

THE FRANCISCO MIRANDA BRANCO CASE, AND OTHER TRIALS UNDER THE SUBVERSION LAW

By Artidjo Alkostar

Francisco Miranda Branco case was one of the political crime cases that linked with the case of Santa Cruz in Dili Civil Court, East Timor, 1992. The accused Francisco Miranda Branco was sentenced to 15 years in prison. The sentence was accordance with the Attorney General's prosecution. Francisco Miranda Branco was accused against The Subversion Law 11/PNPS/1963 for being suspected as a member of *Comite Executivo (CE) of Concello Nacional De Restencia Maubere (CNRM)*, led by Xanana Gusmao. In this Comite Executivo Francisco Miranda Branco joint with Gregorio Da Cunha Saldanha, Jacinto Dzs Neves Raimundo Alves, Juvencio De Jesus Martins, Filomeno Da Silva Pereira and Carlos Dos Santos Lemos. The other accusation was a plan about the arrival of Portugal Parliament Delegation.

According to The Prosecutor, the following are CE personal structure :

1. Constantio Pinto, The Chairman;
2. Francisco Miranda Branco, The Chief of Documentation and Analysis Department;
3. Gregorio Da Cunha Saldanha, The Chief of Agitation, Propaganda and Youth or Youth Mass Activator Department;
4. Augusto Filipe Gama Xavier, The Chief of Youth Department;
5. Juvencio De Jesus Martins, The Chief of Post and Transportation Department and also courier for Fernando De Araujo (The Chairman of Denpasar Renital);
6. Carlos Dos Santos Lemos, The Chief of Courier Department/special courier for CE members;
7. Jacinto Das Neves Raimundo Alves, The Chief of Health Department and being assigned for Documentation and Analysis Department;
8. Felomeno Da Silva Pereira, The Chief of Trusteeship and Logistic Department.

In August 1991 CE committed a meeting at Francisco Miranda Branco's house that also attended by an Australian citizen, Vasco. One of the decisions was shaping communication network among CE in Dili and Kupang with Darwin. The

communication used the tourism visit Australia to East Timor and on the country under the coordination of Vasco in Darwin, Australia.

On 28 of October 1991 meeting was also held at Carlos Dos Santos Lemos house which discussed and decided :

1. Stabilizing demonstration preparation to well come Portugal Parliament Delegation.
2. There were jobs of each person : Constantio Pinto as CE Chairman assigned to prepare petition for Portugal Parliament Delegation; Fransisco Miranda Branco assigned to make street banner illustrated with Xanana Gusmao pictures, the illustration of Falintil's and Fretelin 's flags and UDT's. Those there flags were being united called *Convergencia Nacionalista (CN)*. They also made United nation flag; Gregorio Da Cunha Saldanha as the coordinator of demonstration organizer and made the banner and the flag as well.

On 7 of November 1991 a meeting was being held in Francisco's house talking about the cancellation of Portugal Parliament Delegation visits and the arrival plan of the Human Right Commission of The United Nation. Therefore, the demonstration plan of The Human Right Commission. An agreement about the separation of East Timor from the United Area of Indonesian Republic was made also.

Meanwhile a demonstration run 12 of November 1991, there was a mass on Motael Church for the death of Sebastio who shot by the member of ABRI. The demonstration which being led by Gregorio Da Cunha Saldanha started after the mass on 07.00 pm. They yelled Viva Fretelin, Viva Xanana Gusmao, Viva Falintil. They also performed pictured and noted banners signed are : "Viva Fretelin, Viva Falintil, Viva Resistencia Nacional De Povo Maubere (Long Live Fretelin, Long Live Falintil, Long Live The National, Defense of Maubere People); the banners printed with the portraits of Xanana Gusmao, Fretelin Flag and UDT's being united with Falintil's flag noted with Xanana Gusmao Simbolo De Unidade Nacional (Xanana is the symbol of Nation Unity); the banner noted with "tear and blood shed are the suffering of the people of East Timor since 1975; banner noted with "Meu deus Altissimo Salvai Nos Commo Salvastes Daniel Na Boca Dos Leo'es Indoensia (God The Mighty, save us as You save Daniel from Indonesia mouth); "Demonstrasi Dia 7-12-1975 De 1975/1991 Joven Timorese Anti Integracio No Indonesia, Anti Comonismo Indonesia No Timor Leste (Demonstration

that held on 7-12-1975 from 1975/1991 was the attitude of East Timor Youth, the refused to integrate with Indonesia and anti Indonesia Communism in East Timor); "Batidos Masnao Vancidos" (being killed but undefeated); the flags and banners were fluttered and extended from Motael Church to Santa Cruz cemetery which has distance of 4 km.

