



**UNIVERSITI PUTRA MALAYSIA**

***COMPARATIVE ANALYSIS OF GOVERNMENT POLICIES IN SMALL  
CLAIMS CASES IN INDONESIA, MALAYSIA AND THE PHILIPPINES***

**GLEND A E. FELIPRADA**

**FEM 2019 4**



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By

**GLEND A E. FELIPRADA**

**Thesis Submitted to the School of Graduate School, Universiti Putra  
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Doctor of Philosophy**

**December 2018**

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Abstract of thesis presented to the Senate of Universiti Putra Malaysia in fulfillment of the requirement for the degree of Doctor of Philosophy

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**December 2018**

**Chairman : Professor Jayum Anak Jawan, PhD**  
**Faculty : Human Ecology**

The Small Claims Courts in Indonesia, Malaysia and the Philippines are established to increase access to justice by the marginalized and disadvantaged individuals who have no financial capacity to secure legal assistance and protection. These courts are supposed to protect the rights of the plaintiff and increase their access to justice through low cost and fast litigation of cases. However, there are corporations who tend to manipulate the legal mechanisms in their favour and against the plaintiffs. This situation gave impetus to this study and raised the question on how the Small Claims policies in the three countries protect the rights of the plaintiffs and increase their access to justice. Specifically, this study aims to: 1) compare and contrast the government policies and mechanisms implemented by the Small Claims Court in the three countries; 2) elicit the perspectives of the implementers and the litigants in terms of the relevance, feasibility and outcome of the Small Claims Courts; 3) assess the legal effectiveness of the Small Claims Courts given the existing resources, manpower and other limitations; and 4) determine the efficiency and effectiveness of resolving Small Claims Cases in upholding the rights of the marginalized and disadvantaged.

The qualitative method of research was used in this study. The primary data were gathered through in-depth interview, and the secondary data were obtained from the court dockets and court resolutions of the Judicial Branch of Indonesia, Malaysia and the Philippines. The participants of this study were 10 court implementers and 10 litigants as plaintiff and defendants in Small Claims Courts from each of the three countries. They were chosen through purposive sampling.

Thematic analysis was used to analyze the primary data gathered through the interviews conducted, and frequency counts, percentage and mean were used to analyze the secondary data obtained from the Judicial Branch of the three countries.

The findings of the study revealed that Malaysia and the Philippines implemented egalitarian theory and litigations were conducted without lawyers. The litigations secured procedural, substantive justice and reciprocity in court resolutions in serving equity between parties. However, Indonesia has to refine Small Claims policy to achieve equity.

In the Philippines and Indonesia, the Small Claims Courts are perceived by the public with diverse political behaviour in favour of the corporate creditors instead of individual debtors, while Malaysia's Small Claims Procedure disqualifies corporations as plaintiffs. The three countries failed to address public awareness for the full empowerment of the marginalized in the society through the government policy on Small Claims Cases. The Small Claims Courts in the Philippines and Malaysia were efficient and effective in the enforcement of payment in compromise agreement with twelve (12) percent legal interest rate per annum and decision on merits with zero interest rates respectively. However, Indonesia failed to achieve the goal of Small Claims Court. Corporations, without restriction of cases withdrawal in court, manipulated extra-judicial settlement in their favour against the plaintiff at the minimum interest rate of two point five (2.5) percent per month.

Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia sebagai memenuhi keperluan untuk Ijazah Doktor Falsafah

**ANALISIS PERBANDINGAN DASAR-DASAR KERAJAAN DALAM  
KESTUNTUTAN KECIL DI MALAYSIA, INDONESIA DAN FILIPINA.**

Oleh

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**Disember 2018**

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Mahkamah Tuntutan Kecil di Indonesia, Malaysia dan Filipina ditubuhkan untuk meningkatkan akses kepada keadilan oleh individu yang terpinggir dan kurang bernasib yang tidak mempunyai keupayaan kewangan untuk mendapatkan bantuan dan perlindungan undang-undang. Mahkamah ini sepatutnya melindungi hak plaintif dan meningkatkan akses kepada keadilan menerusi kos yang rendah dan kes litigasi yang cepat. Walau bagaimanapun, terdapat syarikat yang cenderung untuk memanipulasi mekanisme undang-undang yang memihak kepada mereka dan bertentangan dengan plaintif. Keadaan ini memberi dorongan kepada kajian ini dan membangkitkan persoalan tentang bagaimana dasar-dasar Tuntutan Kecil di ketiga-tiga buah negara melindungi hak-hak plaintif dan meningkatkan akses kepada keadilan. Khususnya, kajian ini bertujuan untuk: 1) membandingkan dan membezakan dasar dan mekanisme kerajaan yang dilaksanakan oleh Mahkamah Tuntutan Kecil di ketiga-tiga negara; 2) memaparkan perspektif pelaksana dan litigan dari segi perkaitan, kebolehlaksanaan dan hasil keputusan daripada Mahkamah Tuntutan Kecil; 3) menilai keberkesanan undang-undang Mahkamah Tuntutan Kecil melalui sumber-sumber sedia ada, tenaga kerja dan batasan lain; dan 4) menentukan kecekapan dan keberkesanan menyelesaikan kes Tuntutan Kecil dalam menegakkan hak-hak individu yang terpinggir dan kurang bernasib baik.

