Cultural Confession in Indonesian Religious Courts: A Forensic Linguistics Analysis

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Abstract

Forensic linguistics is used to clarify a legal process, including the Religious Courts system. The Religious Courts are legal institutions in Indonesia and meet the criteria in the focus of forensic linguistics because they have a court process involving the use of specific languages (language in legal context). The research was conducted at the Watansoppeng and Pekanbaru Religious Court with three different trials. The primary data of this research is the transcription of the trial speech. Olsson's (2008) forensic linguistic statement analysis concept is the primary tool used to observe the legal discourse of the Religious Courts. The use of narrative statements was analyzed with the theory of narrative statement analysis, which was divided into five categories (time, place, sequence, description, & other words). The panel of judges, petitioners, and witnesses in the trial of the Religious Courts tend to use the technique of using certain narrative statements. Culturally, narrative reports are used to exert influence in the trial process. These narrative statements have cultural aspects, both produced by the Panel of Judges and the trial participants. These cultural aspects are cultural evidence, cultural information, and cultural considerations. The percentage of cultural factors involved is 3.7% cultural evidence, 37% cultural information, and 59.3% cultural considerations. This research shows that the Religious Courts tend to use judgment in the case settlement process. Thus, forensic linguistics is not only used for advocacy purposes but also restoration purposes. Based on the results of forensic linguistic analysis in the legal context of the Religious Courts, a generalization can be obtained that cases that have legal implications can be prevented by providing an understanding to the public regarding the use of language and the resolution of cases involving cultural aspects.

Keywords: Religious Court, Narrative Statement, Cultural Aspect, Forensic Linguistic

Introduction

Empirically, the legal system requires the contribution of language analysis, such as police interview interactions and communication models within the courts. The necessity of the relation between language and law is then translated into a study that integrates them, namely forensic linguistics (Coulthard & Johnson, 2007; Gibbons, 2003; Olsson, 2008). The reality of language and legal context are interrelated and become the main scope of interdisciplinary development studies between language and law (Heriyadi, 2015:45).

The recent research and studies on forensic linguistics have resulted in new reflections in forensic linguistics, such as forensic semiotics by Sorensen, Thellefsen, & Thellefsen (2017) and authorship formulas by Tomblin (2012). In this case, forensic linguistic research does apply not only theoretically but also practically in various fields. As explained by Pether (2009) that currently,

forensic linguistics has developed in at least six perspectives, namely humanism, instrumental/phenomenal, philosophical/theory, education, practice, and culture. Early, forensic linguistic research originated in a wide range of diciplines: linguistics, law, psychology, anthropology, and sociology and included topics as diverse as handwriting analysis, forensic phonetics, and role of the linguist as an expert in court, covering work in Australia, Europe, and North America (Coulthard & Johnson, 2007:6).

Forensic linguistics is the study of language for various problems in a special domain (law). Central concerns of forensic linguistics that will be treated in subsequent chapters are; the language of legal documents, interviews with children and vulnerable witnesses in the legal system, courtroom interaction, linguistic evidence and expert witness testimony in courtrooms, authorship atribution and plagiarism, forensic phonetics and speaker identification (Coulthard & Johnson, 2007:5). Similar slang expressions abound in police usage and in prisons (Gibbons, 2003:50).

The trial process in forensic linguistics was raised to meet the needs of the legal field in terms of determining evidence in the trial process and case settlement. In Indonesia, forensic linguistics has developed significantly both theoretically and practically (Bachari, Sudana & Gunawan, 2018; Erdian & Mulia, 2016; Hartini, Saifullah & Sudana, 2020; Ikhsan & Hidayanto, 2016; Rustan, 2016; Saifullah, 2016; Subyantoro , 2019; Susanto & Nanda, 2020; Waljinah, 2016). Theoretically, forensic linguistic studies and research are carried out through various scientific conferences and meetings. Practically speaking, the development of forensic linguistics is caused by the diversity of legal cases with different social background problems.

In Indonesia, there are four types of official courts that handle legal cases based on the area of study and the social background of the community. The four courts are; General Court, State Administrative Court, Military Court, and Religious Court. The Religious Court is the official title (title) for one of the four legal State Courts or Judicial Powers in Indonesia (Rasyid, 2019).

