

GLEND A. Feliprada
JAYUM Anak Jawa n
Universiti Putra Malaysia

INDONESIA AND THE PHILIPPINES SMALL CLAIMS: SIMILARITIES AND DIFFERENCES

Small Claims Courts of Indonesia and Philippines conducted hearings for speedy disposition of cases where defendant failed to meet obligations on loan. The litigation does not need legal counsel, thus it is low cost and has jurisdiction over civil cases. Indonesia's high percentage of judgment default of the corporation plaintiff defeats the goal of assisting the poor and marginalized sectors of society. On the other hand, in the Philippines, the large number of compromised agreement is an indicator of meeting the goal of assisting the poor. Arriving at a compromise requires efforts and time in negotiations that results in the reduction of payment rates and in an instalment mode of repayment. The inclusion of writ of execution to litigate default of payment is commendable while in Indonesia parties have no legal mechanism to enforce default payment of the defendant which is a weakness or limitation of legal procedure. The issues that need to be addressed by both countries include lack of public information and the strict implementation of usury law against exorbitant interest rates. Indonesia's extrajudicial settlement and writ of execution need to be included in the Small Claims mechanism. The absence of writ execution renders the result useless.

Keywords: *Small Claims, Justice, Equity, Access; Compromise*

Introduction

The Indonesian judicial structure co-exists with the Adat government system in adopting the Dutch colonial laws after the country gained independence from the Netherlands in 1945, however, it retained the legality of not observing the principle of precedence wherein court decisions are not conclusively adopted in succeeding cases of similar circumstances.¹ On the other hand the Philippine Judicial Government System is patterned after the American structure. The United States colonized the country for almost 50 years, and the Philippines was granted independence in 1946. The precedence of court decisions is in adherence to the principle of *stare decisis et non quieta movere*, a Latin dictum which means "stand by the thing and do not disturb the calm". It enjoins adherence by lower courts to doctrinal rules established by higher Court in its final decisions.²

Indonesia and the Philippines were among the recipients of the Southeast Asian judicial reform financial assistance for developing countries, from international agencies since 1994. Its implementation required the retrieval of performance data, monitoring of process and evaluation of outcomes. Inadequacy in evaluation and monitoring of the process has been noted.³ The Philippines initiated the Small Claims litigation in pilot courts; tested nationwide in the third level courts, and fully implemented in 2008,⁴ while in Indonesia, the Supreme Court Regulation No. 2 established the Small Claims Court in 2015. This initiative aims to reduce the case backlog in courts toward resolutions of the civil judicial issues and the enhancement of business climate opportunities.⁵ These are Judicial Equity programs that enhance accessibility of justice by the disadvantaged and marginalized in the two countries.

This study presents the comparative analysis of the government policies on Small Claims Cases in Indonesia and the Philippines and to identify similarities and differences in results as basis to improve delivery of service by the Judicial branch of the government. The objective of the study is to assess the extent to which the goal of the law has been achieved in upholding the egalitarian theory where everybody is given equal opportunity and protection. This study also identified the mechanisms adopted by the two countries on Small Claims Courts; the perspectives of the implementers and litigants; the legal efficiency; and effectiveness of the court in upholding the rights of the marginalized.

Research Methodology

Indonesia and the Philippines were selected as the location of the study because they adopted the Small Claims Courts. The data in the Philippines were gathered from the Third Level Courts in the cities of General Santos, Davao, Cebu, Iloilo and Manila, while Indonesia, from the District Court in the areas of Central Jakarta, Bale Bandung, Bandung and Medan where selected as locale of the study.

This study used the descriptive research design and employed the qualitative research methodology. The descriptive design is used to gather information on existing conditions that describe the characteristics of a population or phenomenon being studied.⁶ The descriptive design was adapted to present status of the mechanisms in the implementation of Small Claims Courts, and the qualitative method was employed through the use of interview guide to gather the primary data from the court implements, and party litigants in Small Claims courts. Secondary data were obtained from the records of the Judicial Branch specifically from the court dockets, and court resolutions.

The participants were chosen through purposive sampling considering the objectives of the study. This study sought to determine the importance of

Small Claims in empowering the marginalized and disadvantaged people, and assess implementation of the mechanisms which lead to the increased access to justice by the marginalized in the society. The respondents were chosen based on who could give more information on the subject, and the first set of respondents were the implementers of the policies on Small Claims such as court judges and personnel who have handled litigations of Small Claims, while the second set of respondents were composed of the litigants the plaintiff and the defendants chosen were those who have filed cases in District Courts and Third Level Courts of Indonesia and the Philippines. In Indonesia, the implementers were taken from the District Courts, while in the Philippines, the judges and court personnel were taken from the Third Level Courts. Based on the established criteria in the selection of respondents, there were ten implementers and ten litigants from each of the two countries considered as the actual respondents and were the interviewees. There were 20 respondents from each country or a total of 40 respondents for the study. The primary instrument used to gather the data are the two sets of the interview guide. The first set was used in the interviews of the judges and the personnel while the second set for the litigants, both the plaintiffs and the defendants. The interview guide formulated considered the following: purpose of adopting Small Claims Cases; initiatives of the court for the parties to understand the process of litigation; differences between litigation in the regular court and in Small Claims Court; strategies used by the judge in mediation proceedings towards compromise agreement; importance of Small Claims program for the marginalized; effectivity of attaining accessibility of justice to the poor. The findings were basis for recommendations to improve the policies and their implementation procedures. The interview guide for the litigants include the following: awareness of the litigants on filing complaint in Small Claims Cases; awareness of the purpose of adopting these Courts; cases heard by these Courts; period for the resolution of cases; perceptions on the fairness and equality of the litigation; attainment of the objectives of making justice accessible to the marginalized; assistance received from the judge or court to settle the concerns of the litigants; need for lawyers; advantages and disadvantages of having a lawyer; reasons for the delays of cases; and the respondents recommendations to improve the operations of Small Claims Courts.