When the participants of demonstration arrived at Santa Cruz, the fireshots were arose by ABRI members and causing many dead victims and wounded. New Orde Regime of Indonesian Government related the peace demonstration which led by Gregorio Da Cunha Saldanha with Santa Cruz case that happened on 12 of November 1991 and all of CE members were dragged to court. Fransisco Miranda Branco was sentenced with Subversion Law No. 11/1963, Gregorio Da Cunha Saldanha was sentenced with Subversion Law No. 11/1963 as well, meanwhile Jacinto Das Neves Raimundo Alves was sentenced with article 106 juncto article 55 juncto article 64 KUHP (Criminal Code) and article No. 154 KUHP (Criminal Code). Juvencio De Jesus Martins, Felomeno Da Silva Pereira and Carlos Dos Santos Lemos was sentenced with the same article.

Fransisco Miranda Branco was arrested by Police from 6 of December 1991 to 4 of March 1992. The Summoning to Court of Fransisco Miranda Branco was started on 12 March 1992 and there were 15 court sessions. At last he was sentenced 15 years in prison. Today, he stays in Kedung Pane Civil Prison in Semarang. Central Java. He Obtained a remission for the expiry of 2000 and will be released sooner if he discharged conditionally.

There were some law violations in the interrogation process against Francisco Miranda Branco. *First*, during the time of investigation at the Attorney Office he was not accompanied by legal counselors. Whereas, according to article 56 and 114 of Act No. 8 of 1981 regarding Rule of Criminal Procedure (KUHAP), Francisco Miranda Branco must be accompanied by legal counselors since he was accused of breaking a law whose criminal punishment was more than 5 years. The criminal punishment of article 13 of Act No. 11 of 1963 regarding Subversion Code might be dead penalty, sentenced for life or 20 years in jail maximum. However in the reality, Francisco Miranda Branco was never given law facilities of law counselors during the time of the police and attorney interrogations. Only when he was in the court sessions, he was accompanied by law

counselors of Legal Aids Services and Indonesian Bar Association; Artidjo Alkostar, Luhut Pangaribuan, Domios Atok and Barnabas Bonggur. We (Artidjo, Luhut, Domios, Bonggur) could be his law counselors only after we had an argument with the Court of Judge and after we sent a disapproval letter to the Supreme Court in Jakarta. Furthermore, we protested the attorney since Francisco Miranda Branco had been sent to the court with handcuffed condition. This broke the article 52 of Act No. 8 of 1981 stating that during the time of interrogating on the stage of investigation and jurisdiction, the suspect or the accused has a right to give an explanation freely.

In the jurisdiction process, the judges also always broke the law since the judges showed an attitude or asking questions that stated a conviction of the accused's guilt in the court session. This broke the article 158 of Act No. 8 of 1981. Furthermore, the court sessions of Francisco Miranda Branco were attended by military, police, and intelligence apparatus more than civilian people so that the atmosphere was not conducive to hold free court sessions.

The law counselors of Francisco Miranda Branco were also too often terrorized and followed by military intelligence agents when they were at the hotel, court, got a taxi etc. That was the reason why the counselor team that were previously 4 persons (Artidjo, Luhut, Domi and Bonggur), went home to Jakarta one by one. Finally it was only me who had stood for 4 months continually since Bonggur only stood for 3 days, Luhut was often in Jakarta, and then Domios Atok went home. I, myself, besides defending Francisco Miranda Branco, also defended Gregorio Da Cunha Saldanha, Jacinto Das Neves Raimundo Alves, Juvencio De Jesus Martins, Filomeno Da Silva Pereira and the last Bobby Xavier who was accused of being involved in the murder case at Motael Church.

