The construction of victims of defamation in court's written verdicts

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ABSTRACT
Most countries in the world consider defamation case to be a civil domain. However, Indonesia still classifies defamation as a criminal act. Following the issue of defamation in the Criminal Code, the establishment of the Law Number 11 of 2008 on Electronic Information & Transactions has resulted in a more complex situation because it also covers the act of defamation. After the Law came into force in 2009, to 2014, 71 people had been charged in court for alleged defamation. This study is a linguistic study in the context of law to discuss the construction of victims in copies of court decisions on defamation cases. It aims to reveal the representation of victims in the court's verdict. The data were taken from two copy-texts of court decisions in 2014 and 2015. The texts explaining the position of victims in relation to one of the grounds for judge's decision. This study used the Fairclough's (1997) critical discourse analysis framework that features dialectical-relational approaches to map social relations patterns explaining a party's construction in a discourse. The data interpretation and conclusions reveal the reproductions of the logic of parties in the decisions, marginalization of victims, and the establishment of the role and position of victims in defamation discourses by ignoring institutional aspects and powerlessness. Thus, victims are not the center of discourse in the text copies of Indonesian court decisions. In addition, victim is the most important part of the defamation cases since the cases was classified as a criminal complaint.

Keywords: Court decision; defamation; Forensic Linguistics

INTRODUCTION

Throughout human history, the relationship between language and violence has emerged in various ways, from dichotomous to symbiotic. The oldest knowledge of Ancient Greek states that *"the basic character of language is non-violence"*. In 1921, Walter Benjamin released his *Critique* with the idea that language and violence were two opposites since language was present to link humans in communication for the common good. This idea was later refuted in critical theory by those who began to see language as

evidence that "humanity is playing violence" (see Ryazanova-Clarke, 2016, p. 3).

Moreover, along with the complexity of human social life, it is shown that language is no longer seen as a 'means of communication' or simply 'unifying between individuals in conversation'. Language also began to be seen as a 'tool of crime' in the realm of law.

Language and law are two integral fields of study. For instance, the interpretation of language in laws and regulations shows the urgency of language in the realm of law. However, the emergence of forensic

linguistics also shows that the relationship between language and law does not merely talk about the interpretation of legal language. The relations between language and law cover various aspects and dimensions, such as proof, indictment, denial, to judge's decision.

The perception of language as a 'tool of crime' is an interesting focus of discussion in Indonesia. Today, while most countries in the world consider defamation in the civil domain, Indonesia is still one of the few countries in the world to classify it as a criminal act. The case of defamation in Indonesia is a complex issue as several articles in the Indonesian Criminal Code (KUHP) have regulated the language of insult and threats in multi-interpretive nuances for a long time, as in the article of unpleasant acts.

The issue of language as a tool of crime has become increasingly significant in Indonesia since the emergence of Law Number 11 of 2008 concerning Information & Electronic Transactions (UU-ITE). Since the enactment of Law of ITE 2009, up to 2014, as many as 71 people have been charged in court for alleged defamation with a final guilty verdict.

Judges' decisions are often based on lexical meanings in sentences that are alleged to be "defamation", and then weave them together in one "copy of court decision". When compared with other criminal cases with physical crimes, such as murder, fraud, theft, etc., cases that use language as a crime tool do not have a method of proof that can be scientifically justified. This issue implies the possibility of gaps in decision making by judges when deciding cases of defamation and insult using the scientific method.

Defamation is debated not only in legal discipline, but also in linguistics. As with law, linguistics itself has many points of view that can be used in relation to decision making whether one can 'pollute' others using language. Various previous studies have tried to explore the problem of defamation with various approaches, ranging from formal to functional. Lee (2012) conducted a study to explore defamation from a linguistic pragmatic perspective. By taking a pragmatic approach, the research was able to define the complexities of the transmission of textual knowledge and relational purposes in communication. A detailed study of the recipient's interpretation of offensive comments is also a prerequisite for recognizing the consequences of defamation.