The data gathered from the interviews of the judges, court personnel, and litigants were analyzed through themes following the steps outlined by Braun and Clarke.⁷ The interview results were transcribed, and the researcher familiarized herself with the data by reading and studying the transcript. During data familiarization, the ideas noted by the researcher identified the preliminary codes, and then generate the initial codes based on the features of the data, and considering the objectives of the study, was followed by the search for themes through the interpretive analysis of the codes identified and generated which includes sorting the data according to the overarching

themes. Further review of themes was done by combining, refining, separating, and discarding the initial themes. Further, defining and naming the themes and potential subthemes within the data, the theme names were identified. A substantive discussion of each theme was done, followed by the analysis of the secondary data gathered from the court records through descriptive statistics that include frequency count, percentage, and mean to support the findings of the interviews.

Results and Discussion

The Philippines and Indonesia adopted and implemented Small Claims Courts to make the legal services of the government accessible to the people, in particular the disadvantaged sector. The Small Claims intends to enable the people to defend themselves with court interventions, but without the need of legal counsel which keeps the process at low cost. This is the concept of egalitarian theory of providing equal opportunities to seek protection from the government and protect human rights, regardless of the people's status in the community.

The Government Policy on Small Claims Cases adopted in Southeast Asia like Indonesia and the Philippines are integral to the Judicial Reforms. It is an inquisitorial system where the judge participates in assisting both the plaintiff and defendants in facilitating the resolution of civil cases that involve recovery of money that arise from loans, contracts, compensation and damages. Small Claims Court provides the public equality of access to justice and settlement of civil monetary claims. The Small Claims Procedures known as equity justice gave the marginalized parties their day in court and secured protection by government policies in adherence to Egalitarian Theory of Rawls to wit "that the principle of justice is to improve the least advantaged members of society".⁸ The Small Claims Courts originated from European countries and was subsequently adopted by the United States and other countries of Asia. The implementation of Small Claims Cases varies according to the limitations of the respective countries. On government's agenda, these programs were intended to address clogged civil court dockets, lack of accessibility, transparency, speed, efficiency and accountability in the settlement of cases involving the disadvantaged and marginalized people. The Small Claims Program of Indonesia and the Philippines were implemented by the Judicial System in 2016 and 2009 respectively with court jurisdiction specified by the Supreme Courts regulations.

A. Mechanisms Adopted by Indonesia and the Philippines in Small Claims Courts

1. *Informal and Simplified Procedures in Settling Small Claims*

One of the mechanisms adopted by both Indonesia and the Philippines in the implementation of the government policy on Small Claims Courts is the informal and simplified procedures in settling small claims which ensures that justice is easier achieved, for the marginalized and disadvantaged as it keeps the cost of litigation low, as legal counsel is not allowed.

Small Claims Cases covers civil claims involving breach of contract or tort dispute; cases not under the jurisdiction of special courts; not involving land rights; parties involved are not more than one and both are residing in the same court jurisdiction. Money claim involved in Small Claims in Indonesia amounting to not more than IDR 200,000,000.00 (USD 13,714.22), are under the jurisdiction of 1st level District Court where parties are mediated to settle voluntarily the financial obligations on their own terms, and payment rendered without court intervention which simplify the procedure. An interview with a corporate plaintiff on the subject of improving mechanism, and referring to the restrictions of parties to be residents of the same jurisdiction, he stated that “court needs to review the residency, and the no legal counsel for corporation requirements, as most parties in contract of loan transact business across Indonesia.”

The Philippines had implemented the Small Claims Court in 2009 in pilot court and later extended nationwide under the jurisdiction of the third level courts such as Metropolitan Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court. The money claim case has been amended to cover case of not more than PHP 300,000.00 in February 2018 from previous limits of PHP 200,000.00 and PHP 100,000.00 in 2016 and 2009, respectively.⁹ In an interview, one of the Plaintiffs claimed that in Small Claims Court “walang pasikotsikot, wala abogado, wala gastos mas madali tapusin simple na processo at masabi mo sentiment sa problema ” (translated) he said no counsel is advantageous as it removes the litigation cost as procedures are simple and parties learn to assert their rights and speak in their native dialect to express their sentiments. Equity demands that everyone needs to be informed of the basic means to enable the people to assert their rights and claim it, and judgment needs to be based on equity and good conscience so the core decision of judges is understandable to man who is ignorant of the rules of law.¹⁰

2. *The Plaintiffs and Defendants*

The plaintiffs and defendants can be individuals or corporations with no lawyer to represent in court except if the parties are lawyers themselves. Filing fees are charged, except if plaintiff is an indigent which case, he is free of charge, provided there are proofs of indigence such as having no property registered in his name in the local government where he is residing. In case of company,

corporation, and lending agencies, a regular fee is charged, with additions on a pro rata basis on the 5th, 10th and 15th case progressively.¹¹ This is to address the issue of lending corporation using the court as collection agency as one court interpreter justified, these charges “secures that the corporation using the court as collection agency has to pay the court for the services rendered.” In observance of the theory of equity and fairness, it is commendable that those corporation plaintiffs pay court services in proportion to the number of cases filed. This is consistent with logic and the principle of the legal Latin maxim rule of expression *unius est exclusio alterius* which means that what is expressed is included and unexpressed is excluded.¹²

Philippine Small Claims Court aims to de-clog court dockets of civil cases, increase access to the court by the disadvantaged and marginalized in a fast, simple and low cost manner. The mechanism requires the plaintiff and defendant to be present, and upon failure of the plaintiff to appear, the case is dismissed without prejudice, whereas in the failure of defendant to appear, the case is resolved by judgment default. Parties are given enough time to file counter claims in any compromise agreement, but in case of failure to enter into compromise, the courts resolve case on the merits and non-appealable status. Failure to comply with court resolution, the plaintiff applies in court writ of execution to effect payment from the defendant’s personal property commensurate to the amount claimed. This writ of execution is the strength of the Philippines but is missing in Indonesia.