Francisco Branco is a son of East Timor who has a great social sensitiveness. And the juridical and political facts show that the East Timor problem is still on debate of the United Nations members. The reaction of Timorese people who do not agree with the integration process is a political fact that still exists in the social reality of Timorese people. So what Francisco Miranda Branco did was not a law fact or action that deserved punishment with the Act of Subversion.

If each person or East Timorese who is still in doubt or questions the integration process is called as a resister that deserves punishment, what will happened is an “oppressive” criminal code application that was used to doing by *Orde Baru* regime. What Francisco Miranda Branco et. al did was a political aspiration and was not a crime. While after being released from Portuguese’s colonization, it is logical for East Timorese to imagine that they will enjoy a free and more humanic life. It is rational for them to see a full of hope life “dawn” cracking . However, if they will live in fearness after being integrated with Indonesia, so the “dawn” will be a misery. That was why our defense speech for Santa Cruz Case was FAJAR KELABU DI UFUK BUMI TIMOR TIMUR (A Gray Dawn on the Horizon of East Timor). And indeed, in 1999 the East Timorese are granted the freedom to express their aspiration through a polling that will be held in August 1999 under the supervision of the United Nations. In 1998, the government of Indonesia granted an amnesty to all of the political opponent groups.

Francisco Branco was brought to justice and sentenced on behalf of the Act of Subversion or the authoritarian characterized and anti-democracy law. The Act of Subversion was made by the *Orde Lama* regime in 1963 and continued by the *Orde Baru*. Many University students, the group of critical society, were sent to the court and sentenced by the *Orde Baru* government by using the Act of Subversion and some articles of the Criminal Code (KUHP) that were inherited by the Dutch Colonizer, so this Act of Subversion was used more as political instrument. It caused the democracy life was not developed, the law upholders became stagnant and corrupt. These were the cause of “Court Mafia” phenomenon.

The process of upholding the criminal law in a country that is learning democracy such as Indonesia, correlates with some factors that can be seen in the process of upholding the law:

1. Law Substance
2. Rule of Criminal Procedure
3. Law upholder apparatus
4. Legal Aid/Lawyer
5. Political Condition

1. Criminal Law Substance

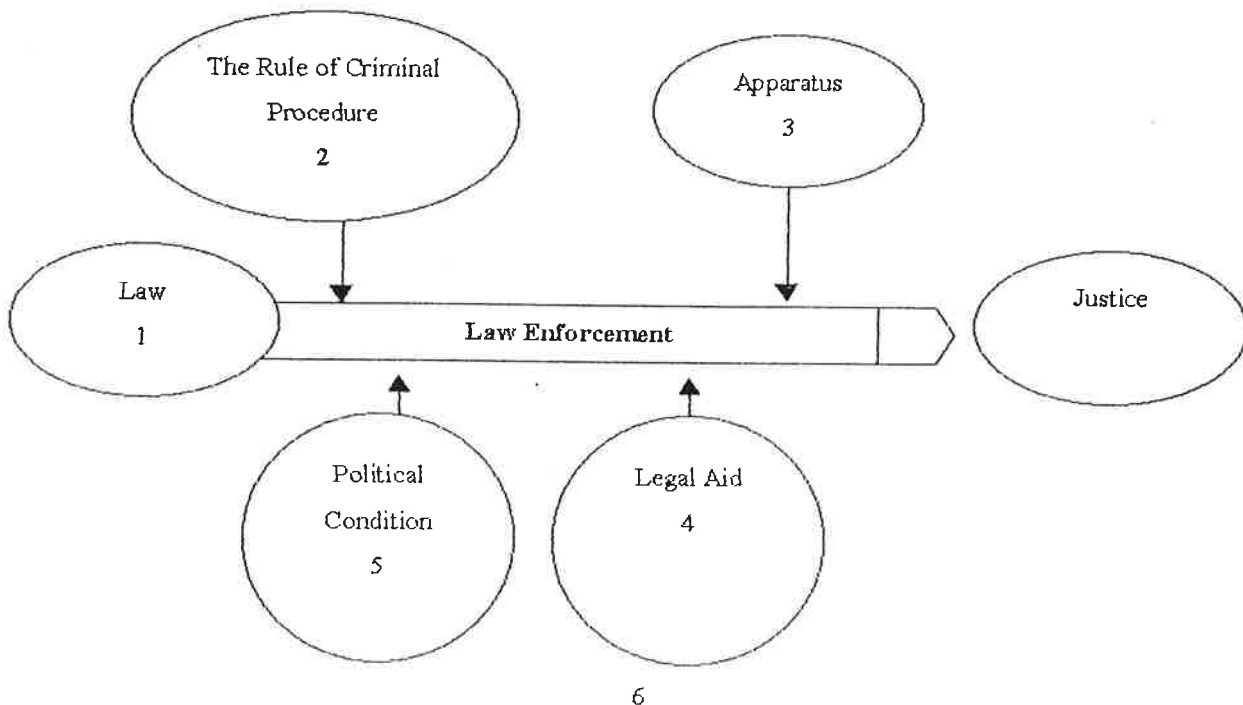
The healthy democracy atmosphere will bear good law rules – we might see the Act no. 11 of 1966, no. 14 of 1970, no. 3 of 1971, etc. It shows the existence of commitment manifestation of the upholding of Law State in the beginning of the birth of Orde Baru. However on behalf of the Act No. 21 of 1982 the juridicial guarantee for press to fight for correctness and fairness on behalf of liable freedom. The change of the Act no. 11 of 1966, in the perspective of law state, must have a law responsibility and must not have a responsibility of power holder's desire.

