

2024

Sulat Pasa: Its Implications to Local Divorce Practice among the Sama of Tawi-Tawi, Philippines

Alshadat B. Sabal

Date received: November 30, 2023

Date revised: January 17, 2024

Date accepted: June 28, 2024

Similarity index: 2%



Abstract

This study investigates Tawi-Tawi's *sulat pasa* (traditional divorce paper), particularly as it relates to Sama divorcees, and if it provides a workable way to end their marriage. Through qualitative-descriptive research, it reviews the characteristics of local divorce documents, the processes involved in getting them, and their effects and implications on local divorce practice. With the institutionalization of the Code of Muslim Personal Laws of the Philippines, Muslim Filipinos should follow the divorce procedures laid in it. However, this legal hybridity is seen as inadequate because it looks insensitive to the long-standing customs and beliefs of the Muslims, jeopardizing their autonomy and self-instituting cultural traditions about divorce. Furthermore, because divorce conflicts and their resolution have been entirely integrated into the Philippine judicial system, the existing system does not provide speedy resolution to the satisfaction of the Muslim divorcee/s. Despite the implementation of the Muslim Code, the study found that Sama in Tawi-Tawi continued to present and bring their divorce cases to the traditional authority for enforcement. Given the Code's lax implementation, local divorce cases outside Shari'ah court proceedings remain critical. The study proposes a measure through direct parliament action, such as adding a provision to the existing Bangsamoro Organic Law once the Muslim Code is upgraded, and, in the interim, this can be done through collaboration with the National Commission on Muslim Filipinos, Ministry of Indigenous Peoples Affairs, local religious and elective officials, and women's organizations to institutionalize the traditional divorce paper as also legal, and binding taking into account issues of accessibility, affordability, practicability, and feasibility.

Author Information:

Alshadat B. Sabal
alshadatsabal@msutawi-tawi.edu.ph
orcid.org/0009-0009-1148-8770

Associate Professor
College of Arts and Sciences,
Mindanao State University—Tawi-Tawi
College of Technology and Oceanography
Tawi-Tawi, Philippines

<https://doi.org/10.53899/spjrd.v29i2.405>

Keywords: *sulat pasa*, *lumah sarah*, local divorce, Shari'ah courts, Muslim Code

Before the foundation of the Philippine nation and its governance, Muslim Filipinos sought redress for grievances through community-based conflict resolution, which provides speedy resolution. Prior to Spanish colonization, the Sultanates of Sulu ruled their subjects by written laws. The Sulus had the *diwan* that was used to regulate relations between Muslims¹, and its application has repeatedly been cited to support alternative dispute resolution to settle both higher or petty disputes in the southern Philippines. The Sama people had customary practices that regulated relationships, transactions, and dealing with misdemeanors in their respective communities (Sabal, 2019).

The Bangsamoro have been known to have fought the longest political resistance struggle in Southeast Asia (Buendia, 2005). During the Martial Law period, the government successfully assimilated the Moros. Integration has been a long-standing political agenda carried down through several successive administrations. Providing a platform for carrying out government plans and programs aimed at the Moros has been a top priority between the Philippine government and the Moro National Liberation Front or Moro Islamic Liberation Front over the last five decades of struggle for self-government.

The formulation of Presidential Decree No. 1083, better known as the Code of Muslim Personal Laws of the Philippines (Hagad, 1977), was one of them. The Code went into effect on February 4, 1977², as part of an effort to quell long-standing violence between Christians and Muslims in the predominantly Christian country (Chiarella, 2012). This Code governs and regulates divorce between Muslims in the Philippines.

According to Holbrook (2010), the Code serves as the foundation for the Shari'ah court system's application among Muslims in Mindanao. Moreover, its institution considers it a significant piece of legislation since it recognized and integrated Muslim governing Shari'ah law as part and parcel of the laws of the Philippines. It, therefore, offered a legal space to harmonize traditional practices inside governmental mechanisms and processes.

Traditional Muslim laws such as *diwan* and *luwaran* are already legally hybrid, combining adat or customary law with Islamic laws. Its spirit of incorporation into State law through P.D. No. 1083 aimed to preserve Muslim cultural identity while staying compliant with conventional legal vocabulary and consistent in form and substance with a Philippine statute.

As an indigenous cultural community, Muslim Filipinos have constitutional rights guaranteed by the Philippine Constitution. As a result, they are treated equally with all other ethnolinguistic groups and are an integral part of the Filipino people nation³. The Muslim Code was created to ensure Muslim Filipinos' legal systems were upheld in their local communities. The Indigenous Peoples Rights Act (IPRA)⁴ and the Organic Act of the Autonomous Region in Muslim Mindanao (ARMM)⁵ establish and stress these rights in greater detail. The Bangsamoro Organic Law⁶ revised the ARMM law further and was ratified on January 21, 2019, in the historic plebiscite held across the Bangsamoro's core areas. This aligns with the Bangsamoro people's self-determination goals.

Pursuant to Articles 148 and 158 of the Muslim Code, the Shari'ah Circuit Courts and the Shari'ah District Courts have exclusive jurisdiction to resolve and hear disputes amongst Muslim Filipinos. The Supreme Court promulgates the Special Rules Governing Shari'ah Courts, which govern these courts' operations. Absolute divorce was already practiced by many indigenous peoples

¹Code of Muslim Personal Laws of the Philippines (CMPL), 1977

²ibid

³ibid

⁴Republic Act No. 8371 otherwise known as the Indigenous Peoples Rights Act

⁵Republic Act No. 6734 or An Act creating the Autonomous Region in Muslim Mindanao (ARMM)

⁶Republic Act No. 9054 or the law expanding the Autonomous Region in Muslim Mindanao law

in the Philippines (explanatory note, H.B. No. 1799, as cited in Jacob, 2013). It was also legalized during the American Commonwealth Regime through Act No. 2710, otherwise known as the Divorce Act of 1917. Japan's imperial government also permits absolute divorce under Executive Order No. 141 of 1943 (Tolentino, 1947, as cited in Guzman, 2009).