The Philippine party litigants affirmed that Small Claims Courts reduced exorbitant interests of lending companies the diligences of judges are commendable in the strict imposition of 12 percent interest rate per annum against lending agencies. One defendant stated, “malaking tulong at napapaliwanag ng juwes ang processo at napapakinggan ang hinaing naming sa matataas na interest at tinanggal ang multa sa utang na kaya kong bayaran na installment”. (Translated) he said that (it was a great help that procedure was explained by the judge, and he/ she listened to our sentiments on high interest rates. Penalties in the loan was also cancelled and loan is payable in instalment.”) It affirms that the government treats its citizens equally, and accords the poor a fair share of resources as a matter of justice.¹³ The Philippine judges restricted exorbitant charges to one percent per month, consistent to the theory of equity and fairness which affirms that statute is free from evil or injustice and its spirit that brings life rather than constricts to the letter and kills it.¹⁴ This is again the strength of the Philippines Small Claims as compared to Indonesia which has 3.5 percent monthly interest rates.

3. *Expeditious Settling of Disputes on Small Claims.*

The implementation of the Small Claims Courts in Indonesia and the Philippines is expeditious with respective government policies adopted and to expedite the

resolutions of cases. In Indonesia, Small Claims Courts were implemented in 2016 under the Supreme Court Regulation No. 2, limiting the court resolution of cases to 25 days from the first trial.¹⁵ It intends to reduce the cases and enhance business climate opportunities in relation to the ASEAN Economic Council; however, the data gathered revealed that the average disposal rate of case disposition was 36 days (1.2 months). The disposition of cases beyond 25 days limit is attributed to defendant's failure to appear due to their preference for outside court settlement with the plaintiff. This results to judgment default and, plaintiff's withdrawal of the case and manipulated the procedural law at the expense of defendant's rights of substantive law. The Small Claim Court failed to achieve the egalitarian theory in the case of uninformed defendants. The data revealed that the case disposition in West (BRT) Jakarta recorded an average disposition rate of 36 days (1.2 months). In the interview of judges, variations of the disposition from the different district courts were attributed to skills of judges in facilitating the parties to enter into compromise agreement, thus the judges themselves recommended their training to improve their facilitating skills. Another factor that delays the resolution of cases was the defendants' absence in court due to shame and guilt for nonpayment of debt.

The resolution of cases in Small Claims Courts in Indonesia is fast as affirmed by the interviewed litigants; one of them citing that the advantages of settling the dispute in Small Claims Court without a lawyer is that the decision made by the court is fast. A plaintiff, in an interview said that "it took only two weeks to finish the hearings, and I do not have lawyer coming with me in court." This was further affirmed by court implementers who said that "Small Claims Courts can have at least two hearings in two to three weeks. When parties are all present, the judge proceeds to judgment on merits of the case or through compromise".¹⁶

In the Philippines, the expeditious settling of cases in the Small Claims Courts is manifested in the average disposition of cases. Data showed that the average disposition is 2.2 months for individual and corporation plaintiffs and defendants. The disposition of civil claims is commendable in contrast with cases filed in regular civil court cases that are resolved in a span of two to five years. The "reasonable promptness" in disposition of cases needs to be exercised in good faith to secure that speedy dispensation of justice do not compromise quality and not tainted by malice, and injustice.¹⁷ This procedure is commendable in the Philippines' Small Claims Cases in achieving equity justice according to the egalitarian theory.

Further, the resolution of cases in Small Claims in Iloilo City, Philippines, had the average of 44 days (1.5 months); in Cebu City had average of 103 days (3.4 months). Data showed that most plaintiffs are Corporations placed at 75.7 percent, while individual plaintiffs are at 24.3 percent. This requires re-assessment of huge disparities of the primary goal of the Small Claims to increase access by the marginalized to the court system. Beneficiaries'

cases need to be resolved to remove the public fear instigated by the lending companies. As cited in an interview, an individual defendant who expressed being “fearful as I might be imprisoned, so I was accompanied and assisted during the hearing by my college graduate nephew.” It is the primary duty of the government to its people to eliminate coercive political practices that have significant impact on people’s lives.¹⁸ The highest number of cases filed is by corporations against individuals, placed at 75.7 percent, across the highly urbanized regions of the country. The data gathered affirmed that corporation lending companies benefited from government policies on Small Claims more than the individuals which is not consistent with the Rawl’s aspect of justice that social inequalities should be arranged so that both the least advantaged and those in higher position and offices are open to fair equality of opportunity.¹⁹ This also defeats the objective of Small Claims to serve the disadvantaged, and this remains a negative point of the country during the study was conducted.

The data in the Philippines also revealed that the highest court resolution is through compromise at 59 percent, decided on merits at 25.9 percent and lowest judgment default at 15 percent. Compromise agreement is widely acceptable in the Philippine setting where the court resolves conflict as third party to process the dispute smoothly and efficiently.²⁰ This is an affirmation that equity justice of court resolution facilitated by the judges as mediator intervene towards compromise agreement in favor of the marginalized and disadvantaged, thus, equity and fairness, served the purpose of Small Claims Rules. The egalitarian theory manifests its implementation both in the mechanism and the resolution of Small Claims cases, thus the spirit of egalitarian theory is achieved in this sense, but there is a need to address the high cases of corporation filing as plaintiff against individuals.

