the banishment of slaves. Slaves are dependent on their master who provides them their basic needs such as food and shelter to live and survive. Any person who is exiled may be caught in an inhabitable place i.e. a place that could not support life like a desert without an oasis, thus, resulting in death of that exiled person. Islam gave special treatment to slaves and their lives are protected, thus, they do not get stoning to the death penalty if they committed fornication. If and when they committed fornication they only get fifty lashes and or a year or half year banishment as a penalty.

In comparison, in the case of Lanao Sultanate, Mamitua Saber and Mauyag M. Tamano explain, *radiam* (stoning to death) was applied a penalty for individual who have been proven guilty of commission of fornication. Stoning to death was also an applied penalty to incest crimes. Mamitua Saber and Mauyag M. Tamano say, “Death and enslavement were applied to high crimes of murder, homicide, adultery, and incest.”⁵³ This means that people who were guilty of adultery and or incest crime will be enslaved as penalties for commission of adultery and or incest. Those married individuals who committed adultery are stoned to death. In a nutshell, people who committed incest crime and adultery may either be enslaved or be stoned to death as a penalty, most probably, re-enslavement for

⁵⁰Ibid.

⁵¹Ibid.

⁵²Ibid.

⁵³Saber and Tamano, “Decision-Making and Social Change in Rural Moroland,” 118.

freed slaves and stoning to death for married freemen. The Lanao Sultanate did not deviate from al-Māwardī's general views on fornication, and on the establishment of punishments to fornicators due to the fact that the Lanao Sultanate follows the *Sharī'ah*'s and the four school of thoughts' ruling on punishment for fornicators.

How fornication is established? Fornication is established in one or two ways: admission or testimony. "The mandatory penalty is administered to a sane individual who has reached legal majority after a single voluntary admission of guilt, although Abū Hanīfa stipulates repeating the admission four times before the punishment is inflicted. If the admission is retracted before the flogging is enforced, the penalty is automatically dropped, although it is not dropped for retraction in view of Abū Hanīfa."⁵⁴ Abū Hanīfa somehow follows the event during the time of Prophet Muhammad (SAW) regarding the man who insisted and admitted four times in different occasions to the Prophet Muhammad (SAW) that he committed fornication and asked Prophet Muhammad (SAW) to be stoned which the Prophet Muhammad (SAW) approved of.⁵⁵ However, during the execution, the man regretted his declaration of commission of fornication and he ran away; the punishment squad ran after him and killed him. Because of this event, Prophet Muhammad (SAW) said: "Would that you had left him alive: he would have repented, and God would have been merciful to him."⁵⁶

The man was not stoned to death but killed after he ran away. In this event, God's mercifulness was relevant in the eyes of Prophet Muhammad (SAW); that the man's life could have been saved but it is too late. In this event, it gives us knowledge that even during the time of execution of a person, and then later, if that person regretted his declaration of commission of fornication, in my view, that person must be saved from stoning and his life must be spared. Only God knows.

Al-Māwardī says, "the proper evidence is the testimony of four just men, but no women, that he has committed fornication, attesting that they witnessed the entry of his penis into the vagina...their testimony is invalid unless they have seen the act perpetrated in this way, but if they have their evidence, their evidence is accepted whether rendered separately or at the same time."⁵⁷ It is a very rare occasion that fornication is done publicly. Fornication is always done in secrecy. Thus, there is a very slim chance that the commission of fornication is established based on the testimony of four sane witnesses who have seen the act of insertion of penis into the vagina.

⁵⁴Wahba, *Al-Māwardī, The Ordinances of Government, Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya*, 243-244.

⁵⁵*Conferences of Riyadh, Paris, Vatican City, Geneva and Strasbourg on Muslim Doctrine and Human Rights in Islam, a Proceedings* (Riyadh, 1972), 21-22.

⁵⁶*Ibid.*,

⁵⁷Wahba, *Al-Māwardī, The Ordinances of Government, Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya*, 244.