Kaedah penyelidikan kualitatif telah digunakan dalam kajian ini. Data utama dikumpulkan melalui temuramah mendalam dan data sekunder yang diperolehi dari docket mahkamah dan resolusi mahkamah Cawangan Kehakiman Indonesia, Malaysia dan Filipina. Responden dalam kajian ini

adalah 10 orang pihak pelaksana pengadilan dan 10 orang litigan sebagai plaintif dan defenden di Mahkamah Tuntutan Kecil masing-masing dari ketiga-tiga buah negara. Mereka dipilih melalui persampelan bertujuan.

Analisis tematik digunakan untuk menganalisis data utama yang dikumpulkan melalui wawancara yang dijalankan, dan bilangan frekuensi, peratusan dan min digunakan untuk menganalisis data sekunder yang diperoleh dari Cawangan Kehakiman ketiga-tiga negara tersebut.

Hasil kajian mendedahkan bahawa Malaysia dan Filipina melaksanakan teori egalitarian dan litigasi yang dilakukan tanpa peguam. Dakwaan-dakwaan yang diperolehi adalah prosedur, keadilan yang substansif dan timbal balik dalam resolusi mahkamah dalam berkhidmat untuk ekuiti antara pihak-pihak. Bagaimanapun, Indonesia perlu menambahbaik dasar Tuntutan Kecil untuk mencapai ekuiti.

Di Filipina dan Indonesia, Mahkamah Tuntutan Kecil ditanggapi oleh orang ramai sebagai badan yang bertingkah laku politik yang pelbagai yang memihak kepada pemiutang korporat dan bukannya penghutang individu, sementara Prosedur Tuntutan Kecil Malaysia membatalkan perbadanan sebagai plaintif. Ketiga-tiga negara gagal menangani kesedaran orang ramai untuk pemberdayaan masyarakat yang terpinggir melalui dasar kerajaan mengenai Kes Tuntutan Kecil. Mahkamah Tuntutan Kecil di Filipina dan Malaysia adalah cekap dan berkesan dalam penguatkuasaan pembayaran dengan perjanjian berkompromi dengan dua belas (12) peratus kadar faedah guaman setahun dan keputusan merit masing-masing dengan kadar faedah sifar. Walau bagaimanapun, Indonesia gagal mencapai matlamat Mahkamah Kecil. Perbadanan, tanpa sekatan pengunduran kes di mahkamah, memanipulasi penyelesaian tambahan penghakiman yang memihak kepada plaintif pada kadar faedah minimum dua perpuhan lima (2.5) peratus sebulan.

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This thesis was submitted to the Senate of Universiti Putra Malaysia and has been accepted as fulfillment of the requirement for the Degree of Doctor of Philosophy. The members of the Supervisory Committee were as follows:

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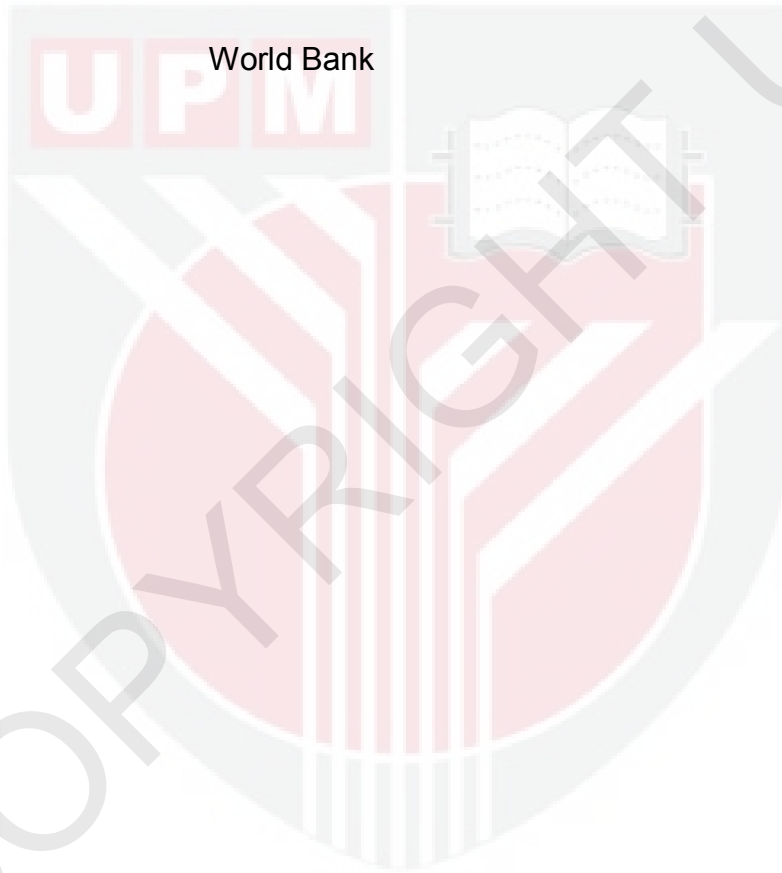
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## LIST OF ABBREVIATIONS

|       |  |
|-------|--|
| ADR   | Alternative Dispute Resolution             |
| APJR  | Action Program for Judicial Reform         |
| CA    | Court Administrator                        |
| CAM   | Court Annex Mediation                      |
| CFI   | Court of First Instance                    |
| CICP  | Center for International Crime Prevention  |
| CRT   | Court Recording and Transcription          |
| EC    | European Council                           |
| EJOW  | Enhanced Justice on Wheels                 |
| ESCPR | European Small Claims Procedure Regulation |
| IDB   | Inter-American Development Bank            |
| IDR   | Indonesia Ruppiah                          |
| JPY   | Japanese Yen                               |
| KLCC  | Kuala Lumpur Court Complex                 |
| MA    | Mahkamah Agung                             |
| MTC   | Metropolitan Trial Court                   |
| McTC  | Municipal Circuit Trial Court              |
| MTCC  | Municipal Trial Court in Cities            |
| NZD   | New Zealand Dollar                         |
| PAO   | Public Attorney's Office                   |
| PSHK  | Pusat Studi Hukum dan Kebijakan            |
| PHP   | Philippine Peso                            |
| PMO   | Program Management Office                  |

|       |   |
|-------|---|
| RM    | Malaysian Ringgit                                 |
| RTC   | Regional Trial Court                              |
| SC    | Supreme Court                                     |
| SCC   | Small Claims Cases                                |
| UNDP  | United Nations Development Program                |
| USAID | United State Agency for International Development |
| USD   | United States Dollar                              |
| WB    | World Bank  |