B. Perspectives of Implementers and Litigants on Small Claims Courts

1. Increase public’s accessibility to justice (practical justice).

The first theme which was identified on the perspectives of the implementers and the litigants on Small Claims Courts in Indonesia and the Philippines is the increase in public’s accessibility to justice known as practical justice. The adoption of the Small Claims Court ensures that the public, especially the marginalized and the disadvantaged have access to justice.

In Indonesia, one of the judges interviewed stated that the adoption of the Small Claims Courts helped address the misconceptions of public that litigations are people who can pay lawyers. In an interview of a judge he cited that the “public perceived courts only for people who are educated and rich to pay lawyers.”²¹ The presence of the Small Claims Courts gives access to the public especially the marginalized to have their cases heard because even

if they are not educated, the manner of resolving cases is through mediation proceedings. The simplified procedure of small claims cases also give the public access to justice because the procedures are designed to help the litigants to save their time, money and effort. The litigants from Indonesia who were interviewed stressed that the Small Claims Court is accessible and they do not need lawyers. In an interview of individual plaintiff he stated that “I filed my case without hiring lawyers and friends coach me what to do and what will happen in the proceedings.”

In the Philippines, as it is in Indonesia, the judges interviewed claimed that Small Claims Courts provide public access to court because parties do not need counsel. The duration of litigation which is fast, and the procedures are simple and understandable to a lay man. The Philippine Courts offer legal readymade forms for them to fill up and are available in both English and Filipino language. It is commendable that parties comply religiously with compromise conditions entered by them. These cases are filed against individual defendants to collect loan. The most significant achievement of court is to mediate and reduce exorbitant charges imposed by the lending companies against the defendants. The mode of installment payments adopted schemes that considered the party’s financial ability to pay. The defendant also claimed that they have good experience in court as the judge used practical explanation and encouraged them to trust the courts. This affirms that individuals interpret their experiences, according to their expectations and values that are influential to change them, and adopt new perspectives.²²

2. *Low Cost or Inexpensive Litigation of Small Claims.*

Another theme which was identified on the perspectives of the implementers and the litigants is the low cost or inexpensive litigation in Small Claims Courts. The implementation in the two countries, Indonesia and the Philippines, are both described as inexpensive. In Indonesia, the presence of Small Claims Court makes the judiciary simple, fast and low cost. The judge interviewed in Indonesia said that the cost is minimal, and he also explained that one of the benefits of the mediation proceedings is the parties can save cost as they do not need lawyers. This is confirmed, in an interview of plaintiff who stated, “I paid only filing fee and I won the case without expenses for lawyers” Similarly, in the Philippines, the perception of beneficiaries of Small Claims Cases is the same as that of Indonesia, as they look at litigation of cases as inexpensive because of the informal, simplified, expeditious settling of disputes, resulting to just resolution of cases. As such, this affirms that the marginalized sectors feel that they are given legal mechanism and equality of opportunity through the Philippine Small Claims Courts. This becomes a visible achievement of egalitarian theory of protecting the least advantaged in the society. The Small Claims Court experience of people enhanced their

familiarity with court procedures and mitigates psychological pressures of litigations especially among ordinary Filipinos.²³ Poverty is the primary reason that majority of individual defendants are trapped in non-loan repayment and bear the consequences of fear and shame for being sued in court.

C. Legal Efficiency of the Small Claims Courts

1. Low level of awareness by the public on Small Claims Courts.

On the legal efficiency of the Small Claims Courts, one of the themes identified from the interviews is the low level of awareness by the public, especially the marginalized on the implementation of the Court in resolving Small Cases, which is due to the lack of government information dissemination. In Indonesia, Small Claims was implemented since 2016, and in a span of two years, public awareness could have been improved, as the access to information is basic tenet of fairness and equity. Of those who filed Small Claims 90.3 percent are corporation plaintiff, and 100 percent are individual defendants, which shows that corporation benefits more than the individuals, due to higher awareness among financial institutions like banks and lending companies. Increasing public accessibility to Small Claims have yet to tilt the balance in favor of the individual defendants. The government, then, has yet to pursue the implementations of the principle of distributive justice to improve access to it by the least advantaged sector of the society, rather than corporations.²⁴ This affirms that beneficiaries of this court is the key to determine whether it satisfies, or not, this principle of justice.²⁵ The information initiatives of government policy on Small Claims Court needs to address barriers that include public misconception that court is the punisher, instead of being facilitative court of equity of the debtor's rights against excessive interest of creditors. This affirms Rawls theory of justice that "individuals will consider their own needs and establish procedural norms of justice for everyone in society to follow".²⁶

The judges in Indonesia claimed that there is a need to intensify public awareness on Small Claims Courts "through organizing more socialization and information dissemination activities".²⁷ The public should be aware of the purpose and mechanism of the Small Claims Courts to empower the public and maximize their benefit as the litigants claim that they are not aware of them. One litigant interviewed said that "I was referred by a friend to file in the Small Claims Court to collect my money for investment that I trusted to a friend, but I have no idea of its mechanism and purpose."²⁸ Similarly, in the Philippines, public awareness and knowledge of the procedures and mechanisms on Small Claims Courts are limited to information seen in court posters that are not sufficient to empower the public about rights to claim over a minimal amount of money from loan against a borrower. Small Claims explanations of procedures

are conducted in court by the judge himself or clerk of court to party litigants, but in general, the public who is not a litigant to Small Claims Cases is not aware and is the least interested to know the details until they become involved and affected by it. The plaintiffs who are money lenders are of advantage due to their familiarity of the court and this speeds up the procedure against the new comer who are unfamiliar of the legal procedures. This challenges judges to secure and strike the balance between the substantive and procedural rights of the parties in court.²⁹

The issue on low level of public awareness on Small Claims Courts is evident in the results of the interviews of court implementers and litigants. One of the judges interviewed confirms the need to intensify public awareness mostly in rural areas where most are individual defendants, while another judge emphasized the need to strengthen public awareness and orientation on the purpose of Small Claims. The litigants also said that public awareness about Small Claims Court is necessary by explaining the mechanisms and purpose of the Small Claims Court in television and radio programs to encourage people to file their claims in court.

