

Thursday, November 21, 2024

- HOME
- CAMPUS ▾
- IUMENULIS
- LIFESTYLE ▾
- OPINION ▾
- MULTIMEDIA ▾
- LOCAL
- CONTACT
- ABOUT US ▾

12th AICIF 2024

ASEAN Universities International Conference on Islamic Finance (AICIF)

**LIMKETKAI LUXE HOTEL
CAGAYAN DE ORO CITY, PHILIPPINES
NOVEMBER 18-19, 2024**

Hosted by:

KEYNOTE SPEAKERS:

- Hon. Ralph G. Recto**
Secretary, Department of Finance
- Hon. Datuk Dr. Mohd Daud Bakar**
Founder and Executive Chairman, Amanie Group
- Hon. Ahod Balawag Ebrahim**
Chief Minister, BARMM

Co-organized by:

International Islamic University Malaysia, Universitas Islam Sultan Agung Semarang Indonesia, Institut Sharif Al-Islami Negeri Brunei Darussalam, Universitas Darussalam Gontor Indonesia, Universitas Islam Negeri Sunan Kalijaga Yogyakarta Indonesia, Universitas Islam Negeri Syarif Hidayatullah Jakarta

Legal Issues and Challenges in the Development of Islamic Social Financial Institutions in the Philippines

👤 Guest Submission 📅 November 16, 2024

By, Alizaman D. Gamon and Mariam Saidona Tagoranao

Global support and demand for Islamic finance have been on the rise among international investors and renowned economic experts. Its holistic approach to wealth cultivation and alleviating extreme poverty has been recognized as a way to attain sustainable economic development. The Filipino Muslim minorities have been looking forward to Islamic financial institutions that can also be dynamic partners in the growth of the Philippine economic industry. However, due to some legal problems, particularly the religious characteristics of waqf, zakat, and, halal, the development of the Islamic social finance institutions as part of the state's affairs is not strongly supported by the non-Muslim lawmakers. Although the government recognizes the importance and sustainability of these institutions, the Philippine Bayt-ul-maal Act (House Bill No. 5772) which was submitted a few years ago to Congress for approval has not yet been signed into law. In the case of the Muslims in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), they are strongly relying on the establishment of Islamic finance as mandated by the Bangsamoro Organic Law. However, the BARMM is set to end its transition period within 2022 but the Bangsamoro Transition Authority has not even passed a bill to institutionalize the zakat and waqf and the establishment of bait-ul maal.

Islamic social finance is a wide area within the context of Islamic law. It involves waqf, zakat, and halal, as well as Islamic banking, and other related institutions related to property matters. The Muslim minority's economic concern has been expressed by the fact that Islamic finance is subject to Philippine secular laws. There was no drawn line upon which the rights of the Muslim community could follow the Islamic economic system. There are various issues on the right of the Muslims to develop and manage their properties based on the Islamic way. Many Muslim intellectuals have addressed these questions with special

reference to some provisions of the Constitution on the right of the Muslim minority to practice their Islamic culture based on the Qur'an and traditions of the Prophet Muhammad (PBUH); and the practice of the early companions concerning the legal status of the Islamic institutions dealing on the economic development.

Every state has its minority populations with certain rights to be protected by its fundamental law. The minorities' rights have been enshrined in the Constitution of the Philippines. But these rights are not absolute. There must be an equal distribution of rights among the citizens regardless of their race, religion, and creed. The Muslim minorities must have the right to preserve and develop their Islamic culture and social financial institutions which can be the tools for economic development.