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# CHAPTER I

## INTRODUCTION

### 1.1 Introduction

This chapter presents and describes the background of the Small Claims Courts. It also discusses the concept of Egalitarian theory consistent with the political theories on political authority in the implementation of government policies as the backbone of the Small Claims also known as “People’s Court”. Many countries have adopted the Small Claims as part of their judicial structure. In all these countries, the purpose of Small Claims is to provide the disadvantaged sector an easy, low cost, and fast access to justice. The assessment of the legal mechanism implemented in Small Claims ensure accessibility to court, adheres to elements of justice, equality, procedural and substantive justice, reciprocity justice and equity of justice for the populace, especially the marginalized sector.

This chapter further provides for a discussion of the Small Claims, specifically in Malaysia, the Philippines and Indonesia as background to establish the problem for this study. It also provides an overview and structure of the research problem that this study seeks to answer.

### 1.2 Background of the Study

The Small Claims Court originated in the 19<sup>th</sup> century in Europe subsequently introduced in Canada and eventually adopted by the United States in the 20<sup>th</sup> century. It was known as “People’s Court” and integrated in the State Courts.

In the United States, Small Claims Cases were initially tried by the Justice of Peace, but was later transferred to the Municipal Court. The issues raised were incompetence, corruptions and erroneous decisions that resulted in the increase volume of appeals in Small Claims Cases filed at the Municipal Court. (Steel, 1981) In the United States, the 50 states adopted the Small Claims approach with distinct differences as to the limits of the money claimed; recognition of legal representation; types of plaintiff (individual or corporation.); staff or self –representing litigants and the like.

The Small Claims Court, as integrated in the State Court, adopted an adversarial model for litigation with the judge as investigator while lawyers were replaced by court clerks in the preparation of cases. (Lillo, 2016)

In 2000, Judicial Reforms included the implementation of pilot programs such as Small Claims Cases on civil issues, and Justice on Wheels for criminal concerns. These programs intended to declog court dockets, decongest jails and ensure speedy disposition of cases as part of the broad spectrum of Judicial Reforms of the World Bank. This was part of its international assistance for the improvement of the judicial governance structure. It spread across the globe with the recognition that judicial integrity and reforms are requisites of inclusive growth and equity by addressing the legal plight of the disadvantaged and marginalized people.

Most litigants are unschooled and their conflict with the law is brought about by their ignorance in legal matters, their dysfunctional family and the misdirection. These observations became a worldwide concern particularly in addressing the plight of the poor and the marginalized that could not access the law efficiently. (United State Institute of Peace, 2016).

The Judicial Integrity Program conceived by the Transparency International and operationalized by the United Nations Center for International Crime Prevention (CICP) was conceptualized by legal experts in Vienna which culminated in the Bangalore Principles of Judicial Conduct producing guidelines in dealing with court corruption, delays in resolution, partiality, and credibility. Moreover, it launched a pilot project on judicial reforms in specific countries. The principle of judicial conduct encompasses ethical standards for officers and members of the bench. It became the basis for countries in enacting and implementing laws according to international standards. (The Bangalore Principles of Judicial Conduct, 2002)

The initiative was adopted by countries in Asia-Pacific region with adaptation of its approaches and implementation modalities based on needs, priorities, participation of stakeholders and adaptability to their culture. The Southeast Asian judicial reform programs obtained monetary support from international funding agencies such as the World Bank, U.S. Agency for International Development (USAID), United Nations Development Program (UNDP), Inter – American Development Bank (IDB).

Since 1994, World Bank, Inter-American Development Bank, and Asian Development Bank have approved loans of more than USD 500 million for judicial reform projects in 26 countries. (Armstrong 1998). The United States Agency for International Development (USAID) spent close to USD 200 million for similar projects in 1990's. (United States Government Accounting Office, 1993). Similarly, other government and private agencies conducted legal transactions through technological upgrading of their institutional structure, training of court employees, assessment and evaluation of existing programs, facilitating case resolution both civil and criminal, and drafting the

judicial Code of Ethics for members and officers of judiciary. (Blair and Hansen, 1994).

Indonesia and the Philippines were among the recipients of the Southeast Asian judicial reform financial assistance extended to developing countries, funded by international agencies since 1994. On the other hand, Malaysia judicial reform programs were funded by its parliamentary government.

Malaysia, the Philippines and Indonesia adopted Small Claims Procedure in 1980, 2008, and 2016 respectively. There were substantial amendments introduced since it was first adopted. These programs were adopted to enable individuals to institute proceedings on their own to claim for money and limits of the amount covered are set by respective statutes.