In the perspective of justice, we can differ a democratic law state from a totalitarian one. Mentioned by Thomas H. Greene (et al) that in a democratic state, Justice is emphasized on individual freedom and equality However in a totalitarian state in which the state is more important than the individual, justice is stated same as keeping the existence of the state and continuing the state will (1984:92).

The absence of freedom and equality is a consequences of a totalitarian system of the state, whereas one foundation of a democratic law state is the right equality in a politic, law and economic. Francisco Miranda Branco was sent to the court and sentenced on behalf of a legal rule with a bad substance, the Subversion Act.

It is true that basically the legal rule contains of a latent problem that is whether the effective law norm contains an essential truth or has an essence of justice or not.

The Scheme of law Enforcement



2. The Rule of Criminal Procedure

Basically when the Rule of Criminal Procedure (KUHAP), the Act no. 8 of 1981 was stated, it was for upholding the content of KUHP in Indonesia. It meant that it was as a formal procedure in the juridical process and effort in upholding a material truth in criminal law. In which the providing of this formal law is part of the requirement to uphold the law in the state as a law state. The presence of the 'obvious' rules in KUHAP _____ requires the accuracy, firmness and transparency of the investigating officer, attorney, legal counselor and judge _____ to pursue their juridical duties based on their positions and portions.

In the process of Francisco Branco's court, the criminal code was not properly brought out. There were many rights of the suspect violated by the investigator policemen. And the weakness of the Act no. 8 of 1981 in Criminal Code is that the absence of witness for the investigator policemen who violated the criminal code. It was not like the application of Miranda Rule.

3. Law Upholder Apparatus

The active institution and law apparatus in the process of law upholding in our country are police, attorney, judge and legal counselor, so these law upholder apparatus must be tried by their inner selves because of being involved in bribery, corruption, collusion, etc. These tragic-comedy phenomena, when police is "watched by police", attorney is "watched by attorney", legal counselor is "legally counseled", are still flourished the law upholding field and the court currently. Even in January 1999, it is talked about the Attorney General, Andi Muhammad Ghalib who accepted a bribe from conglomerate entrepreneurs who were being investigated in his office.

The phenomenon of "Court Mafia" is increasingly transperance and makes justice seekers and public annoyed. If the law upholder apparatus can not deny the accusation of the existence of the mafia in the court, it will show a "bankruptcy" of the law upholder apparatus morality and show the overcast court authority.