The Religious Courts are judiciary or judicial institutions that carry out law enforcement and justice for litigants, especially regarding cases in Islamic law (Aripin, 2013; Matrais, 2008). The Religious Courts handle civil cases related to religious legal issues, such as marriage, inheritance, waqf, and sharia economics. This characteristic is different from the District Court, which concerns criminal and civil cases for the general public (Aisyah, 2018; Bachari, 2017; Wijayanta & Firmansyah, 2013).

The legal system in the Religious Courts has jurisdiction over areas of law related to kinship and society. Therefore, the opportunity for the legal system related to cultural aspects is enormous. The cultural aspects of the Religious Courts take various forms. Tseng, Matthews, & Elwyn (2004, pp. 19—20) describe that cultural concepts can be used in legal processes that provide different connotations and implications, namely cultural evidence, cultural information, and cultural consideration. Cultural evidence can be physical evidence such as icons, indexes and symbols. Cultural information such as exposure to habits, lifestyle and appearance. Cultural considerations such as exposure to values, ideologies and beliefs.

The multidisciplinary nature of forensic linguistics raises the consideration of aspects other than law and language, such as cultural aspects. The concept of forensic linguistics to overcome cross-cultural communication problems, especially in the courtroom, has been proposed by Gray (2010, pp. 591—610). Cross-cultural communication is essential even in the multinational field (Naeem, Jawad, Rehman, Zulqarnain, 2020). These various studies and studies prove that legal

phenomena cannot be separated from the use of language that brings the cultural potential to the implementation of the law.

One of the considerations of language analysis that can be used in court proceedings is the analysis of narrative statements formulated by Olsson (2008). Narrative statements in Olsson's (2008) forensic linguistic theory are a form of language used in interviews and court proceedings. In tracing the implementation of narrative statements, they are not narrative as narrative texts are telling stories. Narrative statements are intended as continuous statements in the trial process.

Based on the theoretical explanation and some of these realities, the author discusses the involvement of cultural aspects in the Religious Courts trial by using narrative statement analysis. The study results become a reference for the Panel of Judges in the process and decision of a case. In addition, this research is a step in developing analysis in forensic linguistics, especially in the legal system of the Religious Courts.

Methodology

This study was conducted using a qualitative approach to find patterns of interactive relationships among social entities. This study is categorized into forensic linguistics as a linguistic study that includes language theory and analysis in the legal realm (Heriyadi, 2015; Olsson, 2008). Linguistic techniques are applied to examine linguistic phenomena in the legal sphere of the Religious Courts among discourse participants in the trial process.

This research is language research that is applied in a legal context. The legal aspect serves as the research context. Olsson's (2008) narrative statement analysis uses the language analysis approach. The analysis of narrative statements is divided into five categories; (1) time markers, (2) place markers, (3 sequence markers, (4) descriptions, and (5) tenses. The five categories are used to elaborate on three cultural aspects of law, namely: (1) cultural evidence, (2) cultural information and (3) cultural considerations.

Research data is divided into two data—the First, primary data in transcription results and written records from the trial process. The trial understudy was held at the Watansoppeng Religious Court and the Pekanbaru Religious Court. Second, secondary data is derived from field records on participation in the religious court process. Both data are sourced from the primary data source, namely the recording of the Religious Courts process through active involvement in the licensing process.

In general, the analysis stages follow the qualitative data analysis of Miles & Huberman (1994, pp. 10—12), namely: 1) data reduction, 2) data presentation, and 3) verification and conclusion drawing. These stages follow the data analysis stages recommended by Aziz (2016, p. 41) in forensic linguistic research.

Result and Discussion

Cultural confessions in the trial process of the Religious Courts are represented in narrative statements. Cultural confessions are presented by the parties involved in the trial process, especially the Panel of Judges. Although there are cultural aspects involved by the Plaintiff/Applicant, Defendant/Respondent, and Witness, they are not dominant and do not affect the trial process. The involvement of this cultural aspect is identified through forms of communication interaction between interested parties and the Panel of Judges. These interactions are in evidence, information, and cultural considerations.