In Indonesia, and Malaysia, the amount covered does not exceed IDR 200,000,000.00 (TWO HUNDRED MILLION RUPIAHS) (USD13, 714.22), amounting to less than RM 5,000.00 (FIVE THOUSAND MALAYSIAN RINGIT), (USD 1,221.80,). In the Philippines, Small Claims cover not more than PHP 300,000.00 (USD 5,662.92) effective August 1, 2018, amending PHP 200,000.00. (USD 3,748.26) which superseded the PHP 100,000.00 (USD 1,874.01) in 2008 when it was first implemented.

As recipients of the judicial reform financial assistance in developing countries, the implementation of such reform required investment for the retrieval of performance data, monitoring of process and evaluation of outcomes. However, Amytage (2009) stressed that there is inadequacy in evaluation and monitoring of the process. Hence, there was a felt need to review in-depth the viability, efficiency and effectiveness of Small Claims Court by undertaking a comparative analysis of government policies, its process and results in the three countries in Southeast Asia selected for this study.

### **1.3 Problem Statement**

Political Theories on justice in Small Claims Cases involve the provision of services that ensure court accessibility where justice mechanism is implemented by the political authority in the tenets of procedural, substantive and equity for the populace which represent the crux of an efficient government system. In many countries, laws, institutions, and policies governing economic, social, and political affairs discriminate a part of society through the inability to provide opportunities to access justice and opportunities on equal terms.

The marginalized or disadvantaged people seemed to be at the periphery of the law's reach. Informal local norms and institutions govern their lack of knowledge exclude from tapping legal system; on an equitable basis. Since they do not know their rights, they are vulnerable to abuse by authorities and peers or powerful interests groups who are in a position to prevent the marginalized to compete in terms of economics, and to have access to justice. Such discrimination has massive consequences.

Under the Political theories on justice, the law works for everyone; it defines and enforces the rights and obligations of all. The law is the platform through Small Claims; where people get access to justice that improves the condition of the marginalized. This allows people to interact with one another in an atmosphere that is certain and predictable. Thus, the rule of law is not a mere adornment to development; it is a vital source of progress. It creates an environment in which the full spectrum of human creativity with resultant prosperity access. The Small Claims procedure is a systematic process in which the disadvantaged can invoke the law, and seek legal protection.

The law is the platform where the vital institutions of society rest. If the law is the barrier to the disadvantaged people who wish to improve their condition it becomes an obstacle to dignity and security. Accepting and understanding the law in terms of protection and equality of opportunity, and access to fair and neutral adjudication must be ensured to serve as a foundation of justice. This is how egalitarian theory works.

There are no technical fixes for development. For states to guarantee their citizens' right to protection, systems modification must reflect this goal. The legal structure as the central force is part of the reform process, and must be simplified and understood by all. It involves respect and protection toward the fulfillment of human rights. The marginalized, recognizing their rights and opportunities, evolve the efforts to understand their entitlement. The elements of legal empowerment are grounded on the spirit and letter of international human rights law, Universal Declaration of Human Rights, which declares, 'All human beings are born free and equal in dignity and rights.'

If the disadvantaged are to be legally empowered, they must be vested with legal rights. These include the right to vote, to free expression, and to due process. This is the purpose of democracy and an ongoing challenge to implement consistently and equitably.

The Small Claims Court is one of the judicial reforms initiatives that aims to address the vulnerabilities of the poor. This is reflected in John Locke's theory that the protection of citizens is the basic task of the government to

ensure equal protection to life, liberty, and property. (Tuckness, 2018). The state ensures liberty to conduct one's life as one best sees fit, free from the interference of others within the limits of his/her capacity. (Wenar, 2017).

The government policies in Small Claims Court Resolutions based on principles that, "Justice is fairness that persons have equal access to distribution of resources with fair circumstances of opportunities". (Rawls, 2000) "Reciprocity is to secure fitness and proportional return for the good or ill received." (Becker, 2005). John Locke *Second Treaty of the Government* is that effective Political authority organizes human life and secures to protect the peoples' interest, and prescribes general good; and under the law its constituents consented and entrusted to be governed. (Sharpio, 2003)

In this regard, upholding the rights of the citizens is the purview of the judicial system, legislature, and executive branches of the government and is essential in safeguarding the rights of the people and promoting public good. (O'Neill, et. al, 2013) Judicial Equity as reflective of human rights ensures that the law upholds these rights. The law works for everyone when it informs people and enforces their rights and entitlements, including the marginalized and disadvantaged. It becomes the foundation of legal institutions such that people, irrespective of social status, can invoke their rights. (Report of the Commission on Legal Empowerment of the Poor, 2008).

The Small Claims Cases' goal is to increase access to justice by the marginalized and disadvantaged people who have no financial abilities to secure legal counsel to enforce and seek legal protection. However, the legal mechanism was used by the corporation at its advantage against the individuals in Indonesia, and the Philippines. In the case of Malaysia's Small Claims Procedures were benefited by individuals against the corporation and individual in securing low cost, simple and fast litigations. One of the questions that arises is whether the court interventions secure equality of the marginalized or disadvantaged people who are uninformed or uneducated on the parameters of procedural and substantive justice to be observed.

Delays in court litigation on Small Claims also inflict injustice on the disadvantaged and marginalized people. Reduction of this justice deprivation, through court decision, and speedy disposition of cases should be the overreaching goal of a nation's fight for equality and for human rights. The informal dispute resolution mechanism observed in Small Claims can lead to speedy decisions at impressively low cost. Yet, the Small Claims Court often fails in achieving the fundamental goals of equitable judicial decision through fast resolution of cases. (Sharif, 2005).

Because of the foregoing scenario on the implementation of the mechanisms for Small Claims Courts, this research sought to provide answers to several issues, such as, the importance of Small Claims in empowering the marginalized and disadvantaged people in the community; the mechanism of government policies in Small Claims that protect the rights and increase access to justice of the people in the society. The Small Claims efficiency and effectiveness of the mechanism to enforce payment is also a question that requires answer in this study.