Divorce existed prior to Islam, but the introduction of Islam made the divorce process significantly more advantageous to women (Mohammad & Lehmann, 2011). A woman, of course, can seek divorce in circumstances where her husband abandons her, fails to sustain her, abjures her, or is impotent (Alam et al., 2000). It is one of the things that *Allah subhanahu wa ta'ala* (God, the most glorified, the most high) despises the most. However, divorce is permitted under Muslim law if particular conditions indicate that the marriage cannot be reconciled.

Divorce from a Muslim marriage is an option available to spouses. Divorce is typically a lengthy and hazardous process that begins with quarrels, followed by mental and physical insults to women, separation, and, finally, divorce. Mangona (2000) noted that divorce should be used as a last option when the interests of the children are taken into consideration. Divorce in Muslim is governed by Islamic regulations, which generally favor men over women. Women are bound to perform a secondary position in marriage relationships (Alam et al., 2000).

The Code of Muslim Personal Laws allows Muslim Filipinos to divorce. Article 45 of the same Code provides explicitly the seven types of divorce. They are a repudiation of the wife by the husband (talaq), the vow of continence by the husband (ila), injurious assimilation of the wife by the husband (zihar), acts of imprecation (li'an), redemption by the wife (khu'l), the exercise of the wife's delegated right to repudiate (tafwid), or judicial decree (faskh)⁷.

For this purpose, a divorce action must be initiated by either Muslim spouse, provided their marriage was arranged and solemnized according to Muslim practices. Moreover, an action for divorce through *faskh* or judicial ruling is procedural in nature. As a result, if a Sama Muslim woman files for divorce, she must proceed to a Shari'ah court to institute action rather than to bring the issue before a traditional authority.

In 2015, the Philippine Supreme Court confirmed the decision of the 1st Shari'ah Circuit Court of Cotabato City in 2011, granting a decree of absolute divorce to a Roman Catholic woman against her Muslim husband due to irreconcilable religious differences. This development left a mark in Philippine jurisprudence permitting divorce in the country, but limited to marriages solemnized according to Muslim traditions. The question is, how long does it take for the divorce case to be completed to the complainant's satisfaction in order to sever her marriage bond? The answer would be time-consuming, even if the procedures governing the Shari'ah court provide for a quick settlement of the matter.

Hence, this paper tried to explore the dynamics of the localized divorce papers system and its implications for Muslim Sama marriage. By reclaiming the ethno-based method as a viable option for dissolving marriage, this paper attempted to maintain the cultural history that residents of the southern Philippines formerly treasured. Furthermore, the study has implications for local divorce at the instance of the wife. Thus, it is worth considering this research to address inconsistencies in divorce practice among Muslim Filipinos.

⁷R.A. No. 11054 or the Bangsamoro Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao

Materials and Methods

The study focused mostly on the island province of Tawi-Tawi, Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), Philippines. It was limited to local divorce at the request of a married woman. Employing qualitative-descriptive research (Bradshaw et al., 2017, as cited in Doyle et al., 2020), it investigated the dynamics of the local divorce papers and their implications for Sama divorce practice in the context of the Muslim Code's adoption.

During data collection between December 2018 and March 2019, a letter of request with attached questionnaires was submitted to the relevant barangay chairperson, requesting permission to conduct an interview. A prepared semi-structured questionnaire in English translated into Sinama dialect was used as a guide to solicit information from 20 key informants among the Sama, including Sama divorcees, *Imam* (Local religious leaders), Barangay officials, Women, Sama professionals, and *Botang Matto'a* (local elders) in Sama-dominated communities. Following permission, the researcher, who speaks Sinama, one of the Sama-Bajau languages spoken mainly in Sulu, Sabah, and Indonesia (Palessen, 1985, as cited in Ingilan & Jubilado, 2021), and is a resident of Tawi-Tawi, personally conducted the interview as well as obtained free, prior, and informed consent with the target informants. The interview was then recorded with a smartphone. Primary data was collected through one-on-one interviews with informants. Secondary sources, including searches for pertinent divorce literature, were examined.

Results and Discussion

The local divorce proceedings in the context of Sama of Tawi-Tawi could be best explained in the following order of precedence: factors that trigger local divorce; initiation of local divorce before the traditional authorities; local divorce proceedings; mediation in local divorce settlement; *sulat pasa* or traditional divorce paper; stages of local divorce; effects and implications of *sulat pasa*.

Factors that trigger the local divorce

Divorce is a common element in nearly all marriage failures. In the United States, more than half of marriages end in divorce or permanent separation⁸. Before adopting the Civil Code of the Philippines, divorce was allowed⁹. Today, the Philippines does not have divorce legislation. Only Muslim Filipinos can divorce.

In contrast to the Muslim Code, the Philippine Family Code establishes explicit legal remedies for dissolving or suspending marriage bonds, such as nullity of marriage, annulment of marriage, and legal separation. To terminate marriage bonds, the reasons to nullify and annul the marriage must exist prior to or during the celebration of marriage. Legal separation, on the other hand, allows spouses to live separately without dissolving their marriage links. In this regard, marriage continues to subsist¹⁰.

