



Access to Justice From a Human Rights Perspective

Hercus Pereira dos Santos

Universitas: Instituto de Sao Joao de Brito, Kasait-Likisa

Corresponding Author: Hercus Pereira dos Santos santoshercus10@gmail.com

ARTICLE INFO

Keywords: Human Rights, Resolution, Conflict, Justice, Rule of Law, Introduction

Received : 21 July

Revised : 23 Agustus

Accepted: 23 September

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ABSTRACT

Access to formal state of justice in Timor-Leste is one of the major problems as a logical consequence of a process of building a new state like Timor-Leste. We have seen that Timor-Leste at the time of its restoration of Independence has been facing a lack of its qualified human resources in the area of justice. The public questions a lot the process of justice in the courts in respecting human rights especially in relation to the time limit of the trial, the preventive detention that exceeds the time without a fixed date for the trial, the problem of evidence, the trial of minors, torture and homicide in preventive detention, the problem of the use of the Portuguese language in court and there are many cases pending in court. Even so, the state seeks to make a lot of effort so that justice can be accessible to all citizens through the judicial reform that this government makes and the formation of judges, public defenders, prosecutors, judicial officers and mobile courts. Timorese leaders seek to establish Timor-Leste as a state of law where state positive law regulates the entire life of the state and the people. One of the indications of a rule of law is the guarantee of access to justice to assert and protect human rights of the timorese people. We have seen that in Timor-Leste, not only does the state justice system exist, but also the state of Timor-Leste values and promotes the use of the traditional justice system, especially in rural communities, as a quick and accessible solution in the search for the solution and resolution of the conflict. Therefore, we can consider that the state of Timor-Leste seeks to establish the state and traditional mechanism to help every citizen in accessing justice

INTRODUCTION

Today, Timor-Leste faces crucial and fundamental challenges in the process of building a Democratic Rule of Law related to access to justice; fair trial. We see that many people speak, question and give their opinion about the justice process in the country.

The problems in justice are not new. In human history, dissatisfaction with justice has always been related to rulers who often make arbitrary, unjust judgments, judge according to their desires to cause injustice to the poor, and do not offer equal treatment in the process of justice. These problems arise because they are related to governance and politics related to the abuse of power.

LITERATURE REVIEW

Rulers of the past abused power because they believed that their rule was legitimized by Lulik or by God (Divine) and that no one could oppose their rule. They make people see them as representatives of God or Lulik. The people respected them and praised them as Kings, Barons, Amu, Na'i, Maun-Boot. On the other hand, it is also linked to his political interest in power. To keep the government strong, they sometimes make people afraid of them, so that they can continue to rule. From these issues, we see that the abuse of power is the mother of the behavior of rulers who are too involved in justice to do everything justly, according to their wishes, and to strengthen their government.

METHODOLOGY

The methodology used in this work is the observation and library research to construct knowledge about the access to justice from Human Rights perspective in East Timor with one principle purpose is to identify the problems and to seek solutions to improve the service of citizens in relation to justice.

RESULTS AND DISCUSSION

In the Western world that has become a reference for us and for the history of Human Rights, we all know that one of the main texts that contributed to the elaboration of global and state mechanisms for the protection of Human Rights and access to fair treatment against the power of rulers in the arbitration of the Magna Carta de Justiça is (1215) in England. Since the barons of England were not happy with King John the Landless, who made him king because King John the Landless ruled against the will of the earthlings, the earthlings and their forces marched to the English capital to express their demands in May 1215. Barons' Articles, which became the basis of Magna Carta.

The Barons forced King John the Landless to recognize the privileges of the Barons and also to limit the King's rule. Firstly, this document benefits the dates, but people also benefit, because it applies to everyone. The Magna Carta became the instrument that gave rise to the concept of due process of law; due process. That the trial process must be fair and forbidden from arbitrariness on the part of the King and also of Parliaments. According to Professor António José Fernandes writes in his book entitled Human Rights and European Citizenship he says, on page 25, that "The Magna Carta is one of the documents that are part of the historical path of human rights; because it is intended to safeguard

personal liberty against the abuse of power". That the Magna Carta is one of the first historical documents of Human Rights, because it aims to protect personal liberty against the abuse of power. Because Magna Carta states that "no free man may be arrested, subject to imprisonment, deprived of his property, exiled or subjected to other forms of violence, except on the basis of a trial in absentia, in accordance with the law of the Kingdom". Thus, Magna Carta strictly prohibits, does not allow, the process of justice that rulers carry out according to their own desires. Magna Carta limits the arbitrary power of the ruler in the courts.