The comparative analysis of government policies in Small Claims in Indonesia, Malaysia and the Philippines would identify the best practices and limitations to help improve the judicial mechanism of Small Claims Cases. The other areas which are essential to be assessed are the information dissemination mechanism, review of the legal interest rates, and the refinement of procedures of Small Claims which would be responsive to the needs of the marginalized and disadvantaged.

All of the foregoing pertinent unresolved issues discussed related to the implementation of the mechanisms of the Small Claims Courts led to the following research questions to be addressed in this study:

1. What is the importance of Small Claims in empowering the marginalized and disadvantaged people in the community?
2. How does the government policy in Small Claims protect the rights and increase access to justice of the people?
3. How efficient and effective is the Small Claims mechanism in enforcing payment?

#### **1.4 Research Objectives**

##### **General Objectives**

This study sought 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 through Small Claims Policies. This study covers three countries: Indonesia, Malaysia and the Philippines. Further, this study will assess the court resolutions, achievement of equity of justice both in procedures and substantive mechanism, and upholding the disadvantaged and marginalized people in terms of their rights in consistent with the concept of egalitarian theory.

### **1.4.1 Specific Objectives**

1. To compare and contrast the government policies on Small Claims Court mechanisms adopted by the three countries in terms of access to justice, equity through litigation of cases among the disadvantaged and marginalized people;
2. To elicit the perspectives out of implementers and litigants in terms of the relevance, feasibility and outcomes of the Small Claims Court;
3. To assess the government's legal efficiency in terms of feasibility given the existing resources, manpower and other limitations;
4. To determine the effectiveness of Small Claims Cases in upholding the rights of the marginalized and disadvantaged according to their own perspective.

### **1.5 History of the Small Claims Court**

The Small Claims Court originated in the 19<sup>th</sup> century in Europe subsequently introduced in Canada and eventually adopted by the United States in the 20<sup>th</sup> century. It was known as "People's Court" and integrated in the State Courts.

In the United States, Small Claims Cases were initially tried by the Justice of Peace, but was later transferred to the Municipal Court. The issues raised for the transfer were incompetence, corruptions and erroneous decisions that resulted in the increase volume of appeals in Small Claims Cases filed at the Municipal Court. (Steel, 1981) In the United States, the 50 states adopted the Small Claims approach with distinct differences as to the limits of the money claimed; recognition of legal representation; types of plaintiff (individual or corporation.); staff or self –representing litigants and the like.

The Small Claims Court as integrated in the State Court adopted an adversarial model for litigation with the judge as investigator while lawyers were replaced by court clerks in the preparation of cases. (Lillo, 2016)

In 2000, Judicial Reforms included the implementation of pilot programs such as Small Claims Cases on civil issues, and Justice on Wheels for criminal concerns. These programs intended to declog court dockets, decongest jails and ensure speedy disposition of cases as part of the broad spectrum of Judicial Reforms of the World Bank. This was part of its international assistance for the improvement of the judicial governance structure. It spread across the globe with the recognition that judicial integrity and reforms are requisites of inclusive growth and equity by addressing the legal plight of the disadvantaged and marginalized people.

Most litigants are unschooled and their conflict with the law is brought about by their ignorance in legal matters, their dysfunctional family and the misdirection. These observations became a worldwide concern particularly in addressing the plight of the poor and the marginalized that could not access the law efficiently. (United State Institute of Peace, 2016).

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Since 1994, World Bank, Inter-American Development Bank, and Asian Development Bank have approved loans of more than USD 500 million for judicial reform projects in 26 countries. (Armstrong 1998). The United States Agency for International Development (USAID) spent close to USD 200 million for similar projects in 1990's. (United States Government Accounting Office, 1993). Similarly, other government and private agencies conducted legal transactions through technological upgrading of their institutional structure, training of court employees, assessment and evaluation of existing programs, facilitating case resolution both civil and criminal, and drafting the judicial Code of Ethics for members and officers of judiciary. (Blair and Hansen, 1994).

Indonesia, Malaysia and the Philippines are among the recipients of the judicial reform financial assistance in developing countries. Its implementation required investment for the retrieval of performance data, monitoring of process and evaluation of outcomes. Inadequacy in evaluation and monitoring of the process has been noted. (Armytage, 2009).



Hence, there was a felt need to review in-depth the viability, efficiency and effectiveness of Small Claims Court by undertaking a comparative analysis of government policies its process and results in the three countries in Southeast Asia selected for this study.

## **1.6 Significance of the Study**

The results of the study are important sources of information to improve and amend existing rules of Small Claims Cases of Indonesia, Malaysia and the Philippines. These would also be important data for other Southeast Asian countries intending to adopt Small Claims Procedures in response to the Asian integration program.

## **1.7 Definition of Small Claims Cases**

### **1.7.1 Indonesia Small Claims Cases**

In Indonesia, a small claim is a case of breach of contract or a tort outside land disputes, with a claim under the value of Rp 200 million (USD 14,500.00), where standard of proof is simple, and according to the laws should not be resolved through special courts.( Indonesia Small Claims Procedure, 2015)

### **1.7.2 Malaysia Small Claims Proceedings**

Small claims of Malaysia are Small Claims Procedure on civil claims between individuals or an individual making a claim against a business in dispute or the value of the subject-matter of the claim does not exceed RM 5,000.00 (USD 1,136.11) heard in the Magistrate Court. (Malaysia Rules of Court Order 93.7.2, 2012)

### **1.7.3 Philippines Small Claims Cases**

Small Claims Cases in the Philippines are civil claims which are exclusively for the payment or reimbursement of a sum of money not exceeding P300,000.00 (USD 5,622.92). (Republic of the Philippines, Amendments A.M. No. 08-8-7-SC dated 10 July 2018 and effective 01 August 2018).