Figure 1. Involvement of Cultural Aspects in the Court

Based on the above view, the involvement of cultural aspects in the trial of the Watansoppeng Religious Court and the Pekanbaru Religious Court includes cultural evidence, cultural information and cultural considerations. The analysis results based on the narrative statement category show that the Panel of Judges dominantly involves cultural information and concerns in the trial process. In contrast, the involvement of cultural evidence is not dominant.

Cultural Evidence

Cultural evidence was used in the divorce trial at the Pekanbaru Religious Court. The cultural evidence is represented in statements that fall into the category of Superfluity Statements because they are not indicated in the types of place, time, sequence, and Superfluity. Even though the Lawyer started to produce the photo as physical evidence, this was supported by the Chair of the Assembly. Based on the accumulated data from the two trials, statements containing cultural evidence were 3.7%.

Table 1. Re	presentative Data of Cultural Evidence	
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Narrative Statement	Cultural Evidence
Context: The trial for divorce at the Pekanbaru Religious Court	
presented a lawyer from the Defendant's side. Lawyers provide photo	Cultural Evidence
evidence information to the Panel of Judges.	(Icon)

Narrative Statement	Cultural Evidence
Lawyer 2: Yes, this is We have known it. But this is more about,	
this is to provide evidence, a photo of a young wife.	
(Lawyer 2 shows the photo of the Plaintiff and Defendant to the	
Chairperson of the Assembly, followed by Witness 1)	
Witness 1: So this is her, a photo of my daughter-in-law. When she	
was young.	
Chairman of the Assembly: Oh is this daughter-in-law, madam? Both of	
them are intimate. Ha, here it is. They are intimate, aren't they?. Of	
course. (The judge showed the trial participants a photo of the intimacy	
of the Plaintiff and the Defendant. The audience laughed.).	
(Superfluity Statement)	

The dialogue in the text above shows an Overstatement. The dialogue involved physical evidence, namely several photographs. They are categorized as an Superfluity because there is a statement by the Chairperson of the Assembly that exaggerates the main statement. This excess can be seen in the sentence, "*Oh is this daughter-in-law, madam? They are intimate, aren't they. Of course*.". In that statement, the Chairperson of the Assembly repeated the words "intimate" 2 times while showing Plaintiff's and Defendant's visuals from the photo. The photo became cultural evidence in the trial because it contained legal information involving fiction or infographics.

The cultural evidence used in the divorce trial at the Pekanbaru Religious Court involved the less dominant cultural aspect. However, this involvement provides a reference for the Panel of Judges. There are two factors that cause cultural evidence to be used sparingly in court :

1. The involvement of this cultural evidence was initiated by the Lawyer, although in the end, it was still controlled by the Panel of Judges by using a Statement of Superfluity. The initiation of the involvement of cultural evidence by lawyers shows that the Panel of Judges is not very concerned with the use of evidence or signs that can be used as material. The Panel of Judges obtains more references from the direct dialogue.

2. According to Tseng, Matthews, & Elwyn (2005, p. 13), this aspect tends to conflict with the concept of culture in law, which is abstract and not readily displayed physically. Although culture can be represented in physical forms such as photographs and other physical conditions, in reality, it is not easy to use in a legal context. Based on Olsson's report (2008, p. 65) that courts in Australia do not use much language evidence. If the litigant can provide a strong reason, then it can be accepted. So the evidence of language is not dominantly used. This is the difference that in Australia, there is no particular system that handles religious issues like in Indonesia.

Cultural Information

Cultural information was used in the divorce trial at the Pekanbaru Religious Court and in the marriage dispensation trial at the Watansoppeng Religious Court. The cultural information is represented in statements that belong to Time Statement, Place Statement, Superfluity Statement, and Other Statements. In contrast, the statement data for Sequence Statement does not exist. Based on the accumulated data from the two trials, statements containing cultural information were 37%. The following describes the trial data containing representative cultural information.