2. *Delays in the Litigation of Small Claims Cases.*

The delay in the litigation of small claims cases, in the aspect of efficiency of Courts, is another theme identified both in Indonesia and the Philippines. The efficiency of the operations of the Courts is affected by the delays in the litigation of cases. In the interview of the party litigants of Indonesia, the causes of delay in the litigation include the failure of the defendant to appear in court, postponement of hearings, and failure to find the address of the defendant. Other causes of delay according to the litigants are their preference for out of court settlement with the plaintiff and the extension of hearing schedules to give time for defendants to come to court, which is eventually followed by the withdrawal of the case and qualified for judgment in default. In the Philippines, the party litigants attribute the cause of delay in the litigation of cases to the delay in the release of sheriff funds to serve summons, the lack of judges in vacant courts, and temporarily assigned a pairing judge, which dispose handful cases compared to the voluminous filed cases. The court procedure that requires defendant's acceptance of notice of summons cause delay because of transfer residence, non-existent residence, departure from the country or simply refusal to receive court summons. In cases cited, the court is constrained to proceed with the litigation as it fails to acquire jurisdiction over the defendant who failed to receive the notice of summon to appear in court. The courts eventually dismiss the case without prejudice to derail cases. Plaintiff is given the option to re-file the case upon the identification of the defendant's residence. The defendant is given several chances to appear in court and the non-compliance to this allows the court to resolve the case in favor of the plaintiff. This is an

affirmative of humane law to effect equal opportunity to have a day in court. This government policy of the Philippines on Small Claims Cases is consistent with the principle of egalitarian theory.³⁰

D. Effectiveness of Small Claims Courts in Upholding the Rights of the Marginalized

1. Litigants are Empowered to Assert their Rights in Small Claims Cases

The results of the study revealed that Small Claims Courts are effective in empowering the litigants to assert their rights in small claims cases. This is one of the themes identified in the data from the court implementers and the litigants.³¹ The Small claim Courts in Indonesia was able to help the marginalized to be empowered to assert their rights in small claims. In practice, defendants in the small claims cases prefer to enter into a new contract with the plaintiff corporation in lieu of the charges and fines. To avoid court litigation, the reciprocal justice of “fair exchange,” the equity and fairness need to be addressed in the Small Claims procedures.³² This policy is consistently parallel with Indonesia’s adherence to the supremacy of the contract parties entered into and withdrawal of cases filed is at the option of the plaintiff. The resolution of the cases based on the contract signed manifests that parties can assert their rights as stipulated in the contract.

In Indonesia, another practice seen in Small Claims Courts is the corporate plaintiff pursuing the payment of loans with new conditions in agreement with the defendant in extra judicial settlement. The issue raised of the corporation taking advantage of unrestricted withdrawal of cases need to be addressed through amendments of the loophole of the statue. In such case, the defendant can not avail of the equitable and just interest rates, as they are subject to rates imposed by private companies. The plaintiff is manipulated in the filing and withdrawal of cases which is inconsistent with the equity in judgment default; such was placed at a high of 53.7 percent in the equality of parties to appear in court. The primary goal of Small Claims Court to give opportunity to the least advantaged was misused.³³ On the hand, in the Philippines, the secondary data showed that individual plaintiff compromise is at 40.04 percent which are all against corporation plaintiffs; decision on merits for individual plaintiff is at 46.0 percent and none for corporation plaintiffs. In contrast, judgments default for individual plaintiffs is at 13.9 percent and none for corporation plaintiffs. The higher percentage of cases resolved on decision on merits over compromise agreement manifests that the litigants assert their rights in small claims. This affirms that equity of justice is facilitated by the court for the marginalized against exorbitant fees, by implementing the legal interest rate of 12 percent per annum. Excessive penalties are also

revoked by the judge. This is in favor of the individual debtors who belong to the disadvantaged sector against the corporation creditors.³⁴ Thus, the Small Claims Court attain the equality of parties in court enunciated in the egalitarian theory, and this is commendable achievement.

The presented above affirm response to the public clamor for protection from the government against illegitimate demand of money beyond the principal.³⁵ This is consistent with the egalitarian theory of justice on Small Claims Cases in the Philippines as judges assisted the party litigants in consideration of their capacity to pay the loan, terms of payment within the range of 1 to 2 years with waiver of penalties which is commendable in the principle of equity justice in egalitarian theory. One court implementer, in an interview, cited that “litigants who were helped by the judge using practical explanation encourages them to trust and not be afraid of the courts”.³⁶

It is important to note that litigants and ordinary citizens view the courts as protective places for judgment.³⁷ Judges of court must think justly that plain man maybe ignorant of the rules of law.³⁸ This affirms that the marginalized individual defendant benefited from the decision on small claims cases through the Small Claims Court intervention which is consistent to equity justice of egalitarian theory. The marginalized litigants interviewed also affirmed that the Small Claims Court had empowered them to assert their rights. The judges listen to the opinions of both parties, thus establish trust to the court, and giving hope to the poor who also are mostly uneducated.³⁹

2. Recovery of Civil Claims through Small Claims Courts

Another theme which emerged in this study is the effectiveness of the Small Claims Courts in the recovery of civil claims. The Small Claims Courts are effective because cases resolved led to the recovery of the claims by the plaintiffs where the Courts helped in upholding the rights of the marginalized to recover their money in a fast and inexpensive way.⁴⁰ The recovery of civil claims through the Small Claims Courts manifests that these courts have helped the marginalized, thus considered commendable, but limited only in Medan Indonesia where majority of their plaintiff are individuals against corporation defendant. Cases resolved based on the merits of case in court which is in contrast to other parts of Indonesia.