The Muslim Filipinos have had a long history of asserting rights for the recognition of *waqf*, *zakat*, *bait-ul-maal*, and other Islamic institutions. All minorities have their way of demanding their rights, but Muslim Filipinos belong to those who have sacrificed thousands of people and cost millions of Muslim properties before they were heard of. Some of their demands have been misunderstood by the majority of non-Muslim lawmakers, such as, if what they demanded had been implemented, there would be the creation of a "state within a state." Aside from this, the government used to emphasize the separation of church and state as provided in the Constitution. The issue is how to make the Christian majority understand that Islam is not only a religion for Muslims but also covers all aspects of man's life. It is the foundation of the Muslim minority culture which is subject to protection and preservation according to the Philippine laws. Unfortunately, the Code of Muslim Personal Laws was only implemented after the proposed provisions on *waqf*, *sadaqah*, *zakat*, and *bayt-ul-maal* had been deleted from the submitted draft by the assigned Research Staff. A few years ago, government agencies (e.g. National Commission on Muslim Filipinos) could not certify halal products because of their religious characteristic. As a result of this, the case had been decided by the Supreme Court as against the Philippines' Constitution.

The Islamic social financial institutions were instrumental in the development of Muslim communities in the Philippines, particularly the *zakat* and *waqf* by serving them in almost all

fields. The *waqf* properties become an instrument in upgrading the legal, social, and economic growth of the Islamic institutions in the Philippines. It had been provided in the form of lands, masjids, madaris, Muslim cemeteries, water system, schools, dormitories, and other charitable institutions. Waqf performs the functions of Islamic education, research, health, religious and social services, and other functions that cannot be provided by the government to Muslim minorities. The cash *waqf* becomes the main financial source for both madrasah teachers and scholars by providing them with a secure means of livelihood. Despite the benign policy of freedom of religion and preservation of Muslim culture under the Constitution, there is no single legislative enactment that provides for the setting up of a government instrumentality specifically designed to administer the waqf properties by Islamic law and the Muslim customary laws prevailing in the Philippines. Therefore, the administration and maintenance of the mosques and madaris shifted onto the shoulders of the Muslim organizations and its success became dependent upon the commitments of individuals. Thousands of mosques and madaris have been built throughout the country by the sweat and struggle of every Muslim Filipino and the donations of other Muslim countries and non-governmental organizations. But a few years ago, there were few developments related to the waqf institutions in the Philippines which were being carried out by the government to promote the socio-economic of the Muslim minorities. The Republic Act (R.A) 9997 that created the National Commission on Muslim Filipinos (NCMF) provides that the NCMF has the powers and functions to administer and hold in trust awqaf (endowment) properties and/or awqaf institutions, and receive by way of grant, donations or gifts, awqaf investments in accordance with the principles of Islamic investments and finance; (it will also) prescribe rules and regulations for the establishment of awqaf institutions, administration of awqaf assets, and settlement of disputes among awqaf beneficiaries pursuant to the general principles of Shari'ah (Islamic Law) (Article II, section 8 (s)&(t), R.A99971). There was a proposed plan initiated by the Mindanao Development Authority on an Islamic financing scheme for the reconstruction of the destroyed infrastructure affected by the Marawi siege in 2017, particularly the madrasah schools and mosques, but never materialized because of some hurdles, mainly legal nature.

In the case of *Zakat*, the institution makes the Muslim ummah to be a sustainable society based on its accountability and capability to implement social justice. Muslims believed that it was a mandate to fulfill zakat to achieve the Prophet Muhammad's (s.a.w) goal of prohibiting a large number of exploitative and unjust techniques in trade and commerce. Before the Muslim Code of Muslim Personal Laws was implemented, the zakat system was not considered by the government as an important factor in uplifting the economic status of the Muslim populace. The government considered zakat as a fully religious institution. Therefore, it was deleted from the draft of the Muslim Code. There is no law regulating the control, management, or development of zakat properties as we would find it in Malaysia and Singapore. However, a few years ago, House Bill No. 5772 was introduced before the Philippine House of Representatives to institutionalize the payment of zakat and the establishment of bait-ul-maal to alleviate poverty, and promote and accelerate socio-economic development in the Bangsamoro region. But until now it is pending in Congress and there is no information on whether it will be approved or not in the House of Representatives. It shows that Muslims cannot rely on government funds to alleviate the suffering of the poor and the needy. There is also a relevant current discussion on the institutionalization of zakat payments in the Bangsamoro, which includes the possible creation of a bayt al-Maal, which is a public institution responsible for the collection and implementation of the zakat system among Muslims. Under this newly published report on the "Children of War", recommendations were submitted and addressed to different government local and national agencies, particularly the BARMM to pass a bill that will protect the rights of orphans and widows in the Bangsamoro Region. However, it seems that the Bangsamoro Parliament has not yet provided priority support during the formulation of the Bangsamoro Local Government Code.

