THE CONTEMPORARY ISSUES ON FATWA MANAGEMENT IN A SECULAR STATE: THE PHILIPPINE EXPERIENCE

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ABSTRACT

Fatwa is an authoritative source of rulings rendered by the learned Muslim scholars. It has an important role in answering questions and inquiries related to the Muslim daily lives to avoid from falling farther from an un-Islamic way of life. The Philippine laws recognized the application of fatwa under the provisions of the Code of Muslim Personal Laws and the Organic Act for Muslim autonomous regions in Mindanao on important current issues where Islamic jurisprudence is unclear. This paper will address some legal pronouncement on various contemporary issues related to health, marriage, terrorism and others. The study identifies the mechanism and method used in managing and disseminating fatwa in a secular state like Philippines. It also analyzes its position in the Shariah courts, particularly on the availability of fatwa rulings on relevant cases. Library research has been used in writing this research. Proofs of a given fatwa is based on the following sources: the Qur’an, the Sunnah, the Ijma, the Qiyas, the recognized opinions of the mujtahiden and other subsidiary legal principles. Selected fatwa issued by the muftis’ and ulama from other regions will be discussed including the several shortcomings made by the mufti on fatwa management. Thereafter, the conclusion summarizes the important significance of fatwa as a reliable valid legal source of Islamic rulings in the Shariah courts. Recommendations and suggestions have been provided on how to give an important position to the fatwa in bridging the gap between the needs of the Muslims and their sustainable co-existence in a wider Filipino-Muslim community.

Keywords: Fatwa management, Regional Dar-al Ifta, Shariah courts, Muslim Code

Introduction

Fatwa is a non-legal binding legal opinions or rulings rendered by the mufti and other Muslim scholars. It has no legal force but it gives a strong guidance and education, particularly to individuals in the ummah. Fatwa has an important roles not only in the majority Muslim countries but also in non-Muslim countries like Philippines, Singapore and Thailand where the Muslim minority communities are striving to apply the Islamic teachings within the framework of a modern secular nations. But fatwa roles in a secular society are deemed limited to personal, individual and private level, and as such does not negate the primacy of national law in the lives of Muslim citizens (Black et.al. 2013). Fatwa institution holds an importance in the contemporary Muslim minority communities in the Philippines. In fact, when the government proposed the creation of the Office of the Jurisconsult, the Muslim minorities have envisioned that the mufti can come to meddle for the institutionalization of zakat (Mohamed Ariff, 1991), waqf, halal and other Islamic institutions in the Philippines.

The fatwa institution has been divided into the segments of Office of Jurisconsult recognized by the national government, the Dar-al-Ifta of the Bangsamoro regions and the mufti or Muslim scholars recognized
by Islamic religious organisations from different regions. The Code of Muslim Personal Laws of the Philippines (Muslim Code), specifically, provides that the state recognises the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective. Thus, the Office of Mufti has been specialized as part of the Shari'ah legal system.

The Muslim Code was signed into law in February 1977 under Presidential Decree No. 1083. The Muslim Code recognizes the Islamic personal laws and its applications to the Muslim minorities. It clearly provides that Shariah law becomes part of the land and also it seeks to make Islamic institutions more effective (Article 2(a), Muslim Code). The process of resolving disputes and other issues related to Muslim personal rights and remedies have been covered by the Muslim Code under the “Adjudication and Settlement of Disputes and Rendition of Legal Opinion.” While the mufti’s position has occasionally taken on political and social importance as orthodox opinions regarding controversial issues elicited by the government and other interested parties. However since 2003, the national government have not appointed any mufti after Aleem Saaduddin Alauya, the second appointed mufti had completed his seven years term in office (Mohamad Ali, et.al. 2016).

The Office of the Bangsamoro jurisconsult is mandated under Republic Act 9054 “Organic Act for Autonomous Region for Muslim Mindanao” (Organic Act-ARMM) which provides that the Regional Assembly shall give priority consideration to the organization of the Office of jurisconsult in Islamic law as established under existing law and provision for its facilities to enable the proper functioning of the office (Section 20, Article viii). In line with this law, Executive order (EO) 09 established the first ARMM regional transitional Office of the Jurisconsult in 2014. While the Regional Darul-Ifta’ (RDI) was created under Muslim Mindanao Act (MMA) 323 and it was officially approved on March 2017 after its publication in a regional broadsheet, the Mindanao Cross (RDI-BARMM Official Website).