Kniffka (2007) dissected defamation case by using a linguistic analysis to elaborate defamatory meaning. It proved that linguistics is a universal method and a working tool for bridging law and criminal act related to language. Afterwards, Shuy (2010) specifically focused on aspects that fit into the analysis of defamation. The aspects, based on the study, were about grammatical referencing, speech acts, conveyed meaning, intentionality, malicious language, discourse structure, and framing.

In essence, defamation can be interpreted as either slander or libel. Both can be expressed in speech, writing, or digital communication (Lidsky & Jones, 2016, pp. 156–178). The distinction is related to the core content of the defamatory utterance rather than on the medium of expression. The linguistic functional perspective that is used to study the problem of defamation is the perspective of discourse. The discourse issues are usually related to proving cases of defamation from a discourse perspective; both oral and written (see King 2015, p. 12).

To deal with language production that can be categorized as a defamation case, Reeck et al. (2016) showed that the theory of impoliteness can be beneficial for an analytical frame to display and describe the social emotions of someone. Social emotion is a fundamental aspect that makes the defendant struggle with moral damage and produces offensive language. The use of impoliteness theory inspires numerous studies on constructing the language produced by the defendant of defamation case. One of which is a study conducted by Guillen Nieto (2020). The study explained that not all offences from the defendant implying face damage could be categorized as a crime by law. The defendant's language production should be seen in terms of minor injuries, low-intensity insults, and cross-accusations with public significance.

In contrast to previous studies, which focused on the language, production of suspects/defendants, and their verification, this study focuses on victims of defamation as the subjects of legal product relating to victims of defamation which has not yet been elaborated in previous studies. The legal products include copies of court decisions on defamation cases. This study measures how the legal process in the copy of court decision places the victim in the discourse of defamation.

METHOD

The data of this study were two text copies of court decisions in Indonesia that decide defamation cases in 2014 and 2015. Data in the form of texts explains the position of victims in relation to one of the grounds for judge's decision. Coulthard and Johnson (2007) have explained that the realm of legal and language studies in Forensic Linguistics includes several levels such as acoustic phonetics, discourse analysis, and semantics. On this basis, data analysis in this study uses a critical discourse analysis (CDA) framework by Fairclough (1997) as the framework features dialectical-relational approaches that can map patterns of social relations to explain the construction of a party in a discourse.

Previously, Ge (2015) uncovered the practice of discourse in the legal system in China with the use of the Fairclough's (1997) CDA framework. However, the discourse scheme examined by Ge is an oral discourse of direct speech. Ellison and Szablewska

(2020) have actually carried out the use of the CDA scheme in the legal writing discourse. However, their framework was high-profile cases of Biljana Plavšić.

Previous research that is closest to this study is King (2015) which focuses on the construction of victims in a copy of the international court proceedings. Current research is expected to extend the field of language and legal studies and/or forensic linguistics by applying the discourse approach to a written legal product.

FINDINGS AND DISCUSSION

Fairclough (2013) argues that language causes social groups to fight and propose their own ideology. Based on this idea, it can be assumed that the practice of discourse displays the effect of a belief (ideology). This means that discourse can produce unequal power relations between social classes, men and women, majority and minority groups. This inequality is represented through social practice. CDA views the use of speech and writing as a social practice. Social practices in discourse analysis are seen as causing interrelated relationships between events that are detached from reality and social structures.

The initial step of current research was done by analyzing both texts linguistically. The focus is directed on vocabulary and sentence structure to investigate the construction of witness as in the witness reference included in the copy of the court decision. subsequently, the vocabulary and sentence structure were analyzed by observing the meanings, both semantically and lexically. The last step was to elaborate the representation of victims in the processes displayed in the copy of the court decision.

The social construction found in the context of vocabulary (references) in the copy texts of defamation court decisions places the victim in the role of a witness. In this case, the victim is placed as an instrument that considers the judge in making decisions. The construction in both copies of the text appears to differ in terms of the projection of the victim in the action of the defendant which triggered the occurrence of the defamation issue, as in the following two examples.