In the Philippines, on the other hand, the resolution of cases both on compromise agreement, and on merits, and the recovery of money are all commendable. This is consistent in the cases of all five cities included in the study: Manila, Cebu, Iloilo and General Santos. The high compromise agreement as facilitated by judges is commendable as this works for the advantage of both parties,⁴¹ as well as the provision of the writ of execution, a mechanism in cases of failure of defendant to pay the claim of the plaintiff. This affirms the state’s role and exclusive responsibility in the enforcement of

rule,⁴² and the achievement of the substantive justice in equity of egalitarian theory has been served. The parties can resort to multi channels to pursue their rights based on their standpoints and economic situations.⁴³ This execution mechanism is an integral component of rectifying the civil damages of the parties in the implementation of egalitarian theory. One of the litigants states that “I recovered my civil claims through the Small Claims Cases on the interest agreed upon in court. The filing fee was refunded also and that judgment was fair to both parties.”

Conclusions

Small Claims Case of Indonesia and the Philippines were set up with the same objectives of making justice accessible to the marginalized of society, coming up with the following conclusions. (1) Both countries implemented Small Claims Cases is informal and simplified procedures without legal counsel, thus helpful to the defendants compose of the poor in Southeast Asia, 90 percent of whom live in Indonesia and the Philippines.⁴⁴ (2) Majority incurred loans from the plaintiffs' corporation, and both countries achieved expeditious settling of disputes arising from these loans at an average of one month. (3) There is perception of Small Claims Court as increasing access of justice to the poor without hiring lawyers but legal efficiency is limited due to the low public awareness, thus the limited utilization of the Court by the marginalized. (4) Delays in litigation are attributed to the failure of the defendant to appear in hearings, and non-existent of address to serve the summons. (5) Effectiveness in upholding the right of the marginalized was achieved through compromise agreement is commendable to the Philippines judges. (6) The recovery of Civil Claims in the Philippines was achieved against exorbitant fees and the writ of execution completed the settlement of civil obligations claimed in court, while in Indonesia there is still a challenge to improve the court resolution of judgment default guidelines in order to increase compromise agreement facilitated in court and include writ of execution in the Small Claims rules. The Small Claims procedure is designed to enable “the man in the street” to take his case to court and, if successful, to obtain a court award.⁴⁵ (Whelan, 1990)

Recommendations

- *Public information awareness.* The Public awareness of Indonesia and the Philippines should be strengthened to improve access of the individual plaintiff the primary.
- *Increase of amount covered.* The Small Claims Cases should eventually increase amount of cases to be filed in court.
- *Withdrawal of Cases.* Indonesia Small Claims should adopt mechanism to address the high withdrawal of cases by the plaintiff.

Public perspectives of court procedure need to enhance protection against fear, refuge against abuse and coercion by the debtors to improve court accessibility to the poor. This mechanism is mandatory to be integrated in the Civil Code of Indonesia for the uniformity and stabilization of the implementation.

- *Usury Law.* Indonesia and the Philippine usury law needs to be amended to lower interest rates at less than 2.5 per month and 12 percent per annum respectively. There should be restriction of multiple accrued interest rates.
- *Generation of jobs and development of skills.* The government should initiate skills-development activities so that debts incurred by the poor and the marginalized, with government regulated low interest rates, will capitalization for activities that will generate jobs and help out of debt traps. (Mitchell, et. al, 2015). This leads to affirm the “political efficacy” in all opportunities to defend and advance the rights and interests of the marginalized and excluded people in the Asean region like the Philippines and Indonesia.⁴⁶ (Abadi,2015)
- *Small Claims Cases Training.* In Indonesian Judges and court personnel in Small Claims Court, there is a need for special training for judges in terms of facilitating and mediating between parties handling inquiries and apprehensions. This facilitates lasting justice settlement.

Endnotes

1. Tabalujan, B., 2000. “Features - The Indonesian Legal System: An Overview” <http://www.llrx.com/features/indonesia.htm> [April 10, 2012]
2. Quisumbing, J., 2005 *De Mesa v. Pepsi Cola Products Phils., Inc.*, G.R. Nos. 153063-70, Aug. 19, 2005, 467 SCRA 433, Central Book Supply, Inc. Manila, Philippines
3. Armytage, L, Searching for Success in Judicial Reform, Oxford University, 2009.
4. Supreme Court of the Philippines, 2016 A.M 08-8-7-SC the 2016 Revised Rules of Procedure for Small Claims Cases
5. Kadafi, B., 2016 “Revitalizing Indonesian Civil Justice”, <http://www.thejakartapost.com/news/2016/03/29/revitalizing-indonesian-civil-justice.html> [April 13, 2017]
6. Creswell, J. W, Educational research Planning, conducting, and evaluating quantitative and qualitative research (4th ed.). Boston, MA Pearson, 2012.
7. Braun, V., & Clarke, V., 2006 Using thematic analysis in psychology. Qualitative Research in Psychology, <http://dx.doi.org/10.1186/1040751406000037>