The Muslim Code and the Organic Act of ARMMM have performed an operational function in the administration and dispensation of justice and an integrative function in the modern state of judicial system. With this, fatwa becomes important in bridging the gap between the needs of the Muslims and their sustainable co-existence in a wider Filipino-Muslim community. In relation to the implementation of fatwa, the Office of the Jurisconsult had been created to exercise the powers and functions conferred to it by the law. The first national government mufti occupied his position as a jurisconsult in 1983 for a term of seven years unless sooner removed for cause or incapacitated to discharge the duties of his office. There were fatwas that have been compiled and collected, notably by the former muftis of the national government. These collections of legal opinions have been submitted to the Supreme Court as an important reference points in considering the application of Islamic jurisprudence to Shariah local cases.

This research aims to explain some contemporary issues on the emergence of some legal opinions endorsed by muftis’ and other Muslim scholars to settle questions where the Islamic jurisprudence is not so clear. It also provides to discuss the challenges that confronted them in implementing the fatwa as a guidance to Muslims daily life activities. The findings present the principal issues to elaborate the application of fatwa rendered by the mufti and other Muslim local scholars. Several ideas are to be presented on how the fatwa can be disseminated effectively to the Muslim minority communities. Finally, recommendations and suggestions that can contribute to its development in the Philippines will be submitted.

Methodology

This study uses library research method in collecting the data. References have been used by using the primary and secondary data from previous research conducted in the Philippines which are in line with the current issues on fatwa management. While proofs of a given fatwa are based on the following sources: the Qur’an, the Sunnah, the Ijma, the Qiyas, and other subsidiary legal principles. Other studies on fatwa from the Southeast Asian countries will be considered. The writers also used the Google search using the keywords provided in the abstract due to scarcity or insufficient availability of local reading resources. Superficial availability of data related to the legal opinions of Muslim juristconsults in the Philippines have been considered.
Results and Discussion

Fatwa becomes an essential part of secular societies with diverse cultures and having complicated issues on matters related to socio-economic and politics. Philippines is an example where the Muslims minorities are facing difficulties to practice certain Islamic obligations in their daily lives. In Islam, it is an obligation for the Muslim jurists to exercise *ijtihad* where there are not many Muslim jurists to be found in a society (Saifudden Abi al-Hasan, n.d.). It is the *mufti* or jurisconsult who used to engage in *ijtihad* by studying the questions and put an effort in interpreting and deriving a legal rulings within the Shariah. This could be the reason that led to the institutionalization of the jurisconsult in the Muslim Mindanao Autonomous Region in 2017. But a demand for legal opinion can only be performed by eligible persons having certain qualifications and criteria. It means, a Muslim jurisconsult must be a learned scholar who understand the issue and is capable of issuing judgments under the principles of Islamic law. He must exercise his judgments which brings to his own deduction of rulings, not a mere narration of other views because a *mufti* is referred to for what he has not on others (Mohamad Ali, et. Al., 2016). With this, Article 165 of the Muslim Mindanao Autonomy Act No. 323 that created the Regional Dar-ul Ifta does not specifically mentioned the qualification of the regional and provincial mufti. It was only stated that for provincial mufti, he will be chosen from among the resident ulama (religious leaders) in each of the provinces (Lacorte, 2015). Another issue for the appointment of the *mufti* is traditionally entrench by tribalism. It does convey that anyone in authority can be tribalistic in selecting the *mufti* from their own people. It is common among the Muslims in the Philippines that tribalism is always considered to assured loyalty and security of belonging. Sometimes it requires blind allegiance and huge passion of affiliation. The abiding purpose of some traditional and political leaders in choosing their own local *mufti* is to secure their prestige and political interest. The local ulama have freedom to adopt any of the interpretation of the four schools of thought provided that it is not contrary to the principles of the Constitution of the Philippines. It is a fact that there is no local laws in the country that restrict the use of legal opinions of one school of law.