The US legal definition, as cited in Jacob (2013), defines divorce as the legal termination of a marriage by a court in a legal proceeding, requiring a petition or complaint for divorce by one party. This is similar to divorce by *faskh* or judicial decree, which can be initiated by the Muslim husband or wife under the Muslim Code. The case shall be filed in the Shari'ah Circuit Court, which has jurisdiction over the parties. To some Sama, divorce is viewed as a threat to marriage. It describes the following:

⁸Article 45 of the Muslim Code specifies seven types of divorce

⁹Your Divorce Questions, 2024

¹⁰Republic Act No 386 or Civil Code of the Philippines

Ya pagbutas tu sapantun banta amaglaki bini.
Hangkan ma pagbeyah-beyah si lalla maka si
danda subay ni ayaran pahap¹¹

[TRANSLATION]

And Divorce is regarded as the enemy of a married couple. That is why it is important to care for companionship.

Like any other divorce proceedings in other countries, the local divorce procedure in Tawi-Tawi has its own application and dynamics that deserve to be documented. This local divorce phenomenon has valid causes for divorce settlement to occur. In local divorce proceedings, the cause of action for divorce is based on Shari'ah norms. According to Mangona (2000), the grounds for divorce among Muslims include sexual dishonesty, non-support, inability to perform sexual acts, irreligious, incurable disease on the part of the husband, and inability to perform marriage obligations.

While generally no research has been published on the factors affecting local divorce in Tawi-Tawi, informants reported the following as some of the most typical causes of Sama relationship separation and divorce. It expressly states the following:

Da'awa karandahan bang angay siga ngamutasan
halla siga sabab halla siga makey anu ni larang
ma sarah lamud na ngaminasa handa siga,
ma kasigpitan sidja, magdanda-danda, mba
nustusan balanjah, matto'a palamud ma kahalan
amaghandam/amaghal¹²

[TRANSLATION]

Women divorce their husbands for a variety of reasons, including the use of illegal drugs, domestic abuse, problematic behavior, womanizing, lack of support, and parental intervention.

Factors such as illegal substance use, marital violence, bothersome behavior, womanizing, lack of support, and parental involvement are nearly identical to the world's main reasons for divorce. Domestic violence, exacerbated by the proliferation of illegal narcotics in Tawi-Tawi in the early 1990s, was regarded as one of the driving causes behind a number of local divorces. The rest is just a popular method of dissolving a marriage, particularly when parental intervention and irreparable differences exist between the parties.

It is worth noting that Islam permits polygyny. Accordingly, Muslims have the freedom to have four wives at the same time¹³, as long as the husband follows Shari'ah law. The Muslim Code allows the husband to engage in a new marriage contract as long as he treats his women fairly and equally and gives just companionship¹⁴. There are cases where the first wife initiates the divorce. This occurs when a spouse cheats on his wife. Cheating could imply that a male partner approaching a subsequent marriage was arranged and solemnized without his wife's permission. Typically, the first wife would react strongly and refuse to let her husband remarry. This, too, can result in a divorce for a Sama Muslim couple.

Initiation of local divorce before the Traditional Authorities

Separation from one's husband is one of the most difficult and agonizing decisions a woman must make. The only option to end an unworkable relationship is to initiate a local divorce.

The local divorce case initiated by the wife began with the *pariksay/pagtutul atawa ni takkahan ni sarah* (to bring the issue before the local authorities) of the *parkala pagbutas* (divorce case) to be presented before the *lumah sarah* (local authority) for mediation or settlement¹⁵. Literally, *lumah sarah* refers to a house of law or traditional body that is customarily formed, acts as needed, and is regarded as an appropriate venue for grievance redress. It is led by the Barangay Chairperson or local religious leaders, who also serve as presiding chairs.

¹¹interview with the elders, women, Barangay officials, Imam, Sama Divorcees

¹²ibid

¹³The Glorious Quran (Verse 4:3), Sean Publication

¹⁴Muslim Code

¹⁵interview with the elders, women, Barangay officials

The Barangay Chairperson, or the *Imam*, acquires customary authority to hear, preside over, reconcile, and resolve divorce cases. Like an ad hoc committee, the latter dissolves once the case is resolved. *Lumah sarah* could mean a venue for dispensing justice before a barangay Chairperson or religious leader (Imam) in the locality, depending on where the complainant brings the case and has the traditional power and authority to rescind the marriage contract.

Local divorce proceedings

When a local divorce case is brought to the traditional authority for mediation, they are followed by the *magtampal/magharap* (confrontation) and the *magsalassay*¹⁶ (to fix up or to settle). There are no witnesses required. The complainant-divorcee serves as a witness, narrating the events surrounding her marital status. It is also not necessary to provide written evidence. It is entirely paperless. There are no formal requirements to follow while presenting a divorce case. No written complaint is necessary, and no oath is required. In the *pariksah/pagtutul*, the complainant might submit her case individually or through her representative(s)¹⁷. The proceedings that followed in the divorce settlement were purely verbal (Abdulhan, 2014).

The body acquires traditional authority to hear the case once it is formally presented verbally or orally for the appreciation of the Barangay Chairperson or Imam. In contrast to court procedures, payment of the docket fee is required before the court can obtain jurisdiction¹⁸. The traditional body does not collect a docket fee to decide the issue, except for some barangays, which purportedly collect 2,000.00 to 2,500.00 pesos considering the issuance of *sulat pasa*. This local system's approach to delivering justice is non-appealable. It is final and executory. There are no minutes from the sessions. Everything is communicated verbally.

