



ORIGINAL RESEARCH ARTICLE

OPEN ACCESS

THE PRINCIPLE OF EQUALITY BEFORE THE LAW IN THE RDTL CONSTITUTION

Querubin Jong Ferreira

Law Faculty, Universidade Da Paz, Unpaz Dili, Timor Leste

E-mail : [querubinjongferreira@gmail.com](mailto:querubinjongferreira@gmail.com)

ARTICLE INFO

Article History:

Received August 10, 2024
Received in revised form August 10, 2024
Accepted August 12, 2024
Published online August 13, 2024

ABSTRACT

The principle of equality before the law is actually a way of accessing the law that must be the same by different people, not all people are equal before the law as stated in the RDTL constitution as part of the interpretation of the law that deviates from the topic which is also a conclusion that is taken arbitrarily is not true. The principle of equality before the law, if interpreted incorrectly in its meaning, will hurt justice by using the language of the game which tends to be deceitful and disappointing. So that the state's hope in guaranteeing the rights of the people and its citizens becomes a mystery in people's lives in debating the values of justice "gerechtigheid", the benefits of law "doelmatigheid, zoegmatiheid and utulity" and the certainty of law "rechtmatigheid". In relation to these legal issues, the author uses a type of normative legal research by using two types of approaches that focus on examining and justifying the problem.

Keywords: Equality, Law, RDTL Constitution



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INTRODUCTION

The principle of equality before the law or Gelijkheid van ieder voor de wet is often found in various constitutions in countries that adhere to the civil law system with the principle of the state of law "staatrecht/etat de droit" which is the basic principle of the state to fight for the rights of its citizens that need to be protected by the state and at the same time as the rechtsidee of the state of the RDTL to achieve justice "gerechtigheid". the benefits of the law "doelmatigheid, zoegmatiheid or utulity" and the legal certainty of "rechtmatigheid".

However, this is still far from the understanding of the actual principle of equality before the law, because in principle we are required to know the law should not be the sound of the words, but the power contained in it as in the legal terminology scire leges

non hoc est verba earum tenere sed vim ac potestatem, so it is not just to know but we are required to know the law with the postulate ignore legis est lata culpa, Because of ignorance of the law, it is unforgivable or ignorantia juris quod quisque tenetur scire, neminem excusat. The postulate related to this is that of Aristotle, nemo conselur ignorare legem, meaning that no one is considered ignorant of the law or ignorantia iuris nocet; Not knowing the law is dangerous. Furthermore, Marcus Tutilius Cicero, said in De republica; "There is a righteous law, a righteous reason, acceptable to nature, known to all, constant and eternal, which calls out the obligation of its teachings, deters evil by its prohibition"<sup>1</sup>.

Law is not about existing articles, but how we can interpret the true meaning, purpose and purpose of these articles, because law is the art of interpretation.

<sup>1</sup> Zainal Arifin Mochtar, Dasar-dasar Ilmu Hukum (Memahami

kaidah, Teori, Asas dan Filsafat Hukum).

Although jurists are still looking for a definition of the meaning of law, "noch suchen die juristen eine defenition zu ihrem begriffe von recht". So the key is never to get into illogical legal arguments, because laws without logic are flawed, like we study medical science without knowing the organs of the human body. Mastery of the law must really master the principles, the philosophy and the theory of the law itself, to the applicable laws and regulations. In practice, the principle of equality before the law is actually reversed and sideways from the true meaning, in fact actions that are contrary to the principle cannot produce the true goal, the term is reasonable but logically reversed, such as the slogan "equal justice under law" in the liberal-individualistic system still discriminates against the incapable. So that the slogan still has to be complemented by other words, namely "equal justice under law to all who can afford"<sup>2</sup>.

In the content of the RDTL constitution in part II concerning Rights, Obligations, Freedoms and Basic Guarantees, title I on General Principles, article 16 paragraph (1) which explains that "... All citizens are equal before the law, have the same rights and are subject to the same obligations". Even though the doctrine of the principle of equality before the law, not everyone is equal before the law, but the law must be equally accessible to different people.