The right to due process is also found in other important human rights texts, such as the Bill of Rights (1688) and the Settlement Act (1700). In the United States of America, in 1777, the New York Bill of Rights also mentioned the word due process of law. Therefore, in all States that consider themselves Democratic by Law, they always try to avoid arbitrariness on the part of the rulers towards all citizens. Not only demonstrated through the speeches, rhetoric, lectures, thoughts and empty words of the rulers in the campaign, but they laid it down in their Constitution and also in all their laws.

Finally, the Universal Declaration of Human Rights, in its article 1, states that "All human beings are born free and equal in dignity and rights...". Article 6 states that "Everyone has the right to the recognition, everywhere, of his legal personality". Article 7 states that "Everyone is equal before the law...". Article 8 states that "Everyone has the right to receive from the competent national courts an effective remedy for acts that violate the fundamental rights recognized by the constitution or by law". 10 states that "Everyone has the right, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations or of any criminal charge against him".

In the International Covenant on Civil and Political Rights, in Article 14, it is also stated that "Everyone is equal before the courts of justice. accusation in criminal matters directed against them, or the answers about their rights and obligations of a civil nature..." Article 26 states that "All persons are equal before the law and are entitled, without any discrimination, to equal protection of the law.

We note that international human rights instruments protect and guarantee that all individuals, whether nationalized or not, should receive fair treatment in their cases. In Timor-Leste, and also in some other countries, the poor and needy can also have access to the Court to defend their interests because the State ensures the right to legal representation through the Public Defender's Office. In Timor-Leste, the right to free legal representation is further reinforced in Decree-Law No. 38/2008 in articles 3 and 4.

In our Constitution, in article 1, it is stated that "The Democratic Republic of Timor-Leste is a Democratic State of Law...". Article 16, number 1 states that "All citizens are equal before the law, enjoy the same rights and are subject to the same duties" Article 26, number 1 states that "Everyone is guaranteed access to the courts to defend their legally protected rights and interests" and also in paragraph 2 it is stated that "Justice cannot be denied due to insufficient economic

means". In the Courts, Article 118(1) provides that "They are organs of sovereignty with competence to administer justice on behalf of the people".

The penal code also contains some articles that can be used to ensure that a citizen can receive fair justice. As an abuse of power, it is provided in Article 297 that the public official may not use his function with the intention of obtaining an illegitimate advantage or causing damage to others. Article 288 prohibits a lawyer or public defender from prejudice to the case entrusted to him. There is also Article 282 on the denial of justice. I believe that other articles and some laws can be used as a way to avoid various violations of access to justice for the poor and needy. The above-mentioned articles showed that the rulers of the new state of Timor-Leste seek to ensure that all citizens receive justice for their problems through trial in court.

Unfortunately, in society, although the laws are very well written in the Constitution, the Penal Code, the Code of Criminal Procedure, the Civil Code or the Code of Criminal Procedure, the laws or decree-laws and our laws in accordance with Article 9 of our Constitution must follow the international laws that we approve or authorize. he has no good will to follow the law, he will use the power he has to do everything according to his will, we are falling into the abuse of power. I can say that the abuse of power seen in the legal process needs to be proven in court, but the proof of the abuse of power in society is that the population has lost confidence in the justice of the state, the population has also lost hope of getting justice for their problems, life in society will be broken because each person will find a way to bring justice to those who commit various crimes with their cars or motorcycles that do not have license plate numbers according to the population, as well as a way to intimidate the population, the number of crimes will appear higher, families will become unstable, confusion will appear and the state of Timor-Leste is slowly collapsing. One day Timor-Leste will continue to be a dream in the poetry of poets.