Despite the institutions of uniformity of venue of action for divorce among Muslims, certain Sama divorcees in Tawi-Tawi continued to bring their divorce cases before the local body as elaborated:

Ya pagsulut parkala tu bete' na saga parkala pagbutas ma lumah sarah, pangaddatan sarah paglahat maka sarah Islam ya ni patarrang patut panga hukum (Mangona, 2000)

[TRANSLATION]

In deciding divorce issues before the local body, the traditional procedure may use a mixture of *adat* and Islamic law.

This demonstrates that the Sama population continues to present divorce issues to the local body, uninformed of the existence and implementation of the Muslim Code. Traditions like the *lumah sarah*, in particular, provide some practical remedies to speed the resolution of family disputes and serve as a potent weapon used by the aggrieved party to express grievances before local authorities. Poor Sama women turned to *lumah sarah* for help in breaking free from abusive marriages. In this context, following age-old customs maintains Sama traditions alive, strong, relevant, and suitable. This preserves the Sama's intangible cultural legacy.

Mediation in local divorce settlement

When exercising traditional authority to settle community cases like divorce submitted to it for settlement, the local body used *adat* or *diwan* and Islamic law as bases for resolving disputes. This is consistent with the practice of local leaders in dispensing justice prior to the institution of the Muslim Code.

In compliance with due process of law, the local leaders may invite or convene both parties to shed light on the matter. However, in most circumstances, opposing parties may not face each other, possibly to avoid violent repercussions. Local leaders handed down the decision in a short period of

¹⁶Interview with elders, Barangay officials, Imam, Sama Divorcees

¹⁷Interview with elders, women, Barangay officials, Imam, Sama Divorcees

¹⁸GR 79937-38, February 13, 1989, Sun Insurance Office vs Asuncion

time with no delays, and it awarded a decree of divorce by the issuance of a traditional divorce paper. This resulted in absolute divorce. Consequently, it allows both parties to engage in a later contract of marriage after the expiration of *idda'* or waiting period, especially for a divorcee-woman to observe.

An example of a local divorce case in one of Tawi-Tawi's towns, where a wife testified before a Barangay Chairperson about why she wanted to divorce her husband. Below are the verbal statements of the Sama divorcee before the local authority to expedite her local divorce proceedings initiatives against her estranged husband on some grounds stated as follows:

*Iskawan nu lu miha hinang malanjaan anak nu
puwas tehnaan bilahi ka ngawinan danda saddi?
Bang ka abilahi okay sah subay kita magbutas
(Mangona, 2000)*

[TRANSLATION]

You are too lazy to find a job to sustain your children, and now you want to marry another woman. Fine, but let us divorce.

Sulat Pasa or Traditional Divorce Paper

Sulat Pasa is derived from the Sinama phrase *Sulat*, meaning writing/paper, and *Pasa*, which comes from the Arabic word *fasakh*, meaning to rescind the marriage. *Sulat Pasa* means a written agreement prepared and issued by the traditional authorities to rescind marriage¹⁹. In some barangays, *sulat pasa* is in a written form prepared in English to refer to as a certificate of divorce issued by the barangay Chairperson.

It is a *katarrangan atawa sulat janjih* or sort of evidence, attestation, or document or a written agreement of the couple issued by local authorities to end their marriage²⁰. Previously, this divorce agreement was imprinted in Arabic with its terms and conditions, and both were signed by the Imam and parties concerned²¹. Nowadays, *sulat pasa* is written informally as an agreement and varies from one barangay to another. In the context of Sama, this agreement has the same force and effect as a valid divorce decree issued by regular Shari'ah courts within its jurisdiction. One local divorce case brought to the barangay elaborated this way:

*Sulat pasa tu dikaw iya katas hantang katarrangan
ma amagbutas. Ni deenan tudju danda
mowa magbutas ma halla na ma lumah sarah
pagnakuraan eh Imam, bay ngawin siga atawa
si barangay muwan ma rom kauman ni handa a'
ngamutas (Abdulhan, 2014)*

[TRANSLATION]

The local divorce paper is similar to a document or evidence given over by the traditional authority headed by a Muslim cleric who solemnized the wedding or is provided by the community's Barangay Chairperson to a married woman seeking divorce.

Stages of local divorce

In the divorce settlement, the complainant-divorcee requests that a *sulat pasa* certificate be issued to release her from her marriage bond. This manner of dissolving the marriage is equivalent to filing a legal divorce complaint with a regular Shari'ah court, requesting a judicial decree of absolute divorce. Compared to the proceedings of the Shari'ah court, the actions taken thus far before the *lumah sarah* are not as stringent. It is entirely paperless, and no lawyer, Shari'ah counselor at law, adviser, or consultant is required. This is a classic method, yet it works quite well in satisfying the initial wife's wish to end the marriage.

A final local divorce agreement results from a three-part divorce settlement process. Some Sama in Tawi-Tawi refer to them as *tallak satu*, *tallak duwa*, and *tallak tiga*. The informants aptly contended that:

¹⁹Interview with some elders, Barangay officials, Sama Professionals

²⁰Interview with Imam, Elders and Sama Professionals

²¹ibid

*Ya sulat pasa tu tallu ginisan na. Yana nipag-onan tallak satu, tallak duwa maka tallak tiga*²²

[TRANSLATION]

Traditional divorce paper has three forms, namely, *tallak satu*, *tallak duwa* and *tallak tiga*.