Given the lack of support from the government agencies, the beneficiaries of zakat (*Asnaaf*) in the Philippines relied on the Muslim local organizations with the capacity to mobilize independent local resources as in the case of collecting zakat from other Muslim organizations abroad to balance the distribution of income and wealth. The *asnaaf* families and the local charitable institutions become the attractive recipient of

funds from Middle East groups and organizations looking for appropriate recipients of zakat funds in the Philippines. The presence of Muslim charitable institutions created by religious organizations in different regions reflects the richness of the Islamic culture in the Philippines. However, some individuals who are not affiliated with any of those religious organizations are giving their zakat directly to the beneficiaries who are closely related to them. But the concept of zakat under the Shariah in some cases is not fully understood by other members of the Muslim communities. As a result, there is mismanagement in the collection and distribution of *zakat* properties to the beneficiaries.

The Philippine *halal* industry is deemed as another instrument that promotes and empowers the social and economic well-being of the Muslim communities in the Philippines. It had been developed and strengthened after the Office on Muslim Affairs (OMA) (replaced by the National Commission of Muslim Filipinos or NCMF), review its programs and policies to accommodate the halal industry in the Philippines for economic development. By virtue of Executive Order 122-A, OMA was given sufficient power to promote and enhance the development of domestic trade and commerce among Muslim communities and to undertake measures and institute rules and safeguards to ensure that the Muslims consuming public are well informed of the food and non-food products they purchase for their intake and consumption. Having recognized the dedication and concern in developing a strong halal system in the Philippines, the then President issued Executive Order 46 giving an exclusive power to the OMA to undertake halal certification and accreditation. This mandate was challenged before the Supreme Court in 2003 under G.R. No. 153888 which resulted in the nullity of the Executive Order and gave power to Muslim organizations and religious groups the role to classify the halalness of products. It means it was left to different religious organizations and individuals to adopt their own halal standards with regard to halal accreditation and issuance of halal certificates. While the government is only allowed to provide technical services and other non-religious aspects of halal standards.

After many years, the government realized the importance and relevance of the global halal industry in its open economy. The Philippine Government started accelerating its halal industry at

the regulatory level in the year 2016 when the Philippine Halal Export Development and Promotion Act was signed by the then President of the Philippines (Nor Aida Abdul Rahman et.al., 2021). There are more halal policies introduced by the government to push the Department of Trade missions in achieving a potential strategy in promoting the Philippine socio-economy, locally and internationally. It was revealed in 2014 that ten percent (10%) of the Philippine travel market belonged to the 108 million Muslim travelers from different countries. It shows that the *halal* system has been accepted by the government in promoting and preserving the economic and socio-cultural well-being of Muslim minorities. In the Bangsamoro Region, the promotion of halal industry has become one of the top agendas for economic growth for the past few years. The First regional Halal Congress was held in 2015 with the exhibition of halal-certified products from different parts of the autonomous provinces and cities.

Numerous challenges are facing the development of social financial institutions in the Philippines. Although the government has been providing support in implementing laws related to Islamic social finance like *zakat* and *waqf*, none of them have been fully attended. The poor and needy people including orphans and widows have been suffering from the unequal distribution of wealth. Some of them relied on their relatives, non-governmental organizations, and charitable institutions. In the Bangsamoro Region, people have been anticipating the support of the autonomous government by passing a bill to the parliament for the institutionalization of *zakat* and *waqf* and the establishment of Bait-ul-Maal. However, there has been no bill passed by the BTA that will establish sustainable social financing measures committed to *zakat* and *waqf* activities for the Bangsamoro people.