In the context of Timor-Leste it can be a reference to the abuse of power committed by rulers in the Portuguese era and also in the Indonesian era to oppress the people and resistance leaders as a guide to independence. Perhaps during independence there was abuse of power by rulers to oppress the poor and needy? I believe that the ruler who was a warrior who suffered and received several violations of his rights and the rights of the people of Timor-Leste will not forget how painful it was to suffer and violate these illegal occupations of Indonesia. Now at the time of independence to apply again to small and weak peoples? Destroy the Timorese society that you dream of building? Democratic Rule of Law built with all the suffering and difficulties? And your dreams in difficult times? Where to take Timor-Leste? These issues are only a reflection, but I firmly believe, and I firmly believe even in the crisis situation, that the ruler who is the leader and guide of the people of Timor-Leste towards independence will do everything to ensure that the state of Timor-Leste and all peoples are free from discrimination, suffering and violation of their rights and lives.

Access to fair justice is a fundamental issue in a democratic state based on the rule of law. According to Larenz, "the idea of the Rule of Law is based on the requirement that a "just law" be observed in it, and it is the duty of the State to create and execute it". Ronnie Preuss Duarte then states that "It is impossible to

speak absolutely, in a Democratic State of Law, without citizens being guaranteed, in all its fullness, the possibility of, under equal conditions, resorting to the courts for the protection of their respective subjective legal interests". Canotilho states that "from the principle of the rule of law one deduces, without a doubt, the requirement of a fair and adequate procedure for access to the right and the realization of the right. can condition the result". Or that it must be through a substantially fair process, because the procedure can become a condition for obtaining the result.

We can expect fair justice when the judiciary, including all components of the state justice process, is free from the influence and interference of political power. Here I am talking about political power and not executive or legislative power, because John Locke thought that political power should be separated. It also influenced Charles de Montesquieu, who later developed the theory of separation of powers. According to Montesquieu, political power is divided into three: the legislative power, which is part of Parliament, the executive power, which is part of the Government, and the judicial power, which is part of the Courts. But, theoretically, we see the political powers as something that divides them, according to scholars, "The three powers must be so balanced that none of them can interfere with the others and override any of them", but in reality, they are sometimes always linked to each other. We can only have confidence in the judiciary when it is not interfered with by the other two political powers, when we have built all the right systems and instruments to guarantee the full independence of the judiciary. The problem is that the executive power, as a government, comes, as a result, from the legislative power, as a parliament. That in Timor-Leste, or also in some other countries, the formation of the government (executive power) takes place through legislative elections. That according to the party that has the most votes in the National Parliament (legislative power) or the alliance of parties in the National Parliament (legislative power) that obtains the most votes can form the government (executive power). Therefore, the link between the executive branch (government) and the legislative branch (parliament) is very strong. Let's say Party A is in power. Then, logically, in the interest of taking power, the deputies of party A in the National Parliament will make laws that favor their interests. Laws that are against their interests are blocked, kept in the drawer for various reasons, or they can vote against and abolish the law. When the government makes a decree-law, it will be approved in the National Parliament because it certainly reflects its interests.

If there are different organs of sovereignty of the State, the Government and the National Parliament, and each one, theoretically independent, will have a strong influence on each other, how can we be sure that the Public Defender's Office, as a component of the executive body, cannot be influenced by political power? When small people face any problems related to people close to power or those in power, they will face various obstacles to obtain fair treatment in a fair and proper process and good procedures to obtain good results in accordance with the interests of small people, and not in accordance with the mandate of the Titular Ombudsman or the interests of some interested persons again. Otherwise, can the poor ask the state to spend the budgets so that the Public Defenders can

do their own work? For families? For friends? Or for the poor who seek justice? Therefore, what is necessary to do between the Titular Defender and the population that seeks justice is to make an agenda and communication between them so as not to cause misunderstandings, concerns of the population that does not know the law can get some explanation for their needs.

Here too, I think that perhaps, in the future, the Public Defender's Office can become an independent body, not subordinate to the executive power, to guarantee its work of free legal aid to the poor and needy, but also with complete independence. When it is submitted to the executive body, we cannot have confidence in its work. We also need to have a good control mechanism for their work. Here, my intention and my dream is to establish a Democratic Rule of Law that can guarantee that all people receive fair and adequate treatment and access to state justice. I speak to all the people, to a people of the present time or to the peoples of the future; new generations and all the people of Timor-Leste. Regardless of tribe, race, color, religion, etc.