## 1.8 Theoretical Framework

The political authority, distributive justice, substantive justice, reciprocity justice, and egalitarian theory in Equity of Justice in government policies in Small Claims Court Resolutions is based on Lawrence Becker's John Rawls "Justice is fairness, that person is equal to access in the distribution of resources with fair circumstances of opportunities". Protection is afforded through people's empowerment to exercise their legal rights against any injury/injustice or loss as a consequence of their actions/omissions. A legal framework must be in place to facilitate the recognition of these rights through the judicial structure that facilitates their access and ensures speedy litigation process. This is shown in Figure 1.

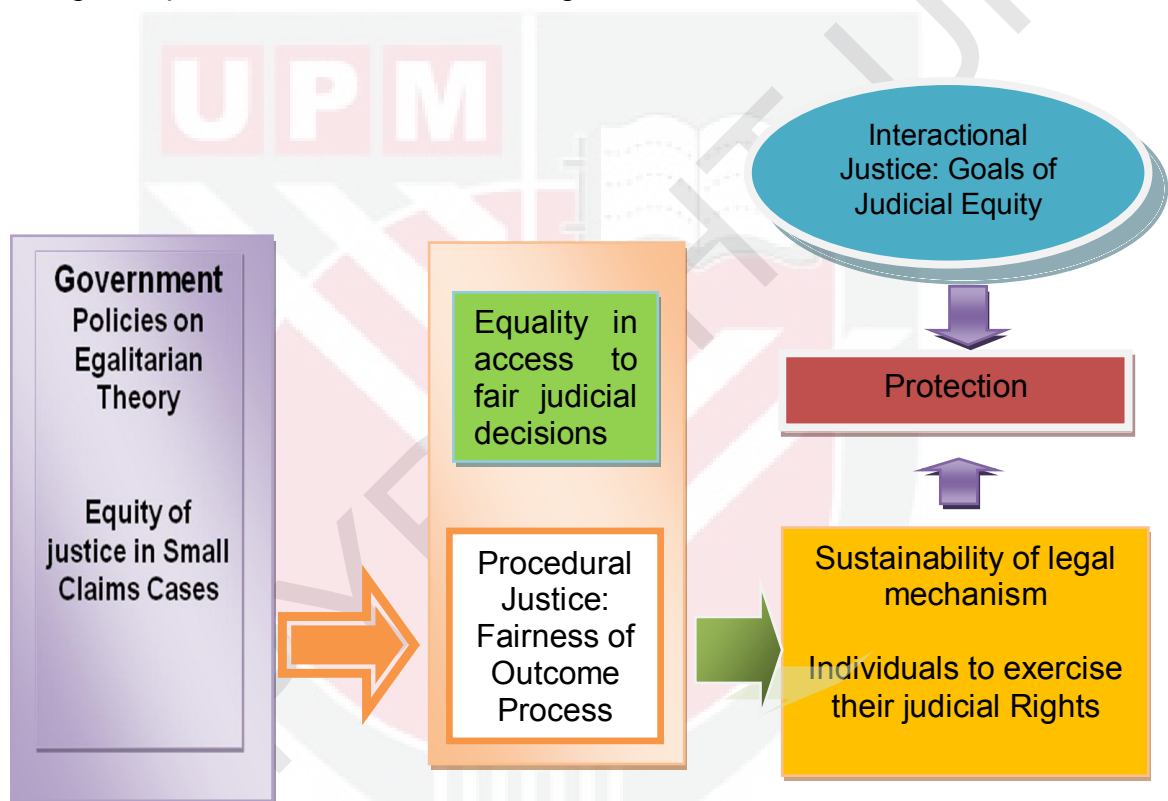
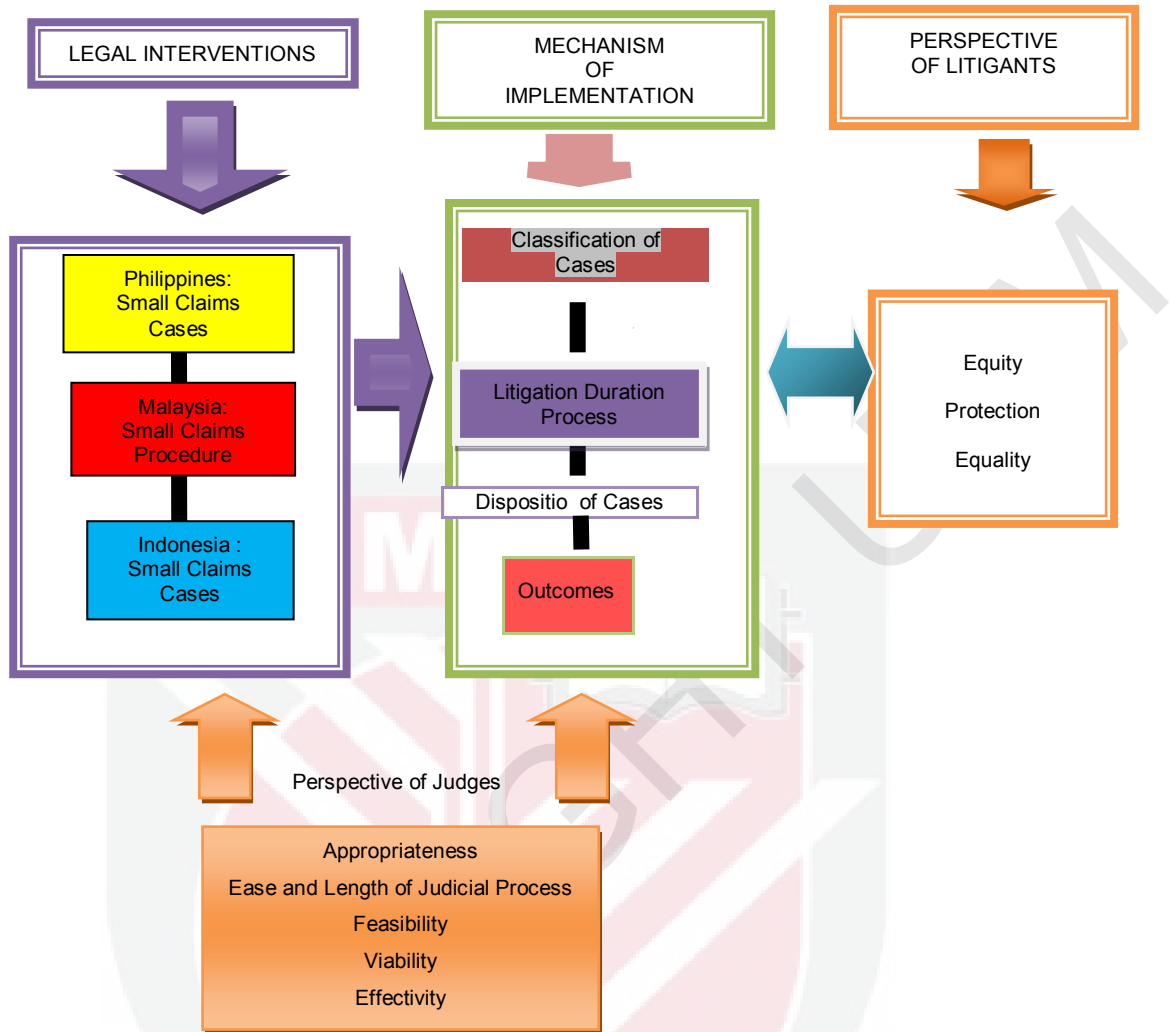