The legal opinions of the jurists have very important roles in the Muslim communities in providing solutions to current issues on social, religious, cultural, economic and politics. The global issue on Covid-19 brings out some legal opinions from the Darul-Ifta of the Bangsamoro Autonomous Region (BARMM), particularly on the religious aspect. According to the Bangsamoro Grand Mufti, there was three weeks temporary suspension of Friday prayers and suspension of all congregational prayers in small and big mosques due to rapid spread covid-19 with a high number of deaths. (CNN Philippines, March 19, 2020). It was an urgent announcement on religious guidelines signed by the *mufti*. The fatwa on the suspension of congregational prayers was extended for another weeks to help prevent the spread of the highly contagious and deadly coronavirus disease (COVID-19) in the region. According to the Grand Mufti, the extension to ban congregational prayers in the region followed the example of “the great scholars (ulama) of Saudi Arabia, Qatar and Egypt, who are more conversant of the Quran and Sunnah,” or the ways of Prophet Muhammad (Sarmiento, April 14, 2020). Other religious organisations have given their fatwas on sanitation, quarantine and Muslims’ burial who died from Covid-19. Some of these organisations have different opinions in solving the issue. They used to follow different school of laws or madhahib. While the National Commission on Muslim Filipinos, succeeded to provide some religious guidelines through consultation with some religious leaders in the capital region of the country. As an example is the immediate burial of a Muslim who died from Covid-19 which will not go beyond 12 hours after the death.

Another notable issues that legal opinions of the *mufti* and other Muslim scholars became important was the case of terrorism in the Philippines. There was a strong support from the ulama and religious institutions against the violent extreme terrorism that happened in some parts of the country, particularly the five months Marawi siege between the Islamic State fighters (ISIS) and the government forces. The Regional Dar-ul-Ifta of ARMM and the ulama members of MILF declared that terrorism and mischief cannot be accepted because Islam as a religion commands the Muslims to be compassionate to all beings in the land. The MILF declared that “it is *haram* [forbidden and unlawful] to use Islam to justify or legitimateize violent extremism and terrorism.” (UCA News, Aug. 9, 2017). It was also mentioned in the given fatwa that an.
urgent need to fight violent extremism or radicalism was in compliance with the injunction of the Quran and the Prophetic Tradition.” (UCA News, July 5, 2017). During the Summit of Muslim Religious Leaders in Cotabato City, the ulama challenged themselves “to re-educate (their) constituents to rediscover Islamic faith for justice, compassion, harmony and peace”. They also declared that it is also imperative to all the Muslims in the Philippines “to cooperate and collaborate with the stakeholders in preventing and countering violent extremism and terrorism in its many forms and manifestations.” (Wee, Aug 8, 2017)

In relation to family planning and reproductive health, the legal opinion that family planning was not forbidden among Muslim couples, which was previously adopted by the government official mufti in 2004 was similarly considered and followed by the Bangsamoro Dar-ul-Ifta. It means, there was no revision because it was still relevant to the Muslim communities. However, there were issues related thereto that they have to clarify and endorse in relation to early and forced marriages among the minors. According to the fatwa on the Model Family in Islam signed by the Mufti of the Bangsamoro Dar-al-ifta, the Muslim youth can “get married when the necessary conditions are meet” but clarified that the urgency is not applicable to the pre-puberty or childhood stage (Dar Al-Ifta, 2015). It was also clarified in the given fatwa that where the bride is under 18, the couple can practice contraception to delay her pregnancy. Aside from the fatwa rulings on reproductive health, it reaffirms the elevated position of women in Islam that gender-based violence and other forms of abuses against women are absolutely against the principle of the Shariah. Another important rulings mentioned in the Model Family in Islam is the pre-marriage counselling.

There was a consensus among the ulama on the necessity for couples to go for medical examination before the marriage solemnization. But it is not considered as a compulsory condition on the legal validity of the marriage. It does differ in other Muslim countries like Malaysia that every couple who applied for marriage is obliged to undergo for health examination, particularly on HIV screening. This is based on the legal ruling provided by the Fatwa Committee National Council of Islamic Religious Affairs Malaysia in 2009 that Muslims are obliged to go for pre-marital screening in a government hospital or clinic (National Fatwa, 2009). The fatwa provides a mandatory health screening to the prospective spouses to prevent greater harm to them and their descendants.