Some of my other experiences and the observation of other cases related to the authorities make me think that access to justice for the people of Timor-Leste, so that their cases can be judged fairly and independently, is the dream of Timor-Leste, as a democratic state of law that seeks to guarantee the protection of human rights. Because when justice is mixed with the abuse of power by rulers, state mechanisms to help solve problems can sometimes become a stage for the theater of rulers.

Therefore, a very important part of the rulers' control against the abuse of power are the leaders of the resistance and include the Catholic Church, Civil Society and the independent and professional media. I would be especially afraid if the Catholic Church, Civil Society and the independent and professional media lost their voice to defend truth, justice and human rights. Now, to the leaders of the Maun-Boot resistance, we ask: who and for what did independence take independence? If it wasn't for us? If it wasn't a good and quiet life? How can the authorities repeat what the Indonesian military did in Indonesia's time with us, the poor?

We all put our hopes in resistance. Because they are the guidelines for the construction of a State that we all call the Democratic Republic of Timor-Leste. They used to say that the liberation of the country is the liberation of the people. Now, how is the liberation of the people? What about your first dream of building this state? Remember the previous promises to the peoples. Without you, the country you built will either advance or become a mess.

In the State of Timor-Leste, which calls itself a Democratic State of Law, in addition to placing our hope in resistance, we also need the media not to interfere with the rulers. There will be no prosecution of journalists when they raise cases related to governance and administration against state officials. Because the ruler of the State exercises public power in the public interest. Authorities can use the right of reply to claim that what journalists write is wrong. We also need the Catholic Church to continue to be The Voice of the Voiceless, as it was during the war. We need an active civil society. We need citizens not to be apathetic in the face of the social crisis that has arisen. We are not only talking about the current

case, but we are concerned about its negative effects on the future of the State of Timor-Leste. A ruler rises and a ruler falls, but what about the life of the State?

But another problem I see is that the law in today's modern state has become a law that acts on society. The law becomes an instrument of the State. Law is no longer an aspect of society that coexists with the population and seeks to solve the population's life problems; The important thing is to try to establish a sense of justice in the population. When there is a law acting on society in the modern state, the question of justice for the population ceases to be important, as the chief justice of the United States of America, Justice Brandeis, said: "Normally, the need to resolve a case on the basis of the 'rule of law' is seen as more important than the question of resolving the case correctly." As the rule of law is established by the rulers, it follows their interests.

The problem we face is that we are influenced by positivist-legalist thinkers who see everything according to the law, while our society is still in a society that we can call traditional society, which values the community's sense of justice more than existing laws. That is why we always hear the population say that the law is unfair. Our country is in a conflict between the modern and the traditional. Rulers make laws according to their interests and their vision, which sometimes do not meet the wishes of the population. But I personally hope that politicians will make laws to accumulate the aspirations of the people, because in the end the people will be affected by the laws of the state. And the rulers too, when all the rules come back and live as a population, also in the laws of the community state, we humans create and need to do for the needs of us humans, to establish the common good of the life of the population in a good and strong state.

CONCLUSION AND RECOMMENDATION

I see and perhaps I can conclude that in the current situation of Timor-Leste the solution of the problems always depends on the goodwill of the rulers and the leaders of the resistance. But especially in the Maun-Boot of resistance. I sincerely declare that I, and I believe that other peoples too, do not dare to oppose the Maun-Boot of the resistance. Because against them it means suffering and suicide. They are like God that we can see in the world of Timor-Leste, which has a great power to influence the lives of the Timorese people. Therefore, what I am writing here is to touch your hearts, to touch your hearts, to humbly ask for your help and goodwill to bring good solutions to our people and also to the darkness of the Democratic Republic of Timor-Leste to give hope to the poor and needy people, to the poor people, that we liberate the homeland of Timor-Leste to free the people from any oppression. So that the people do not suffer anymore!

Now, theoretically from the point of view of the Democratic Rule of Law, everything depends on the foundation that rulers are founding. Because the rulers who are in power draw the general line of state policy. The rulers who define the strong or weak foundation. That depends on the rulers. One of the foundations of the foundation of the State is the law. Because good laws will strengthen the state, and bad laws will weaken the state. Good laws are laws that protect human rights.

FUTHER STUDY

This research still has delays, so it is necessary to conduct further research related to the topic Access to Justice From a Human Rights Perspective in order to improve this research and add insight for readers.

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