- org/10.1191/1478088706qp063oa [January 31, 2019] pp. 77-101.
8. Freeman, S., *A Theory of Justice: John Rawls* Bellnap Press of Harvard University Press: Cambridge, 1971, pp. 60-83.
 9. Supreme Court of the Philippines, A.M 08-8-7-SC the 2016 Revised Rules of Procedure for Small Claims Cases, 2016.
 10. Stout R., 1824 Chief Justice England Practice of Attorneys in the Court of Westminster (Scott vs. Bye, 2 BING 344).
 11. Comparative Analysis of Government Policies in Small Claims Cases, Universiti Putra Malaysia, Selangor Malaysia, 2018, pp. 65.
 12. Agpalo, R, Statutory Construction, Rex Printing Company, Inc. Quezon City, Philippines, 2009.
 13. Miklo, A, Institutions in Global Distributive Justice, Edinburgh University Press Ltd, Great Britain, 2013.
 14. Agpalo, R, Statutory Construction, Rex Printing Company, Inc. Quezon City, Philippines, 2009.
 15. Indonesia Supreme Court, Small Claims Procedure Regulation No. 2 of 2015, Jakarta Indonesia, 2015.
 16. Comparative Analysis of Government Policies in Small Claims Cases, Universiti Putra Malaysia, Selangor Malaysia, 2018, pp. 66.
 17. Villarama Jr., M., 2016 Reflections on “Reasonable Promptness” In Disposition of Cases http://ca.judiciary.gov.ph/index.php?action=mnuactu al _contents&ap=j7070 [June 25, 2018]
 18. Miklo, A, Institutions in Global Distributive Justice, Edinburgh University Press Ltd, Great Britain, 2013.
 19. Lessnoff, M, John Rawls, *A Theory of Justice* Cambridge, Harvard University Press, Massachusetts, 1971.
 20. Shapiro, M, *Courts: A Comparative Political Analysis*, University of Chicago Press, Chicago, 1981.
 21. Comparative Analysis of Government Policies in Small Claims Cases, Universiti Putra Malaysia, Selangor Malaysia, 2018, pp. 70.
 22. Walker, J. 2016 Political Science And The Politics Of The Past: Towards An Integrated Typology Of Power In Pre and Early-Modern Southeast Asia, *Jebat: Malaysian Journal of History, Politics & Strategic Studies*, Vol. 43 [2] [December 2016];, 87
 23. Kojima, T, *Small Claims Court A Comparative Study*, Oxford Clarendon Press, New York, 1990/
 24. Rawl, J. ,1971 *Theory of Justice*, Harward University Press, <http://web.csulb.edu/~cwallis/382/readings/160/TheoryofJustice.html> [Feb. 28, 2019]
 25. Chiang, H. & Ting, J, An Analysis Of The Debate Between Economic Globalization And Regionalization Based On Rawls’s Theory Of Justice *Jebat: Malaysian Journal of History, Politics & Strategic Studies*, Vol. 43 [1] [July 2016], p.25

26. Ibid, p. 23
27. Comparative Analysis of Government Policies in Small Claims Cases, Universiti Putra Malaysia, Selangor Malaysia, 2018, pp. 73
28. Ibid., p. 73
29. Whelan, C, Small Claims Court A Comparative Study, Oxford Clarendon Press, New York, 1990/
30. Comparative Analysis of Government Policies in Small Claims Cases, 2018, Universiti Putra Malaysia, Selangor Malaysia. 2018, pp. 75
31. Ibid, p. 76
32. Vinod, M.J. Deshpande, M, Contemporary Political Theory, PHI Learning Private Limited, Delhi, 2013.
33. Comparative Analysis of Government Policies in Small Claims Cases, Universiti Putra Malaysia, Selangor Malaysia, 2018, p. 77
34. Ibid, p. 78
35. Noonan, J, The Scholastic Analysis of Usury, Cambridge, Harvard University Press, Massachusetts, 1957.
36. Comparative Analysis of Government Policies in Small Claims Cases, Universiti Putra Malaysia, Selangor Malaysia, 2018, pp. 70
37. Kojima, T, Small Claims Court A Comparative Study, Oxford Clarendon Press, New York, 1990.
38. Stout R. , 1824 Chief Justice England Practice of Attorneys in the Court of Westminster (Scott vs. Bye, 2 BING 344)
39. Comparative Analysis of Government Policies in Small Claims Cases, Universiti Putra Malaysia, Selangor Malaysia, 2018, pp. 78.
40. Ibid, p. 79.
41. Ibid, p. 80.
42. Rohl, D. ,Small Claims Courts in Federal Republic of Germany, A Comparative Study, edited by Christian Whelan, Oxford Clarendon Press, New York, 1990.
43. Kojima, T, Small Claims Court A Comparative Study, Oxford Clarendon Press, New York, 1990.
44. United Nation Development Program, 2017 Asean-China-Undp Financing The Sustainable Development Goals In Asean, http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/Financing-SDGs-in-ASEAN.html [June 27, 2018]
45. Whelan, C, Small Claims Court A Comparative Study, Oxford Clarendon Press, New Yor, 1990.
46. Abadi, A. Between Asean Demos And Asean Kratos: The Genesis Of Asean Public Spheres, *Jebat: Malaysian Journal of History, Politics & Strategic Studies*, Vol. 42 (2) (December 2015): 1-22 p. 14