Statement	Cultural
	Aspect
Context: Judge Member 2 inquired about the occupation of the	
Petitioner's Child from Witness 3, who is a relative of the Petitioner and	
received information that the Petitioner's Child does not yet have a	
permanent job.	Cultural
Member Judge 2 : He is MA. What is his job?	Information
Witness 2 : He is a student.	(Habit)
Member Judge 2 : Does he have no job?	
Witness 2 : Sometimes he helps his parents in the fields. Sometimes	
he works in machine shop. Sometimes go there.	
Member Judge 2 : Oo	
Witness 2 : Yes. Sometimes he is in the field, sometimes in the machine	
shop.	
Member Judge 2: So, if people want to get married, they definitely need	
a living. So if there is no work for a husband, then the household will	
have problems. So if you are not old enough, then there is a dispensation	
from the court Because it's not working yet. Must stay 4 months.	
Must be just 19 years old. PY is a girl or a widow?	
(Place Statement)	

Table 2. Representative Data of Cultural Information

Based on the table, a narrative statement in a Place Statement is used to convey Cultural Information in the trial process. The text shows the Place Statement uttered by the Witness) and is guided by the Chairperson of the Assembly. When asked by the Panel of Judges the question "Does he have no job?", The Witness only provided information about where the Petitioner worked, not his profession. It is marked by the sentence, "Sometimes he helps his parents in the fields. Sometimes he works in a machine shop". From this information, it can be seen that the Witness used the adverb of place to state the profession of work in order to strengthen his argument.

Based on the use of narrative statements from the placemark review, there are two (2) main points that can be observed from the text.

- 1. The description of the place stated by the Witness is used to cover up the weakness of the Petitioner. As said in the conversation, the Petitioner does not have a permanent job. Thus, the Witness tried to provide specific information about the place, thus giving the image that the Petitioner was active in places such as rice fields and workshops. The Witness used a statement involving place to influence the trial process, tracing statements from witnesses by involving the place factor with reference that the inclusion of places relates to things that must be included and things that must be omitted (Olsson, 2008:118).
- 2. Based on the language data, the Panel of Judges raised the issue of employment of the Petitioners. The judge uses the technique of telling the Witness about the work so that the Witness can bring up weaknesses in the conversation. This indicates the inclusion of cultural information in the trial. Research put forward by Buffam (2016) that the Indo-Canada community in Vancouver, Canada is under repression to acknowledge a culture other than their own in a legal context. The research shows a reduction in cultural information in the legal context in Canada. This is, of course, different

from the legal system of the Religious Courts in Indonesia, which actually involves cultural aspects, especially cultural information from the community, to resolve a case.

Cultural Considerations

Cultural considerations were used in the trial for divorce and marriage dispensation at the Pekanbaru Religious Court and the Watansoppeng Religious Court. This cultural aspect is dominant in the trial process as much as 59.3%. Cultural considerations are represented in statements that fall into the categories of Time Statement, Place Statement, Sequence Statement, Superfluity Statement, and Other Statements. The following describes the trial data involving cultural considerations in a representative manner, both from divorce proceedings and marriage dispensations.

Table 3. Representative Data on Cultural Considerations

Statement	Cultural Aspect
Context: The head of the assembly reprimanded Witness 1 because the	
Witness tended to be confused by his statement regarding information that	Cultural
required personal information.	Considerations
Chairperson of the Assembly: Well madam, don't do it. Look at here, please.	(Value)
Don't look there, right. Can you see it? Means him. He was sworn in.	
(Chairman of the Assembly looks at the Lawyer). If he lied. It's pity for you,	
madam. Yes, who knows. If he's lying, we don't know. How do you know	
him? How do you know? Tell me if you don't know. Who knows, knows.	
Witness 1: Yes, we are responsible for it in the hereafter.	
Chairperson of the Assembly: Ah yes. We, we, this decision determines the	
witness. So the witness was sworn in. We, if he's lying, we don't know.	
That's the witness. Determine. So his husband's name is IL. Where did you	
get married, madam? Are you married?	
(Time Statement)	

The example text shows that the Witness had doubts after being interrogated by the Chairperson of the Assembly. This doubt is demonstrated by the utterance of unclear sentences and by turning his gaze to his Lawyer. Witness 1's doubts affect the investigation in the trial process and verdict because Witness 1 tends to be dictated by the Lawyer. In response to these doubts, the Chairman of the Assembly issued a statement, "the witness was sworn in." which shows the past. The doubts led by Witness 1 became a separate consideration for the Panel of Judges because it raised doubts about the position of the Respondent. Therefore, the Chairperson of the Assembly stated: "Oh yes. We, we, this decision determines the witness. So the witness was sworn in. We, if he's lying, we don't know. That's the witness. Determine.". The statement has elements of value that must be upheld by the Witness. Therefore, the conversation between the Chairperson of the Assembly and the Witness indicated cultural considerations that influenced the trial process.