In Media Indonesia daily newspaper, March 28th 1994, there was a headline : Nine Judges who accepted bribes were continuously investigated. These showed that a tragic-comedy in our justicial court was a known public secret. The judges in

Indonesia were not politically and economically independent anymore. Many judges accepted bribes and cannot be independent in leading the court process. There were no single case that had a freedom sentence in Indonesia, including the case Francisco Miranda Branco.

Lately, If there is a delegation of the World Bank or trade mission from a western countries who questions the condition of Indonesia justicial court, it will be the consequences of Indonesia attitude that involves into global and open trade environment in the future. Since the investors or foreign fund creditors want their investment and their trading companies are not stolen little by little by the court mafia that can appear in various ways and variations.

The integrity of the court moral and the credibil ty of the law upholder apparatus can be the delegation of law upholding image and become a part of "clean government" portrait. The anticipation of trade liberality in the future requires the increasing of moral integrity and professionalism of the law upholder apparatus, since the social control for them will be increasingly transparence and in a high intensity.

4. Legal Aid

Most of The Indonesian legal Aid organizations are non governmental organization (NGO) or lembaga swadaya masyarakat (LSM), so it needs to recognize the existence of organizational type and characteristic differences from the other NGOs that are not active in legal aid services. The case of Francisco Miranda Branco et.al was defended by Legal Aid Foundation and Indonesia Bar Association with free.

It is the right of each citizen to get a legal aid and on behalf of that point the legal aid services have a foundation in the society. Juridicially it is ruled in article 35-37 of the Act no 14 of 1970 and the article of the Criminal Code (KUHAP). The existence of legal aid will be always relevant in each momentum of the society development, primarily the industrial society. The sensitiveness of public juridical instincts demand increased bureaucracy service quality and law upholder apparatus step accuracy in doing their duties. It was shown after the Act no 8 of 1981 (The Criminal Code (KUHA²)) put to be effective in that many people used pre-justicial court medium when their rights were violated by the apparatus who were making mistake in doing

their duties although those mistakes happened in the court process as well. The employment to give legal aid services is a profession that is restricted in a profession ethics code, just like a reporter. The legal aid workers who are doing their advocacy duties in a freedom atmosphere. Another characteristic of this work is the existence of confidence relying (it is usually confidential) from a client or justice seeker that is wished to be done by the lawyer (legal counselor) in a professional way.

5. Political Condition

The effort to prove the equality and justice means an essential change process engineering in the behavior arrangement (politic, economic, social and culture) so that each individual can reach his/her individual or collective rights that guarantee juridicially (dejure) in the constitution. And there is no any distortion and manipulation of its spelling out and realization. The justice that must be fought for by press based on its portion and position is the principal pre requirement for a egalitarian social life based on the real human values. The unjustness is not a destiny of them who are repressed but actually it demands our attitude to care of the fellow human being.

The assurance of the human right to be allied and gather, and express our opinion that has been assured by article 28 of the Constitution 1945, in the political reality until the end of 1994 was often restrained by the conducive Laws for the upholding of law and democracy. The restraint came from the colonialism heritage Laws, Haatzai Artikelen, article 154 of KUHP, and the Orde Lama heritage Laws, the Act of Subversion, the Act no. 11/PNPS of 1963. Therefore, there was a correlation between the political reality condition and the law nature. It was impossible to create a healthy democracy atmosphere when the law nature was repressive. On the other hand, there would be no appropriate law if the political condition was not democratic.

In the perspective of law upholding, a government political condition can be seen from the law products. The Orde Lama or Lead Democracy government political mistakes and sins were when they produced the Act no. 19 of 1964 that reduced the court authority or determined that the judges had to work for the revolution interests and the power of the Supreme Court was reduced on the same level as ministry. The elementary mistake of Orde Lama's Lead Democracy (1959-1966) was that the

government engineered the law upholding negatively, as well as Orde Baru (1966-1999) when Francisco Branco et.al was sent to the court in the authoritative political condition that might not have allowed the law supremacy. Since in the authoritative regime, something that always won was the power and physically strength. It was not the law moral truth. Therefore in the court of the first instance, both the appeal to the court of the second instance and to the Supreme Court, the Francisco Miranda Branco case was always conceded defeat.

Denpasar, July 1st, 1999.