This needs to be carefully considered, because the constitution mandates the idealism of the maubere people contained in the preamble of the RDTL constitution, in paragraph X, that solemnly reaffirms its determination to fight against all forms of tyranny, oppression, domination and social, cultural and religious segregation, to defend national independence, respect and guarantee human rights and the human rights of citizens. to guarantee the principle of separation of powers in the structuring of the state, and to establish the fundamental core rules of multi-party democracy, with the aim of building a just and prosperous country and developing a united and friendly society.

So, the law must be equally accessible to different people. This is what we need to improve in order to optimize a critical and logical way of thinking in accordance with its function, so that the principle of equality before the law is infused with the same spirit, which is to provide justice to the people regardless of status, position and class. As stated in the RDTL constitution in article 26 paragraph (1) which explains that "... Access to the courts is guaranteed for everyone to defend their rights and

interests that are protected according to the law". So it is not the same person, but the access to the law must be the same.

Because not all people are the same in status, position or class. The word "sama" has a lexical meaning that arises as a result of the relationship between grammatical (morphological) elements in a broader grammatical unit (syntax) derived from the root word equation, regarding equalization (height, level), in the proverb using the word "Sama" means that everyone is always looking for someone of the same level or equal. Even though it is a delicacy, it is clear that the law is like a kitchen knife that is sharp downwards and blunt upwards "*aviado mai kraik e aboresidu ba leten*".

In fact, if we only measure justice, as Fence M. Wantu has said, that "... Justice essentially puts things in their place and gives to anyone what is their right, which is based on a principle that all people have an equal position before the law (equality before the law)". The author agrees with what France M. Wantu has said, that justice is inherently putting something on its patch, for example; functional positions, state positions, organic positions, dual positions and structural positions. And give to anyone who is entitled to it, such as; the right to access the law, the right to get legal protection and so on. However, if everyone has the same position before the law, this is a mistake because basically the person is not the same, as we see it, let alone his position in a matter.

Legal justice, according to Lambertus Johannes Van Apeldoorn, should not be seen as synonymous with equalization, justice does not mean that everyone gets the same share (L.J. Van Apeldoorn, 1993). This means that justice demands that each case must be weighed separately, meaning that being fair to one person is not necessarily fair to others. The law must be accessible in the same way by different people, as Jhon Locke said that democracy means that we are different but we have the same access to the law. If in a country, human rights are neglected or violated deliberately and the suffering it causes cannot be justly addressed, then the country in question cannot be called a state of law in the true sense.

Because of the nature of "democratische rechtsstaat" in every state of law, the principle of democracy or people's sovereignty is embraced and practiced that guarantees the participation of the community in the process of state decision-making. With the participation of the community in the decision-making process, every law and regulation that is

<sup>2</sup> Op.Cit.,Gerry Spence,Hal.8

established and enforced can be expected to truly reflect the feeling of justice that lives in the community.

Old maxim, *Ibi jus incertum ibi jus nullum*, this contains the meaning that something uncertain is not a law, it emphasizes more on the aspect of legal certainty. The existence of the law aims to provide certainty for every individual behavior in the life of the community to do the ordered acts and avoid prohibited acts. Thus, everyone should be treated equally in that law without regard to race, gender, nationality, color, ethnicity, religion, disability or other eristic characteristics, without privilege, discrimination or bias. Therefore, in the Constitution of the RDTL, it expressly guarantees that there is equality of position as in the content of article 6 letter (b) which explains that "To guarantee and promote the rights and fundamental freedoms of citizens as well as honor for the principles of a democratic state based on the force of law".