Based on the research findings, narrative statements involving cultural considerations have 2 (two) main points.

1. The judge uses a statement technique that involves time in order to influence the trial process. Searching for statements from witnesses involving the 'time' or 'mass' factor with reference to whether the answers given were well-formed or ill-formed (Olsson, 2008:117). In this context, the

inclusion of time by the judge is caused by rules or regulations that should be followed by everyone in the trial. These values are also a way of life for society in general. The process of the community's view of life becomes a cultural consideration in the trial process.

2. The judge uses a narrative statement technique involving Superfluity and the element of time in order to limit the Witness in giving information. This is evidenced by two forms. First repetition. Repetition provides a part of Superfluity compared to if it is only done once. Second, the choice of words involves something sacred, namely honesty. The Panel of Judges stated the importance of honesty that must be held by the Witness because it really determines the trial. This shows the involvement of cultural considerations that contain moral values.

Based on the assessment of the findings and discussion regarding the involvement of cultural aspects by the Panel of Judges, it is obtained 3 (three) significances as follows:

1. The involvement of cultural evidence, cultural information and cultural considerations in the trial is an effort by the Panel of Judges to understand the position and deal with the issues being litigated. For example, the Panel of Judges uses narrative statements which are categorized as cultural information. This cultural information is in the form of questions and statements about activities and work. After being answered by the trial participants regarding their work, there is an answer from the trial participants indicating that the person concerned does not have a job. After obtaining an understanding of the case based on the involvement of cultural evidence and cultural information, the Panel of Judges will provide cultural considerations before deciding a case. Thus, cultural considerations are the last attempt by the Panel of Judges to fix and resolve problems.

2. Hierarchy of cultural aspects

According to the topic of discussion, cultural evidence, cultural information, and cultural considerations are used randomly by the Panel of Judges. However, based on research findings, cultural evidence and dominant cultural information are used first, then cultural considerations. If the Panel of Judges cannot reconcile or correct the case with evidence and information such as tracing icons or lifestyles, then the Panel of Judges will use more inherent cultural considerations such as ideology and belief.

3. The role of cultural aspects for the Panel of Judges

There are three benefits of cultural evidence, cultural information and cultural considerations for the Panel of Judges. They are: (1) providing a comprehensive understanding of the cases being handled because the characteristics of cases in the Religious Courts are related to socio-cultural issues, and (2) the opportunity to handle cases more closely. Psychologically due to the involvement of cultural aspects related to personality, family, and environment, (3) referral to socio-cultural and religious grounds so that case settlement can occur correctly.

Conclusions

Forensic linguistics is a multidisciplinary field of study, including its relation to understanding how to use language so that it does not become a social problem and has no legal impact. Likewise, efforts to handle it are carried out through an approach to the urgency of cultural aspects in society. This method is carried out as an effort of legal education through the involvement of cultural evidence, cultural information, and cultural considerations in the legal process using certain narrative statements. Narrative statements have a cultural aspect, both produced by the Panel of Judges and the trial participants. The percentage of involvement in cultural aspects is 3.7% cultural evidence, 37% cultural information, and 59.3% cultural considerations. This data shows that the Religious Courts tend to use judgment in the case settlement process.

Thus, there are several significances of the involvement of cultural aspects in the legal discourse of the Religious Courts trial, namely: (1) the involvement of cultural evidence, cultural information and cultural considerations in the trial is an effort by the Panel of Judges to understand the position and handle the issues being litigated, (2) cultural evidence and dominant cultural information are used first then cultural considerations, and (3) the role of cultural aspects is very influential for the Panel of Judges.

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