Another issue to consider on fatwa management is how effective and efficient the RDI in disseminating the fatwa to all the areas being covered by the BARMM as well other Muslim communities in other regions. It should be a reference and a source of learning and knowledge. It can be preserved due to its credibility as the main sources are from the Shariah. In Malaysia and Singapore, every fatwa is not binding and enforceable unless and until it is published and gazetted. It is gazetted for implementation and people will be educated and comprehensively disseminated at each level of society, in order to avoid any dispute on the fatwa issued. While in the Philippines, there is no law that specifically provides for the publication to make it enforceable as a source of law. It shows that there is nothing binding on the mufti as the fatwa itself has no legal effect other than to state a legal opinion in answering current issues. In the BARMM, it is clearly emphasized that the mufti will only advise and serve as consultant to the regional government and the Regional Legislative Assembly on matters pertaining to Islamic laws, jurisprudence and ecclesiastical matters and serve as the “religious guide” of leaders, bureaucrats and professionals, including those in the local government units (Lacorte, 2015). However, none of the fatwa rendered by the regional or provincial mufti becomes as a source of law or enacted as part of the Shariah law in addition to the provisions of the Muslim Code.

It does not have a power and authority under the Shariah courts. A fatwa should have a certain role to play and a high level of commitment in resolving disputes on trial before the Shariah courts. There must be a serious attention from the court administrator particularly in deciding cases where the Shariah is unclear. But it shows that fatwa institution in the country, particularly on religious issues will never be considered officially because of the separation of religion and state under the Philippine Constitution. In the Shariah courts, the judges failed to refer the case on trial to the available relevant fatwa.

It is believed that maybe some of them are not aware or just know a little about the importance of fatwa in resolving disputes. They hardly refer the case or matters to the jurisconsult who used to be more experience and knowledgeable on the issue. Although, the fatwa is not binding between the parties but the final judgment or decision of the Shariah judge will be recorded and become a significant source of law. Article 166 (3) of the Muslim Code clearly provides that the Office of the Jurisconsult shall keep a compilation and cause the publication of all his legal opinions. Another shortcoming in the local judiciary system is bringing the Shariah courts under the supervision of the Supreme Court of which none of the
justices are Muslims. There should be a Muslim judge or justice in the highest court who is knowledgeable and knows the important driving force of a juristic opinion as an authoritative source of law. Also, he must know that the legal opinion must be within the scope of the Muslim Code and in conformity with the Constitution of the Philippine.

There is no proper method used by the ulama in providing an answer or solution to questions or issues brought before them. For those who have studied abroad may refer the questions on a compiled fatwa issued by many mufti from the Muslim countries. Having known that fatwa of the jurisconsult is universal, the local mufti make it applicable to all similar cases. However, there were questions that they have to be revised to make it conform with the contemporary needs or for the convenience of the interested parties. There were also few cases that call for revision of fatwa because it ceased to be of relevance to the community and its needs (Mohamad Ali, et. al, 2016). It was, however, admitted by some ulama that most of their legal opinions were based on the published fatwa by other Muslim countries. According to their own evaluation, there were relatively few cases that emerged as completely new.

Conclusions

In concluding this research, a brief recapitulation is presented on the important roles of a fatwa institution in a secular non-Muslim country. Philippines is an example of a state that has both success and failures in the development of fatwa management. Although, the legal opinions of the mufti or the ulama have no legal effect and not sanction by the authority, it plays an important roles in providing solutions to various issues affecting the day-to-day lives of Muslim minorities. It was found out that majority of the Muslims morally submit themselves to every fatwa endorsed by the mufti and other learned ulama. It can also serve as a guidance for Shariah judges in the exercise of law. In fact, it has a high level of commitment in resolving legal cases. However, the Shariah courts failed to refer to the mufti for any legal opinion before rendering judgment on cases brought before them. In the same case, legal opinion has not been considered on appealed cases before the Supreme Court where all the judges are not Muslims.

This study recommends that the Bangsamoro Dar-al-Ifta and other Muslim religious organizations from different regions should be united into one coherent whole body to endorse a uniform and centralize fatwa for the whole country. They should meet to decide and answer together the current issues affecting the development of the Muslim communities. They have to invest on their own rulings with practical and original authority. There is a need to measure and identify the main sources of the fatwa for proper documentation and publication. It is also recommended that there should be a law to require the Supreme Court to consult the jurisconsult before ruling on cases arising within the Code of Muslim Personal laws in the Philippines. Therefore, in the absence of the national official mufti, the Bangsamoro Dar-al –Ifta must exercise more effort to empower and strengthen the fatwa management in the Philippines.

References