These stages of local divorce follow a sequential pattern to ensure fair and smooth deliberation during the issue's mediation. Each stage for which divorce is accounted has specific functions. In legal terminology, this refers to a safety net clause designed to save the marriage by exploring the possibility of reconciliation. At this point in the divorce process, earnest conversations can be used to urge both parties to resolve the family disagreement and bury the hatchet.

The first two stages of local divorce are analogous to legal separation under the Philippine Family Code, where the couple is legally separated from their beds and boards. The marriage is not quite broken. These stages of local divorce are known as the cooling-off period. A grace period in which the couple can mend their ways. It is also a time for them to put in their best effort to rekindle their relationship and return to each other's arms. As pointed out by informants, it could be possible for parties to reconcile, given the magnanimity of the divorce to the family²³. The third stage is the final decree of local divorce, issued after the couple's six-month period of prospective reconciliation has expired but no reconciliation has occurred.

In another local divorce case, the Barangay Chairperson advised the parties not to rush into divorce proceedings and to think about it first. Local authorities used the occasion to deliver unsolicited advice to the parties, warning them of the harmful consequences of divorce, particularly on children, focusing on the emotional and psychological problems caused by divorce. Some cases and precedents lead children of divorced parents to engage in illicit activities and other vices, tarnishing their family's names and credentials. It ruined their goals and aspirations in life, particularly their chances of receiving a good education.

This should be avoided since it poses a security concern and causes issues in the community. Another layer of complexity has been added to the task of maintaining community peace. Desperate children do not listen to sound advice from community elders or their divorced parents. This is one of the negative repercussions of divorce on children. On some occasions, the advice of community elders proved fruitful, resulting in the wife and husband's reunion and reconciliation. In one case, the local authorities of the *lumah sarah* proceeded in saying as follows:

Min beteh naan, buwanan ta kam dambulan mikilan ma pasal magbutas bi (Abdulhan, 2014)

[TRANSLATION]

From now on, I will give you one month to think about your divorce.

According to Article 14 of the Muslim Code, marriage is not only a civil contract but a social institution. Marriage is an important social institution and the foundation of a family, and it should be appreciated and preserved. To save the marriage, the local chieftain attempted to persuade both parties to consider the ramifications of divorce. It was clearly stated that parties should be given one month to reconsider not separating and evaluate the influence it would have on their children's welfare, if any. The opportunity to give reconciliation might be viewed as one of the local leaders' most important roles in protecting the sanctity of marriage.

It is worth noting that counting numbers in Malay impacts the local phases of divorce among Tawi-Tawi's Sama people. This is explained by the geographic location between the state of Sabah, Malaysia, and the island province of Tawi-Tawi, where language contact and cultural convergence have traditionally influenced the economic and social interactions, shaping the dynamics of both populations.

²²interview with elders, Barangay officials, Imam

²³ibid

As a condition precedent for the issuance of the same, a timeline or criteria should be rigorously observed. Moreover, a specified *idda'* or waiting period in every stage of the *tallak* must be observed and followed²⁴. The *Tallak Satu*, the first stage of local divorce, is granted for one month to allow parties to consider reconciliation. In the second stage, *Tallak Duwa* is given as a warning to parties to resolve the conflict. This stage of divorce lasts three months. On the other hand, *Tallak Tiga*, the last stage of local divorce, is fixed for six months for the couple to consider reconciliation. After months of waiting, the *lumah sarah* or traditional body will issue *sulat pasa*²⁵.

In reality, the three stages of divorce are not strictly followed. Couples may end their marriage at any moment. Local divorce may occur after the wedding ceremony, especially if the marital agreement was made by *magpoleh* or *magebog*²⁶ (elopement). This occurs when parents on both sides do not want their son or daughter to marry. Parents may act to end the marriage immediately, even without a judicial decision of absolute divorce issued by the Shari'ah circuit court or the issuance of a *sulat pasa* certificate by *lumah sarah*.

The married couple may also be considered divorced if the husband refuses to sign the paperwork dissolving the marriage as proof that they both agreed to the divorce. In one example, the husband's proxy signed the *sulat pasa*. Typically, this occurs when a husband abandons his wife and children for a month or year without providing support, when an estranged husband does not attend at the beginning of the local divorce proceedings, or if the husband has no intention of divorcing the wife or refuses to reconcile²⁷. This is best stated in the Sama expression of *magtop-top buway* (literally, cutting the umbilical cord) to permanently disconnect the marital relationship²⁸. With the issuing of *sulat pasa*, the marriage ends, resulting in divorce, also called *magbutas*, *magtiman*, *magtallak*, or *magsaley*, in various Sinama spoken words²⁹.

Effects and Implications of *Sulat Pasa*

Sulat pasa appears to be very effective at causing local divorce. It is similar to an out-of-court instrument or document that functions as the law between the parties involved. It typically has the power and binding effect of a lawful divorce resolution from the perspective of Sinama-speaking people. With *sulat pasa*, the offended woman can now participate fully in civic activities without being sidetracked by personal issues. It depicts a traditional ideal of a Sama ethnic community that is *toddoh* or as calm as the sea before parting ways.

Legally speaking, local divorce agreements like *sulat pasa* are only binding between the parties concerned. It does not bind the entire world in the strict sense of the word. Without conforming in substance and form to the Shari'ah rules of procedures, Muslim local divorce through the granting of *sulat pasa* is without binding effect. It is just equivalent to an ordinary paper or document that is useless and becoming obsolete. The couple's marriage has not legally ended. It still exists.