How stoning to death is done? According to al-Māwardī, “in order to stone an adulterer whose guilt has been established by the testimony of [four competent and sane] witnesses, a pit is dug into which he has to descend to prevent his escape, and if he runs away he is pursued and stoned until death.”⁵⁸ In Islam, “The testimony of one witness has no value before the law: in that case, the person is advised to refrain from making the denunciation, and condemned to be scourged, if he would continue in his accusations; the same thing happens if there are only two, or even three witnesses.”⁵⁹ The stoning to death punishment can be established based on the testimony of four objectives, sane, competent, trustworthy and adult witnesses.

The Qur’ān clearly stipulates the primary condition required by the verses: “is the presence, at the moment of the act, of four witnesses who can be trusted, and had never been indicted.”⁶⁰ The stoning to death punishment is to deter and refrain individuals from doing immoral acts i.e. fornication. The reason why stoning to death is done publicly is to set an example for people, so that, they would be aware of the consequences of engaging in fornication. Islam teaches the Muslims to behave modestly and morally both in public and private spaces, and abide by Islamic teachings wherever a Muslim is at all times.

10. Conclusion

The Agama Court of the Maranaos in the Philippines today differs from the *Sharī’ah* Court in other countries like Saudi Arabia and Brunei Darussalam where *Sharī’ah* is enforced. The Agama Court of the Maranaos applied both the customary laws and Islamic law in settling criminal cases. The sultan and the *datu* administered the Agama Court. The sultan appoints a deputy such as *radia-muda* and *datu-kali* or *kali* (Arabic *qādī*, for judge) to assist him in settling judicial matters. In the old days, the penalties imposed for crimes and fornication were: *kitas* (death penalty by execution); *olol* (enslavement for women convicts of high crimes); *radiam* (stoning of convicts in adultery and incest crimes); and *kapangangawid* (honourable settlement with fine and compensation). The penalty for *zina* (fornication) and incest is *radiam* (stoning to death) of the perpetrators. However, *kitas*, *olol* and *radiam* are no longer practiced except in very rare cases in isolated areas. While, *kapangangawid* is still popular and often tolerated or accepted in the extra-legal settlements by the modern constitutional officers of the law. Al-Māwardī’s thoughts on punishment for fornication was based on Hanīfa, Māliki, and Shāfi’ī school of thoughts, of which, generally are based on the Qur’ānic injunctions on fornication. Al-Māwardī posits that fornication can be established by the four just men who saw the fornication act. On stoning the fornicators, according to al-Māwardī, a pit is dug into which he has to descend to prevent his escape, and if he runs away he is pursued and stoned until death. Stoning is done publicly to deter the people from committing fornication. The Lanao Sultanate application of stoning of the fornicators was based on the Qur’ānic injunctions on

⁵⁸Ibid.

⁵⁹*The Conferences of Riyadh*, 22.

⁶⁰Ibid., 23, quotes verses from the Qur’ān An-Nūr 24:6.

fornication which is similar to al-Māwardī's thoughts on punishment for the people who were proven guilty of fornication act.

Recommendations

- For the Muslim Filipino researchers and academicians: The Muslim Filipino researchers and scholars who are interested in studying Islamic leadership during the colonial era in the Philippines and the current political set-up of the Philippines must examine the relevance of the wide-ranging contribution of Islam to the Muslim Mindanao laws particularly on the application of Islamic laws.
- For the Philippines Department of Education and Commission on Higher Education: The Department of Education and Commission on Higher Education of the Philippines must incorporate the rich history, civilization, heritage, culture, and the political set up of the Muslim Filipinos in the history and social sciences materials, references, and books which are to be available to the public, the general learners, scholars, and academicians so that the non-Muslim Filipinos may have a better understanding of the complexities of the civilization of the Muslim Filipinos, hence, they avoid biases towards the Muslim Filipinos' general culture.
- For the Maranao traditional leaders: It is recommended that the incumbent Maranao *datus*, sultans and *bais* must reflect on the objectives of Islamic leadership in the past so that their leadership today could become meaningful, dynamic, productive, and functional, where the Ummah could benefit from their leadership.
- For the general Maranaos: Maranaos are proud of their culture, heritage, religion and history. Thus, it is recommended that they continue cultivating their culture especially their traditional leadership guided by the teachings of Islam so they could sustain their existence, development and address their social, moral, cultural and political needs.

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