(1) *Menimbang bahwa berdasarkan keterangan saksi-saksi serta pengakuan terdakwa yang saling bersesuaian diperoleh fakta bahwa **terdakwa** menuduh **saksi Hermanto** mengambil uang dari laci toko milik saksi Haslipah* (Teks 1, Halaman 8, Baris 32-33).

(1) Considering that, based on witness testimony which corresponds with and the defendant's confession, the fact is **the defendant** accused **witness Hermanto** of taking money from the shop drawer of witness Haslipah (Text 1, Page 8, Line 32-33)

(2) *Terdakwa memasang photo seorang wanita telanjang (tanpa berpakaian) yang sengaja menjual diri dan pada facebook tersebut dibuat status/ kata-kata yang pada pokoknya meminta orang yang mau kepada **Silvia Dwi** tersebut untuk menghubungi melalui telepon, bahwa sejak Januari 2013 terdakwa selalu memperbaharui/up date akun face book **Silvia Dwi**, lalu beberapa orang laki-laki yang membuka akun Face Book **Silvia Dwi** menghubungi **Saksi Selvia** untuk mengajak **Saksi Selvia** berhubungan badan.* (Teks 2, Halaman 4, Baris 22-27)

(2) The defendant posted a photo of a naked woman (without clothes) who deliberately sold herself and on that Facebook platform there was status/word which basically ask the person who wants **Silvia Dwi** to contact her by phone, that since January 2013 the defendant always updates the Facebook account of **Silvia Dwi**, then some men who opened the Facebook account of **Silvia Dwi** contacted **witness Silvia** to ask **Witness Selvia** to have sex. (Text 2, Page 4, Lines 22-27)

Fusion of both Internet and digital devices message can be flowing straight- forward within few seconds globally. Hence, said to be that the internet provided endless sources for the cyber offenders. The example (2) is the great example of the concept.

From the two examples above, it appears that Text 2 is inconsistent in representing the victims. In this case, the victims are not always referred to as witnesses. In other parts, it was found that Text 1 tends to be more consistent in referring victims as witnesses while Text 2 is found to be inconsistent as shown in example (2) above.

This finding is an important marker that there is a reproductive logic of certain parties in a copy of criminal justice decisions. In this case, it is appropriate to suspect the clerk (who is responsible for writing a copy of the court decision) or the judge who elaborates the information to make the decision.

It should be noted that the key aspects of text quality are related to writing coherence (Williams, 2022). The existing practices on example (1) and example (2) predominantly show that coherence and consistent method of representing the victim of defamation case has little relation either to law judgment or to text-specific meaning. The texts can be categorized as, based on studies conducted by Dhar et al. (2021) and MacArthur et al. (2018), texts with no consideration of word or text length or the number of pronouns and connectives. The consistent use of referring the victims as witness is crucial since it assesses the semantic similarity and rhetorical structure of the text. The minimum consistency of those aspects shows that the respective verdicts have minimum significant improvement over the baseline of averaged expert standard. Snajder et al. (2019) state that a model that uses rhetorical structure scores as

features yields a statistically significant improvement over the baseline of averaged expert-assigned scores.

The consistency of referencing victim should be performed meticulously in legal texts. The reason is that, to understand a text, readers have to construct a coherent mental representation in which the personal reference is connected to each other. Example (1) and Example (2) do not follow the ideal concept of consistent performance of personal reference. Numerous studies have proven that consistent personal reference can facilitate comprehension (Sanders et al., 2007).

From a different perspective, the inconsistent use of personal reference relates to the minimum cognitive standpoint. Truth-conditionally speaking, the use of personal reference should be implied by the juxtaposition of two examples. Moreover, the inconsistent use of personal reference (stating directly the name of victim or witness victim) offer minimal information on how the text might continue. For example, temporal relations introduce a temporal structure and are therefore quite difficult. The examples did not display contrastive and causal relations. Therefore, the texts should do better represented in memory of who the personal reference is. Meyer and Freedle (1984) proved that texts with consistent personal referenceare recalled better than texts with inconsistent reference. Identical results have been displayed by Mulder (2008) on verification statements and by Sanders and Noordman (2000) on recall and verification statements.