Notwithstanding the promulgation of Presidential Decree No. 1083, this traditional divorce paper is still used to dissolve marriages. It is embodied in the *diwan* and has a Qur'anic injunction and prophetic traditions adopted by early Muslim Filipinos to fulfill the goals of justice. It has proven to be quite successful and beneficial in resolving divorce cases. This entire practice of presenting the cause of action for divorce to the traditional authority in the Sama community is usually part of the Muslim Filipinos' local justice system. It, therefore, relieved the side of the time-consuming task of preparing or drafting pleadings in accordance with the Shari'ah rules of procedures.

²⁴ibid

²⁵interview with elders, women, Barangay officials, Imam, Sama Divorcees

²⁶ibid

²⁷ibid

²⁸ibid

²⁹ibid

Despite the integration of the Muslim Code, a number of Muslim Sama couples have continued to end their marriage traditionally. This illustrates that divorce initiatives are already the norm rather than an exception in Tawi-Tawi. From a legal perspective, the Shari'ah Circuit Court heard 25 divorce cases in 2015 because some professionals desired to end their marriage connections officially. In 2016, 18 additional divorce cases were filed in the same court in Tawi-Tawi. This does not include local divorce cases presented to the *lumah sarah* for settlement.

The researcher argued that the system observed before the shari'ah court does not provide a quick, accessible, easy, and practical method of settling the divorce case to the satisfaction of divorce complainants in Tawi-Tawi. Divorcees-informants who had previously secured a perceived valid local divorce certificate in the absence of a judicial decision of absolute divorce were able to remarry and live happily. They claimed they did not present their divorce cases to the ordinary Shari'ah court. They desire an immediate separation without the court's intervention.

Their subsequent nuptials were also not sanctioned. The Barangay Chairperson or Imam who mediated the divorce dispute locally is not subject to disciplinary action or legal consequences under any applicable legislation, national or local. Local divorce using the *lumah sarah* has become the standard because it has previously been used. This demonstrates that local leaders are quite adept at resolving divorce cases in their areas of responsibility. According to some Sama professionals, they elaborated as follows:

*Maniyah dusab abey magcomplain ma pasal
pagbutas min pag deen sulat pasa*³⁰

[TRANSLATION]

So far, there are no complains about the divorce done through the issuance of traditional divorce paper.

Traditional leaders play an important role in decision-making. Their involvement in maintaining community harmony contributes to the community's peace and order. They can also exhibit good governance by resolving community disputes. Traditional religious leaders, on the other hand, are highly respected among Muslim Sama communities that live predominantly on islands. They possess moral ascendancy over their followers. Both sides accept the local authorities' decision in the mediation proceedings, and there is no animosity between the parties involved. This is to be understood as a strategy for avoiding potential conflict on both sides.

Traditional divorce papers have provided a means to end a marriage. It provides justice not only to the wronged party but also to their family and community. Whether purposefully or unintentionally, this approach may be used to avoid legal processes or the consequences of not taking their case to Shari'ah courts or seeking the services of a Shari'ah counselor, whose job is meaningless and useless before the traditional body. Furthermore, their presence in the local body disturbs the smooth process of resolving family problems.

For practical purposes, the disgruntled woman may seek local divorce proceedings to expedite the resolution of family issues. The optimistic results indicate that justice will be administered more quickly than in a special Shari'ah court. More crucially, it eliminates the lengthy list of writings and documents required by the Shari'ah court, saving the divorcee-wife time, effort, and money. When asked about the benefits of getting a divorce locally, the informants/divorcees succinctly stated:

*Likkas magsarah pagbutas ma barangay. Maniyah
na banan katas ni sulat kalagihan tudju barangay
atawa imam*³¹

[TRANSLATION]

It is faster to resolve divorce in the barangay. It requires no paperwork when presenting divorce issues to local/religious officials.

³⁰Interview with Barangay officials, Sama Divorcees, and Sama Professional

³¹interview with Sama Divorcees

Husin (2010) reported that a mixture of traditional and Islamic justice systems is being implemented in Mindanao with state institutions. However, Ali (2007) opined that the implementation of the Muslim Code is based on cultural customs rather than theological convictions of Filipino Muslims. This is absurd because the system of divorce among Muslims is absorbed into the Philippine judicial system. It is, therefore, insensitive to local practices of dissolving marriage.

Currently, the Muslim Code is procedurally implemented, which is beyond the scope of the local justice system. Such a second-mix legal hybridity resulted in a dilution process in resolving a local divorce. It became ineffectual after the Muslim Code was adopted. Divorce among Muslims in the Philippines is governed and regulated by P.D No. 1083. However, its applications are governed by the Special Procedural Rules promulgated by the Supreme Court of the Philippines³². Essentially, the Shari'ah court's rulings, judgments, and resolutions are part of the Philippine judicial system. In other words, the Supreme Court supervises the operations of the Shari'ah court. Its rulings and decisions are subject to judicial review by the Supreme Court.

Article 155, paragraph 2 (b) of P.D No. 1083 states that the Shari'ah Circuit Courts shall have exclusive original jurisdiction over all civil actions and proceedings involving disputes relating to divorce recognized under the Code between parties who are Muslims or have been married in accordance with Article 13³³.

Philippine legislation is enacted to regulate its citizens. The Muslim Code, for example, is intended to regulate Muslim relations. Essentially, every Muslim citizen is expected to uphold the rule of law. According to this assumption, a divorce action must be filed with the Shari'ah court, which is the proper forum for hearing the issue. For legal binding, the woman's divorce must be granted through a judicial decision. Simply put, divorce cases should no longer be referred to the local body for settlement because the Muslim Code's application renders such local divorce proceedings ineffective.