Furthermore, article 16 paragraph (2) also explains that no person can experience discrimination on the grounds of skin color, race, marital status, gender, ethnic origin, language, social or economic status, political beliefs or ideology, religion, education, physical or mental state. In connection with the issues that have been described in the background of the defense, in writing this law, the researcher also describes several issues that will be the subject of discussion, including:

**First, juridical issues;** *The researcher found that there is a bias and multiple interpretations or interpreted in different ways and sideways from the actual and lexical legal principles, the word "Sama" in grammatical (morphology) and grammatical units (syntax), which is clearly contained in the substance of article 16 paragraph (1) of the RDTL constitution.*

**Second; theoretical issues;** *Researchers use the basis of theoretical thinking as a clarification of existing problems and justify the truth of the theory.*

**Third, philosophical issues,** *ontologically, researchers see that the principle of equality before the law contains elements and values of justice that can be justified pragmatically. Axiologically, from the scientific side, law is an emancipatory movement, law for the people.*

## MATERIAL AND METHODS

Normative legal research or library research is a research that examines the study of documents using various secondary data such as laws and regulations,

court decisions, legal theories and can be in the form of the opinions of scholars. So that the normative approach method is a normative juridical approach, which is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. Which focuses on examining and justifying issues related to issues related to, "The principle of equality before the law in the RDTL constitution"<sup>3</sup>.

## RESULTS AND DISCUSSION

### 1) Conceptual realm

Starting from the thought of Ulpian, who has established three primary principles in the laws of nature, namely "... *Honeste vivere* (be honest in life), *alterum non laedere* (do not harm others), *sum cuique tribuere* (give others what is their right)". Of these three principles, all legal rules should be positive. This aims to account for an essential element of law, which is meant by the researcher here is substantive justice, because a law that is sideways from the principle of justice is an unjust law. A reflection that originated from the legal terminology "*Mellius est acciperequam parcere injuriam*" or better that those who have experienced an unjust act, rather than those who have committed injustice.

Principles are principles or foundations, namely truths that are the basis for thinking, acting and so on. In connection with the definition of the word principle, the principle of equality before the law in the RDTL constitution is very fundamental in the administration of the state both in its application and in practice. So that the process of searching for the truth "searching for the truth" will not stop. Because in principle we must realize that the war may end, but the war against injustice will never end. Although, the creed of *Fiat Justitia Ruat Caelum*, first spoken by Lucius Calpurnius Piso Caesoninus (43 BC), says that justice should be upheld even if the heavens are about to fall. This expression emphasizes that no matter how critical the condition, the law must remain upright and unshakable. Logically, this principle of justice that we need to fix and we improve a good and correct way of thinking academically so that it can be accepted with human reason, because basically if the sky collapses, we will definitely die and the world will definitely sink, which is the author's critical question is which justice we must fight for again, If tomorrow the sky collapses and the world sinks.

<sup>3</sup> Ibrahim, Johnny, 2012, *Teori dan Metodologi Penelitian Hukum Normatif*, Cet.ke-6, BayumediaPublishing,

Malang.Hal.310.

Similarly, the creed "Fiat justitia et pereat mundus", meaning that the law must be enforced even though the world will be destroyed. Likewise, the creed "Fiat Ne Pereat Mundus", which means that the law must be enforced so that the world does not collapse<sup>4</sup>.

The world is never destroyed, what is destroyed is the human mind or by saying that an act does not make a person guilty unless his mind is guilty "actus non facit reum nisi mens sit rea". Of the three creeds, the meaning of justice for justice seekers has not been fully answered. So, for the right writer in answering the demands for justice seekers is "*Desperta a lei e dorme a injustiça*", which means awaken the law, put injustice to sleep.

Simply based on the philosophy of law, the author describes above that injustice has rampaged the joints of the law even to the bone marrow of the law which as a result is the law of deep sleep like the roar of the predator of the night who is raging in the darkness ready to pounce on his magsa regardless of whether it is right or not, and whether it is fair or not. Let alone humans, even if predators I will conquer, the simple way is to wake up the law that is asleep, by itself justice will go in line with its path. What the author means is that our own minds are the most dangerous predators out there.