Figure 1: Theoretical Framework

## 1.9 Conceptual Framework

The government policy on cases of Small Claims Court ensures access to legal interventions as drawn in the Conceptual Framework, Figure 8. The various interventions are assessed in terms of the contents of the judicial interventions, modes of implementation, and the outcomes. The shortcomings are identified for revisions of the law.

The government policies on Small Claims mechanism are based on the classification of parties and cases, duration, disposition of cases and execution of judgment. From the perspective of the litigants, inquiry will be made on whether protection and equity are afforded to them from the filing of the case until its resolution. This study focuses on the comparative government policy assessment of the mechanisms in Indonesia, Malaysia and Philippines. The speedy resolution of cases from the perspective of the litigants, and implementers was part of the study. The study also determines appropriateness, feasibility, viability and effectivity of the legal interventions as means of addressing court and jail congestion of cases.



**Figure 2: Conceptual Framework**

## 1.10 Definition of Terms

Within the research context:

- *Access to Justice* refers to the system in which everyone including the disadvantaged and marginalized invoke his/ her rights and/ resolves disputes under the general auspices of the state. It guarantees equal access and achievement of just outcomes.(Cappelletti, et.al.1978)
- *Accessibility of the judicial system* means that judicial system was established and made available to citizens through low cost litigation, simplification of implementing laws, and making available legal and representation in courts regardless of socioeconomic status or geographic location. (Prillaman, 2008)
- *Affidavit* means a written statement or declaration of facts that are sworn or affirmed to be true.
- *Compromise Agreement* refers to an arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts, or the law and the facts together. (Black's Law Dictionary,1979)
- *Corruption* refers to "the misuse of public office for private gains (World Bank and Transparency International, 2018)
- *Decided on Merits* refers to the determination of the validity of a written instrument on a controversy with respect to the interpretation of laws and bars the subsequent suit on same cause of action. ( Black's Law Dictionary, 1979)
- *Default Judgment* refers to the court rendering decision to a party against whom a judgment for affirmative relief is sought but has failed to plead. ( Black's Law Dictionary, 1979)
- *Default Judgment* court renders dismissal upon plaintiff's withdrawal of the case against the defendant. ( Supreme Court of the Philippines Small Claims Procedure, 2016)
- *Defendant* is the party against whom the plaintiff has filed a small claims action. The term includes a plaintiff against whom a defendant has filed a claim, or a person who replies to the claim. (Supreme Court of the Philippines Small Claims Procedure, 2016)
- Efficient judicial system is the ability to process cases without unreasonable delays and backlogs. It is meant to counter the existence of *inefficient* judiciary and, the presence of uncontrolled factors that arise from systemic distortions that are not inherent in the process itself and that can be identified and eliminated. (Prillaman, 2008)
- *Good Cause* means circumstances sufficient to justify the requested order or other action, as determined by the judge. Supreme Court of the Philippines Small Claims Procedure, 2016)