The Supreme Court ruled that the procedure provides a method of obtaining redress³⁴. Its purpose is to make it easier to administer justice. Their rigorous application may serve to undermine the ultimate justice. Therefore, it must be avoided³⁵. The general goal of the procedure is to make it easier to apply justice to competing parties' claims, keeping in mind that the procedure is designed to assist and promote the administration of justice rather than to impede and delay it (Gubat, 2012).

The Muslim Code on divorce appears to be heavily legalistic in nature, with special rules governing the Shari'ah Courts. Its relevance is perceived to be widely overlooked and ignored. Nowadays, many Sama divorcees prefer to dissolve their marriages through customary means. Given the amount of successful local divorces, the belief is that the practice of submitting a divorce case to the Shari'ah court does not allow for a quick resolution of the divorce case or that it is inconvenient for the party. Simply put, it creates delays. To put it another way, the practical traditional technique of dissolving a marriage or approach to resolving family conflict in a local divorce case before a traditional body appears to be more successful and promising. Despite opposing Shari'ah court proceedings, the case can be resolved quickly.

For this study, the researcher puts forward two practical and perceptive grounds for preferring tradition over regular Shari'ah court in resolving local divorce, given the Shari'ah court's geographical distance from far-flung islanders. It makes sense.

³²Special Rules Governing the Shari'ah Courts (Ijra-at Al Mahakim Al Shari'ah)

³³Muslim Code

³⁴Philippine Reports, Vol. 85, p.650, Bustos vs Lucero

³⁵G.R Nos. 76378-81, 1990, Piczon vs Court of Appeals

First, Tawi-Tawi is an island province in the BARMM. It comprises 11 island municipalities and has only one functional Shari'ah circuit court in Bongao, the capital. Traveling to the political and commercial hub would be uncomfortable and stressful for a destitute divorcee-wife from remote island settlements, compounded by geographical circumstances and time constraints. This is not to include the additional expenses incurred by opting to remain in downtown Bongao for the purpose of filing a divorce petition against her erring husband.

Second, Shari'ah court hearings are expected to be delayed due to suspensions, with both sides given a reglementary period to file their respective pleadings. If the divorcee-litigant decides to stay in Bongao, she will incur daily expenses. Furthermore, obtaining the legal services of a Shari'ah consultant would add to the complainant-divorcee's burden, particularly if they could not afford it. This could jeopardize the pursuit of justice.

Because the role of traditional or religious leaders has been reduced to that of a mere witness in a local divorce case, the researcher suggests that a divorcee's legitimate remedy is to request that the Barangay Chairperson or officiating Imam produce an affidavit or pleading outlining the facts of her divorce before the traditional authority. Even if the husband has not signed the divorce agreement, the wife-divorcee may file the affidavit or submit the same before the Shari'ah Court for approval or ratification *ex parte* in order to expedite the issuance or release of a judicial decree of divorce in her favor. If this is allowed to operate, it will reduce the backlog of cases in Shari'ah courts while complementing the latter in the delivery of justice at the local level.

For this study, the informants contended that under the Local Government Code of 1991 or Republic Act No. 7160, the Barangay Chairperson and the local religious leaders do not have the authority to hear, try, determine, or settle a divorce case as it falls squarely within the exclusive jurisdiction of the Shari'ah courts³⁶. True enough, the local divorce procedure followed by some Sama Muslims in Tawi-Tawi is not duly acknowledged by local officials and religious leaders, particularly those granted permission by the Shari'ah court to arrange and solemnize local marriages. Others are unaware of it. This necessitates an information campaign to increase knowledge of the Muslim Code's applicability.

The Barangay Chair, to whom the local divorce case was presented, has the authority to summon contesting parties to an amicable settlement (LGC of 1991). If it cannot be settled at his level, the Barangay Chair may provide a certificate to file an action with the relevant authorities. Similarly, local religious and community elders work hard to keep the marriage bond intact under the traditional practice. However, if the situation is beyond repair, the concerned parties are provided recourse to a practical local system of divorce to take place before the *lumah sarah*. Reclaiming the local justice system offers an option for settling family issues since it is accessible, practical, and less time-consuming. Again, the strategy used by village residents helped to minimize the number of divorce cases filed in Shari'ah courts.

Meanwhile, local marriage arrangements are formalized by practical rites of mutual spoken consent between contracting partners. The wedding ceremony is also performed without the use of a written contract or agreement, except for compliance with legitimate *wali*, *mahr*, and *basingan* requirements³⁷. This type of marriage is popular among the hinterlands and island villages, but they are nonetheless binding and approved by Muslim religious doctrine. In the same way, valuing divorce through issuing a traditional divorce paper is also feasible. This circumstance can be repeated in future research undertaken in other dominant Muslim Provinces in BARMM for comparison and confirmation.

³⁶Interview with Sama Professionals and Barangay officials

³⁷Interview with Sama Professionals re *wali*— a permission to marry granted by the bride's parents, *mahr*— an amount of money or gold in addition to the bride price, and *basingan*— the amount of money or gold in addition to the bride price

The practice of issuing traditional divorce papers is a time-honored tradition, especially among Muslim inhabitants in the core territories of BARMM. It is efficient and realistic and contributes to the dynamics of Philippine culture, displaying the country's heterogeneity. On the whole, this study suggests that despite the promulgation of the Muslim Code, Muslim Sama divorcees in Tawi-Tawi prefer to have their divorce case settled before a customary authority. Given the Muslim Code's loose implementation, this meant that local divorce cases outside of Shari'ah court proceedings are still very relevant and vitally significant.