Starting from this reflection, it is the basis for the author to reaffirm clearly and correctly, the meaning of the principle of equality before the law which is often misused in interpreting the meaning of the principle both in its application and in its daily practice. Referring to the formulation of article 16 paragraph (1) which explains that "... All citizens are equal before the law, have the same rights and are subject to the same obligations."

The word "All citizens are equal before the law", as according to Julita Melissa Walukow, who explains that the connection between the principle of equality before the law and the function of the judiciary is that "... A person who comes to face the court has the same rights and position (Walukow, 2013). The word in its application needs to be explained clearly, because if it is wrong in its application, of course in practice it will also be wrong. Nevertheless, the law is not the right law. Therefore, the term "lex iniusta non est lex" was born, literally "an unfair law is not a law". Rather, it is solely for legal certainty.

If there is a biased interpretation, in the law it must be rejected "curiosa et captiosa interpretatio in lege reprobatur". Because making laws in accordance

with the law is the best way to give the meaning of "concordare leges legibus est optimus interpretandi modus". It should be realized that maybe the rights can be the same because, in the judiciary, all citizens have the same rights but the obligations are not necessarily the same, because in practice there are still defendants, suspects and convicts, of course the legal position is different.

So, the logic of thinking is simple that all citizens are the same in obeying the law, but with different statuses. As stated in the RDTL constitution, in article 26 concerning access to the court, paragraph (1) that "Access to the court is guaranteed for everyone to defend their rights and interests protected according to the law". Do not think that the principle of equality before the law is only an important war to maintain the authority of the court and then a fair decision, it is the same as a wolf with a spear of justice. The doctrine of the principle of equality before the law, not that all people are equal before the law, but that the law must be equally accessible to different people or vice versa, the law must be accessible in the same way as different people, as Jhon Locke has said.

So it can be justified if, there is a mistake in interpreting a text that is sideways from its true meaning, like the Latin proverb "ab abusu ad usum non valet consequentia" meaning from abuse to use, consequently invalid". However, this potential abuse does not eliminate the importance of the law, on the contrary, it emphasizes the need for ethical and responsible legal practice. Like a double-edged sword, it can protect the innocent and punish the wrong, but it can also be manipulated and abused.

Therefore, not all citizens are the same, but rather, the law that must be the same for everyone, based on the true philosophy of law, is "Law for Man, Not Man for Law". Because the law is tasked with serving the community, not the other way around<sup>5</sup>. It can be concluded that of all things in the world, humans are the most precious. This, as stated in the RDTL constitution, in article (1) paragraph (1). So that what the RDTL state is fighting for is not only the principles of human rights but "honor for human dignity".

In this context, it can be understood that the law exists to protect human beings, what we are not aware of, that we are born picked up by the law, raised by the law and then died by the law, if human beings for the law are like wolves under the mask of justice. As Thomas Hobbes has expressed with his

<sup>4</sup> <https://forumduniahukumblogku.wordpress.com/perihal/>

<sup>5</sup> Suteki, *Masa Depan Hukum Progresif*.Cet-ke:I, Penerbit

Thafa Media.Yogyakarta 2015.Hal.3.

famous adagium *Homo homini lupus est* or man is a wolf to his fellow humans.

## 2) Praxis Domain (Legal Pluralism Approach)

The purpose of the pluralism approach is to help improve a person to have mutual respect for people between different races, ethnicities or tribes. The legal pluralism approach relies on the linkage between the state "positive law", the social aspect of the "socio-legal-approach" and the natural law "moral/ethic/religion". A legal method that only relies on positive law with rules and logic and its bound rules will only boil down to the need in the search for perfect substantive justice "perfect justice".