References

- Abadi, A. , 2015. Between Asean Demos And Asean Kratos: The Genesis Of Asean Public Spheres, *Jebat: Malaysian Journal of History, Politics & Strategic Studies*, Vol. 42 (2) (December 2015): 1-22 p. 14.
- Agpalo, R., 2009. *Statutory Construction*. Rex Printing Company. Inc. Quezon City: Philippines.
- Armytage, L ., 2009. *Searching for Success in Judicial Reform*. Oxford University.
- Braun, V., & Clarke, V. , 2006. *Using Thematic Analysis In Psychology*. Qualitative Research in Psychology, <http://dx.doi.org/10.1191/1478088706qp063oa> [January 31, 2019]
- Chiang, H. & Ting, J., 2016. An Analysis Of The Debate Between Economic Globalization And Regionalization Based On Rawls's Theory Of Justice *Jebat: Malaysian Journal of History, Politics & Strategic Studies*, Vol. 43 [1] [July 2016] , p. 25
- Comparative Analysis of Government Policies in Small Claims Cases*. 2018. Universiti Putra Malaysia. Selangor Malaysia pp. 65, 66, 70, 73, 75-80.
- Creswell, J. W. , 2012. *Educational Research Planning, Conducting, And Evaluating Quantitative And Qualitative Research* (4th ed.). Boston, MA Pearson.
- Freeman, S. ,1971. *A Theory of Justice: John Rawls*. Bellnap Press of Harvard University Press: Cambridge, pp.60-83
- Indonesia Supreme Court. 2015. *Small Claims Procedure Regulation No. 2 of 2015*, Jakarta Indonesia
- Indonesia Supreme Court. 2016. *Indonesia Supreme Court Case Inventory. 2016- 2017*. Jakarta. Indonesia
- Kadafi, B., 2016. "Revitalizing Indonesian Civil Justice". <http://www.thejakartapost.com/news/2016/03/29/revitalizing-indonesian-civil-justice.html> [April 13, 2017]
- Kojima, T. 1990. *Small Claims Court A Comparative Study*. Oxford Clarendon Press: New York
- Lessnoff, M. 1971. *John Rawls, A Theory of Justice Cambridge*. Harvard University Press: Massachusetts.
- Miklo, A. 2013. *Institutions in Global Distributive Justice*. Edinburgh University Press Ltd. Great Britain.
- Mitchell, J. Mouratidis, K. and Weal, M. , 2015 The long-term relationship between poverty and debt, Joseph Rowntree Foundation, The Homestead, 40 Water End, York YO30 6WP. https://www.jrf.org.uk/report/long-term-relationship-between-poverty-and-debt#j1_downloads_0 [July 21, 2018].
- Noonan, J. 1957. *The Scholastic Analysis of Usury*. Cambridge. Harvard

- University Press. Massachusetts.
- Philippines. 2008. *Philippines Supreme Court Docket, 2008-200.9* Manila: Philippines.
- Philippines. 1993. *Republic Act 7160 The Local Government Code of 1991*. Metro Manila :Cacho Pub. House, Sec. 417
- Quisumbing, J. 2005. *De Mesa v. Pepsi Cola Products Phils., Inc.*, G.R. Nos. 153063-70, Aug. 19, 2005, 467 SCRA 433, Central Book Supply, Inc. Manila, Philippines.
- Rawl, J. 1971. *Theory of Justice*, Harward University Press, <http://web.csubl.edu/~cwallis/382/readings/160/TheoryofJustice.html> [Feb. 28, 2019]
- Rohl, D. 1990. *Small Claims Courts in Federal Republic of Germany*. A Comparative Study edited by Christian Whelan, Oxford Clarendon Press: New York.
- Shapiro, M. 1981. *Courts: A Comparative Political Analysis*. University of Chicago Press. Chicago.
- Stout R.,1824. *Chief Justice England Practice of Attorneys in the Court of Westminster* (Scott vs. Bye, 2 BING 344)
- Supreme Court of the Philippines. 2016 A.M 08-8-7-SC the 2016 Revised Rules of Procedure for Small Claims Cases.
- Tabalujan, B., 2002. "Features - The Indonesian Legal System: An Overview" <http://www.llrx.com/features/indonesia.htm> [April 10, 2012]
- United Nation Development Program, 2017 Asean-China-Undp Financing The Sustainable Development Goals In Asean, http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/Financing-SDGs-in-ASEAN.html [June 27, 2018]
- Vallas, R, & Boteach, M. 2014. *The Top 10 Solutions to Cut Poverty and Grow the Middle Class*.<https://www.americanprogress.org/issues/poverty/news/2014/09/17/97287/the-top-10-solutions-to-cut-poverty-and-grow-the-middle-class/> [July 27, 2018]
- Villarama Jr, M., 2016. Reflections on "Reasonable Promptness" In Disposition of Cases http://ca.judiciary.gov.ph/index.php?action=mnuactu_al_contents&ap=j7070 [June 25, 2018]
- Vincent, R. J. 1986. *Human Rights and International Relations* Cambridge: RIIA/Cambridge University Press.
- Vinod, M.J. Deshpande, M. 2013. *Contemporary Political Theory*. PHI Learning Private Limited: Delhi
- Vyas, J. , 2012. Poor Financial Literacy For Poor And Vulnerable Group. Shree Mahila Sewa Sahakari Bank Ltd. <https://www.oecd.org/finance/financial-education/49649732.pdf> [July 27, 2018]
- Walden, M. ,2017 "90 percent of Southeast Asia's poor live in Indonesia and the Philippines" Nov. 2017 <https://asiancorrespondent.com/2017/11/90-percent-southeast-asias-poor-live-indonesia-philippines/#MfteLZsv>

BDzseh5v.99 [July 18, 2018]

Walker, J. 2016 Political Science And The Politics Of The Past: Towards An Integrated Typology Of Power In Pre and Early-Modern Southeast Asia, *Jebat: Malaysian Journal of History, Politics & Strategic Studies*, Vol. 43 [2] [December 2016];, p. 87

Whelan, C., 1990. *Small Claims Court A Comparative Study*. Oxford Clarendon Press: New York.

Biography Notes

Glenda E. Feliprada, (gfeliprada69@gmail.com), Phd in Philosophy in Politics and Government at Universiti Putra Malaysia, Selangor, Malaysia. Her published book in Justice for the Poor: “How Adequate the Judicial Reform in the Philippines?” and journal article entitled Resolution in Small Scale Financial Claims: The Malaysian Experience”. Her research interests are Judicial Reforms, and Justice for the Marginalized in the Society.

Prof. Jayum Anak Jawan, (jayum@upm.edu.my), Professor in Politics and Government at Universiti Putra Malaysia, Selangor, Malaysia. His research interests are Politics of Marginal/Minority Groups, Electoral Politics, Nation-making, and Political Culture and Behaviour.

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