Conclusion

This study was carried out in the island Province of Tawi-Tawi, BARMM. It focused on the dynamics of local divorce, the traditional divorce documents, as well as its implications for Sama divorcees. Data were collected from a variety of informants who are familiar with customary divorce proceedings. Qualitative data on traditional divorce proceedings were analyzed and documented.

Divorce is only available to Filipinos who marry according to Muslim rituals and must be filed in the regular Shari'ah court. However, despite the formation of the Muslim Code, which severely restricts the practice and procedures of Muslim divorce, the system of local divorce in Sama Tawi-Tawi remains a viable option for obtaining divorce. Sama Divorcees prefer to have it resolved in a traditional manner as it is easier, paperless, faster, cheaper, accessible, affordable, and practicable. It facilitates the timely delivery of *sulat pasa* in favor of the divorcee under an abusive marriage without delay.

The legalistic design embodied in the Shari'ah processes in obtaining divorce contradicts the traditional method of ending a marriage. Hence, local leaders should handle the local divorce case with extreme care and moderation. They must demonstrate leadership qualities and foresight. The traditional authorities must be able to convince parties to settle their issue peacefully without resorting to physical harm.

Because divorce cases have a negative impact on both the family and the community, local authorities must make every effort to acquire the trust of both parties and guarantee that their decisions are fair and square. Handing down the traditional divorce paper by the traditional leaders helps to effectively enforce peace and order in local communities while also declogging legal cases. It, therefore, helps to keep the community peaceful and orderly.

With the Bangsamoro parliament in place, it may consider passing regional legislation to accept the traditional divorce system. Even if local citizens can apply the Muslim Code, they should be able to follow traditional divorce procedures. Meanwhile, extensive legal advocacy can increase awareness and interact with competent authorities to reinstall the traditional divorce document as legal and binding. The campaign can be effectively carried out in partnership with women's groups, the National Commission on Muslim Filipinos, the Ministry of Indigenous Peoples' Affairs, local religious and elected leaders, and human rights organizations.

Conflict of Interest Statement

I have no conflict of interest to disclose.

AI Disclosure

I declare that this manuscript was prepared without the assistance of artificial intelligence. Hence, the content of this paper is original.

References

- Abdulhan, A. A. (2014). *Pagsulut in Barangay Lamion: A case study* [Unpublished undergraduate thesis, Mindanao State University-Tawi-Tawi College of Technology and Oceanography].
- Alam, N., Saha, S. K., & Van Ginneken, J. K. (2000). Determinants of divorce in a traditional Muslim community in Bangladesh. *Demographic Research*, 3, 4. <https://doi.org/10.4054/DemRes.2000.3.4>
- Ali, A. P. (2007). The legal impediments to the application of Islamic family law in the Philippines. *Journal of Muslim Minority Affairs*, 27(1), 93–115. <https://doi.org/10.1080/13602000701308905>
- Buendia, R. G. (2005). The state-Moro armed conflict in the Philippines Unresolved national question or question of governance? *Asian Journal of Political Science*, 13(1), 109–138. <https://doi.org/10.1080/02185370508434252>
- Chiarella, G. M. (2012). Sources of law, sources of authority: The failure of the Philippines' Code of Muslim Personal Laws. *Pac. Rim L. & Pol'y J.*, 21, 223. <https://tinyurl.com/ht4cr2d5>
- Doyle, L., McCabe, C., Keogh, B., Brady, A., & McCann, M. (2020). An overview of the qualitative descriptive design within nursing research. *Journal of Research in Nursing*, 25(5), 443–455. <https://doi.org/10.1177/1744987119880234>
- Gubat, M. M. (2012). *Shari'a Bar Reviewer* (2nd ed.).
- Guzman, E. A. (2009). *Marriage policy in the Philippines: A case study in agenda setting* [Doctoral dissertation, University of Waikato].
- Husin, A. A. (2010). Healing communities, reclaiming traditions: Legal pluralism, Islamic revivalism, and emerging ethno-based peace and development strategies in Mindanao. *Autonomy and Peace Review*, 6(1), 103-127.
- Holbrook, J. (2009). Legal hybridity in the Philippines: Lessons in legal pluralism from Mindanao and the Sulu Archipelago. *Tul. J. Int'l & Comp. L.*, 18, 403.
- Ingilan, S., & Jubilado, R. (2021). The state of Tausug and Sama-Bajau linguistics. *Hawai'i Journal of the Humanities*, 2(1). <https://tinyurl.com/2a6s25tb>
- Jaafar-Mohammad, I., & Lehmann, C. (2011). Women's rights in Islam regarding marriage and divorce. *Journal of Law and Practice*, 4(1), 3. <https://tinyurl.com/a59m4bj6>
- Jacob, J. A. (2013). *Reintroduction of divorce into Philippine law* [Doctoral dissertation, University of Toronto].
- Mangona, P. T. (2000). *The settlement of cases in Barangay Balimbing* [Unpublished undergraduate thesis, Mindanao State University-Tawi-Tawi College of Technology and Oceanography].
- Sabal, A. B. (2019). Magkiparat: A cultural practice of peace-making, healing and conflict resolution among the Sama of Tawi-Tawi. *Borneo Research Journal, Special Issue*, 57–65. <https://doi.org/10.22452/brj.sp2019no1.5>