There are several requirements or reasons for non-enforcement of law related to the legal function in modern countries that can be used as instruments produced by the top-down and bottom-up work systems in the representative democracy system that is adhered to. The policy of not enforcing the law can be carried out in the following situations; *First, if the law is not familiar with social reality, not close to the people's sense of justice, it is not understood because of the language of the law that is difficult to understand. The limited number and average legal language comes from the ruling class and people who are difficult for the people to understand are often considered to be an arrogance of power. Second, if the implementing regulations are something that absolutely must exist in a certain legal product. In such a situation, without implementing regulations, legal products will cease to function operationally and can only be discussed in a manner.*

According to Satjipto Rahardjo (2005), there are three ways to do rule breaking, first; by using spiritual intelligence to wake up from the downfall of the law and not allow oneself to be constrained by the old ways; Second, conducting a deeper search for meaning should be a new measure in practicing the law and establishing a state of law; and Third, the law should be carried out not according to the principle of logic alone, but with feelings, concern and involvement of "compassion" for the weak group.

In the perspective of progressive law, we should not continue to be trapped in legal formalism, which in practice shows many contradictions and impasses in the search for substantial truth and justice. In formalism, the law and its enforcement with closed eyes will run systematically like a clear, firm and definite mathematical formula.

*If the law only punishes with two closed eyes, it will run systematically like a clear, firm and*

*definite mathematical formula, but for the author it is wrong because legal science is not about the formulation of existing articles but what is defended from the formulation of these articles that we must look for, understand and interpret clearly. and affirmed by the certainty of the law itself, so that there is no mistake in it.*

Endless violations of the law and put us in the cage of hypocrisy of law enforcement. There are also several cases that are often misinterpreted by law enforcement officials in Timor Leste, such as; **First:** if the person involved in a criminal case, then the person escapes, then both parents become a guarantee for their child, this often happens and is practiced by law enforcement officials in Timor Leste. This is clearly contrary to what has been stated in the RDTL constitution, regarding the Limits on Punishment and Security Measures, in article 32 paragraph (3) which explains that criminal responsibility cannot be transferred.

**Second:** a person who has not been asked for information and without going through an investigation process, sometimes the person has been determined as a suspect, this clearly violates the rights of the person as stated in the RDTL constitution on Guarantees in Criminal Trial Proceedings, in article 34 paragraph (1) which says that anyone accused of an offense is presumed innocent until proven wrong before the law.

Therefore, it is appropriate and deserves to be considered important and treated more than just an assumption, an important reflection on a reality that is so ironic that has happened in the country of the RDTL, the injustice that actually occurs because it is consumed by ambition so that it justifies all means in order to gain power, one of the main ways in which it is justified is the stirring up of a state of mutual hostility, division, planting hatred in society by exploiting ethnic, religious and racial differences.

Appreciate differences, not similarities. Because basically human beings are not the same and different according to their respective traits and characteristics. Remember that from differences, justice is born. The difference in question is how we can respect each other, without discriminating against each other.

## CONCLUSION

Normatively in the constitution of the Democratic Republic of Timor Leste, the principle of equality before the law is comprehensively embraced as a human right that must be respected, guaranteed, protected and fulfilled by the state. As ius

constituendum mandated in the RDTL constitution in article 6 concerning state objectives paragraph (1) letter (b), is to guarantee and promote the rights and fundamental freedoms of citizens as well as honor for the principles of a democratic state based on the force of law.

The meaning of a word is the soul of the law "sensus verberum esse anima legis", so it must be viewed axiologically from a liberating science, then these legal problems must be directed to vulnerable people, namely groups of people whose rights are violated as a result of certain conditions either through unlawful acts or through the law itself, so that people are not trapped by the principle of equality before the law. It is often misinterpreted that the true meaning and doctrine is the way of accessing the law which must be the same by different people, not all people are equal before the law as stated in the RDTL constitution as part of the interpretation of the law that deviates from the topic which is also a conclusion that is taken arbitrarily.

As a concrete action in fighting for justice, the author quotes the principle of justice "Desperta a lei e dorme

a injustica", as a hope for the establishment of my law, to sleep the injustice that is happy to be rampant in my country.

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