- *Individual* is a natural person (Supreme Court of the Philippines Small Claims Procedure, 2016)
- *Judicial Accountability* is where a member of the judicial department abides with the dictum of judicial decisions in accordance with the law that is not arbitrary. (Transparency International the Global Coalition Against Corruption, 2007)
- *Judicial Independence* refers to the mandate of individual judges to make independent decisions based on facts. It is characterized by (1) impartial judgments, (2) decisions that are accepted by the parties and the public, and (3) freedom from undue interference. (Asian Development Bank, 2000)
- *Judicial Integrity* refers to a fair and equal protection of the rights of the accused based on commitment of the judges toward the judicial values of independence, impartial, personal integrity, propriety, equality, and competence and diligence. (The Bangalore Principles of Judicial Integrity, 2002)
- *Judicial Reform* refers to the advancement of human rights and criminal justice standards through education of judges on improving their skills in assessing evidence and taking testimony, and implement process improvements to reduce delay and pretrial detention among the disadvantaged and marginalized. (Prillaman, 2008)
- *Judicial Transparency* means that the public can access reliable information pertaining to laws, proposed changes in legislation, court procedures, judgments, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments. (Transparency International the Global Coalition Against Corruption, 2007)
- *Justice for the Poor* refers to the modifications of legal mechanism that enable the disadvantaged sector to access fairness, equity and no litigation cost.
- *Justice* is a scheme or system of law in where everyone receives his/her/ its entitlement from the system, including all rights, both natural and legal. (Hill, G. et al. 2018)
- *Motion* means a party's request, written or oral, to the court for an order or other action. It shall include an informal written request to the court, such as a letter. (Supreme Court of the Philippines Small Claims Procedure, 2016)
- *Person* is an individual, a corporation, a partnership, a limited liability partnership, an association, or other juridical entity endowed with personality by law. (Supreme Court of the Philippines Small Claims Procedure, 2016)
- *Plaintiff* refers to the party who initiated a small claims action. The term includes a defendant who has filed a counterclaim against plaintiff. (Supreme Court of the Philippines Small Claims Procedure, 2016)
- *Ratio Legis Est Anima* refers to "the reason of the law is its soul that gives life of the law." (Philippine Reports, 1947)

- *Referee refers to a person holding office for a term not exceeding 5 years (New Zealand Government, 2018)*
- *Social Justice means the humanization of laws and the equalization of social forces by the State so that justice in its rational and objectively secular conception may at least be approximated. (Moreno, 1988)*
- *Unius Est Exclusio Alterius refers to “what is expressed is included, and what is unexpressed is excluded.” ( Agpalo, 2009)*

### **1.11 Limitation of the Study**

The study covers three Southeast Asian countries Indonesia, Malaysia and the Philippines. Specifically cities of Manila (National Capital Region), Cebu (Central Visayas Region), Iloilo (Western Visayas Region), Davao and General Santos City (Southern Eastern Mindanao) were chosen in the Philippines. In Malaysia, the cities of Kuala Lumpur, Sha Alam Selangor (East Malaysia), and Johor Bahru (South Malaysia), were the sources of data, while in Indonesia, the cities of Central Jakarta, Bale Bandung and Bandung were selected.

This study focused on the differences and similarities of the rules and implementation mechanism of the three countries, Indonesia, Malaysia and the Philippines, as seen by the court implementers and party litigants of Small Claims Cases.

### **1.12 Chapter Organization**

The presentation of the study starts with introduction, background of the study. This is followed by history of the Small Claims Court, the origin country and its expansion in the Judicial Reform programs in line with the principle of political authority, distributive justice, substantive justice and reciprocity theory, and egalitarian theory of equity and fairness to the marginalized and vulnerable.

The problem statement includes research objectives, significance of the study, and definition of Small Claim Cases, theoretical framework, conceptual framework and limitation of the study. The definitions of terms were provided to facilitate comprehension of the reader on the legal terms used in the core of the study.

The study answered the research questions on the following issues: the importance of Small Claims in empowering the marginalized and disadvantaged people in the community; the mechanism of government

policies in Small Claims that protect the rights and increase access to justice by the people in the society; and, lastly, the Small Claims mechanism as to its efficiency and effectiveness.

Chapter 2 presents the review of literatures on Small Claims Cases that covers across countries from Europe, East Asia, Region of Oceania, South Africa, and United States. The judicial structure, history of Small Claims Cases, judicial reforms, similarities and differences of government politics on Small Claims Cases in Indonesia, Malaysia, and the Philippines were explained.

Chapter 3 discusses the methodology used to guide the readers as to the research design, location of the study, sampling design, research instrument, data collection, and data analysis used in the study of Small Claims Cases in Indonesia, Malaysia and the Philippines.

Chapter 4 expounds the findings on the themes of mechanism, perspective, legal efficiency of the Small Claims adopted in Indonesia, Malaysia and the Philippines. A comparative analysis of the government policies and implementation on Small Claims in Indonesia, Malaysia and the Philippines was done. The strengths and weaknesses were discussed especially the attainment of the objectives upholding the rights of the marginalized in line with the egalitarian theory. In the Small Claims, the marginalized can access court mechanism without the legal counsel, and the intervention of the court secures that parties are afforded equity and distributive justice. The enforcement of government political authority to ensured to curb exorbitant fees. Legal interest rates are mandated in accordance to the damage caused and reciprocated accordingly. Thus, substantive justice and reciprocity theory are present elements.

Chapter 5 presents the research findings, the conclusions and recommendation to improve Small Claims Cases practices in the three countries. The study proposed for further research in depth on the party litigants submitted to extra judicial settlement to identify the intervention scheme of the government to protect from abuse of creditors.

The study proposed further research on in depth assessment of the party litigants settled in an extra judicial settlement to identify the intervention scheme of the government to protect individual defendants, the debtors, from abuse of corporation plaintiff, creditors.



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