Another challenge is the absence of a real Islamic bank in the Philippines that will promote and develop the objectives of *zakat*, *waqf*, and *halal* by providing or contributing funds to alleviating poverty, and unemployment, and other programs or services for the Muslim communities in a non-Islamic country. Although the Philippines established its first and only Islamic bank, the Al-Amanah Bank (changed to Al-Amanah Islamic Investment Bank in 1990) in 1973, its main objectives are to provide Islamic banking products and services in adherence to the principles of Shari'ah

have not been fully realized. It has not been developed as an Islamic financial system for Muslim minorities because it failed to manage sustainable programs related to Islamic insurance or takaful, zakat, and waqf funds due to a lack of legal and regulatory framework. This legal impediment will become an issue for the Al Amanah Islamic Bank to open investment opportunities that will give a boost to the Bangsamoro region and the local halal industry. In the absence of Islamic insurance or takaful in the Philippines to support Islamic banking programs, local and international Muslim investors will not be attracted and encouraged due to a lack of compliance with Shariah.

The Al-Amanah Islamic Bank has not created its own Shariah Supervisory Board like other Islamic banks in Southeast Asian countries. Although the creation of the Shariah Advisory Council has been provided under the Islamic Banking Law (Republic Act 11439), the main issue is the current scarcity of experts and scholars on Islamic banking and finance. It is a mandate that Islamic bank activities must be subject to the control of a religious advisory body that is in charge of ensuring that the bank is not carrying out its business in a manner contrary to Islamic law.

To sum up, Islamic social financial institutions, particularly, the zakat, waqf, and halal industry played a very significant role in reducing the worst effect of poverty, by providing good education, health care, and capital or investment to poor people and small businesses. The Muslim minorities, through religious and non-governmental organizations, have exerted their effort to develop the Islamic social finance institutions in the Philippines. That effort needs to be strengthened by the participation of every individual through awareness programs. As public awareness is a key element for public support, new laws like the Islamic Banking Law and the Philippine Bayt-ul-Maal Act should be presented and explained to the people, to fully understand the goals, objectives, planning issues, and strategies in implementing them.

In the case of the government, a few supports have been made to develop Islamic finance upon knowing its current high growth in the global financial community. However, what has been done by the government is not sufficient unless all the social finance institutions become part of its state's affairs. For Islamic banking,

the Amanah Islamic Bank has no major achievement so far as the concrete application of Islamic law to its banking system has not yet been fully attended. For the BARMM, there is a need to give a priority bill for the institutionalization of zakat and waqf to financially assist the marginalized people of the Bangsamoro region. For the protection and maintenance of the existing waqf properties in the provinces and cities within the jurisdiction of BARMM, there is a necessity to create the Board of Waqf to monitor the activities, e.g. *madrrasah* and masjid.

In the case of *halal*, there must be a cooperative effort between the government and religious organizations to find solutions to contemporary issues affecting the halal industry. They need to provide an insight into the wisdom of Islamic ethics and discuss with the government particularly the people from the Department of Trade and Commerce the basis and background of the Islamic dietary regulations. The Muslim communities need to have a role in the production and promotion of halal products and then fully integrate them with the country's economy. Such is parallel, not only to the government's desire to preserve and enrich the Muslim culture but also in developing their economy which constitutes as significant for the Muslim community in facing the global post-economic crisis.

(The writers, Dr. Alizaman D. Gamon is an academic in the Department of Fundamental & Inter-Disciplinary Studies, AbdulHamid AbuSulayman Kulliyah of Islamic Revealed Knowledge and Human Sciences International Islamic University Malaysia (IIUM), and Dr. Mariam Saidona Tagoranao is an academic at the Faculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM).

The article is an adaptation of:

<https://www.islamicity.org/103170/philippines-path-to-islamic-finance-balancing-religion-and-law/> and will be presented in an upcoming conference.)

Author Recent Posts



Guest Submission