By leaning on the analysis, the present study finds that another factor influencing comprehension effects of the construction of victim of defamation case in verdicts is about the continuous or discontinuous nature of the victim. According to Murray (1997), coherence relations are marked according to the "Continuity principle". In simple explanation, readers of the discourse of court expect consecutive sentences to describe events that involve the personal reference in a continuous manner. Discontinuous manner provides no signal for readers to refer the person which is been discussed. In legal context, it is more difficult to comprehend the sequence through that inconsistency manner. Based on the Continuity principle, the present study proposes that the consistent reference victim as witness victim or (only) victim should be evaluated since consistency will benefit comprehension to avoid discontinuous relation.

Additional evidence for differences in referencing effects between types of coherence relations comes from corpus-based research. Prasad et al. (2008) mentions the frequency distribution of relations in the Penn Discourse Tree Bank corpus (Prasad et al., 2008). The frequency of mentioning consistent reference was explicitly marked differed between coherence types. By leaning on the Continuity hypothesis and the Causality-by-Default hypothesis (Sanders, 2005), the study

hypothesized that discontinuous personal reference will disrupt the continuity of the text.

The findings on Example (1) and Example (2) can also be considered not to corroborate a study conducted by Kleijn et al. (2019). The study shows that the lack of an interaction effect between reader characteristics and coherence marking is especially interesting given the finding that coherence marking effects seemed to disappear in easy texts. A legal text is not an easy text. Therefore, a legal text should have perfect structure as law representation of constructing a certain event. It also suggests that it is not the reader's skills that determine the difficulty level of the text, at least not when it comes to the effectiveness of reference consistency. The present study believes that legal texts should discuss complex concept in a perfect manner and structure. As a result, creating a consistent representation of the reference is a necessity to display and construct victim in law justice.

(3) *Kabar tuduhan tersebut sudah tersebar luas yang menyebabkan **saksi Hermanto merasa malu*** (Teks 1, Halaman 10, Baris 21)

(3) The accusation news had spread widely, causing **witness Hermanto to feel ashamed** (Text 1, Page 10, Line 21)

(4) *Bahwa akibat perbuatan terdakwa maka **saksi menjadi malu** karena saksi adalah perempuan baik-baik yang memiliki keluarga yaitu anak dan suami.* (Teks 2, Halaman 12, Baris 31)

(4) Whereas as a result of the defendant's act, **the witness becomes embarrassed** because the witness is a good woman who has a family; children and husband. (Text 2, Page 12, Line 31)

Examples (3) and (4) are quoted to show the sentence in relation to the position of the victims in the flow of information. It appears that both Text 1 and Text 2 projected mental process of feeling ashamed arising from the material process of the defendant's actions which is formed by nominalization. Even so, there are significant differences where Text 2 elaborates the reasons for feeling embarrassed in the following section which causes example (4) to be longer than the previous example even though the substance of the information conveyed is the same.

Recognition in cyber defamation cases among adolescents can virtually diverge from the perspective of early adulthood. In this section, we can see that Text 1 implies marginalization of the position of the victims in sentences. In fact, the existence of victims in the background information is important considering the copy of the court decision is a reflection of the law. Meanwhile, the law provides equal opportunities for all people to balance justice retributively. Moreover, both texts do not imply ways to provide restorative justice. In fact, defamation is a proposition that is considered detrimental to the victim, especially morally.

The achievement of the expectations that have been stated as rights and obligations explicitly in the absolute constitution depends very much on the operation of the legal system. The harmony between all components will determine the nature of justice in a legal system that prevails in society. The legal system must be able to treat the entire nation fairly and with dignity. The fairness of the legal system's treatment is important because every human being wants his dignity and honor to be maintained.

The issue of dignity and honor in the context of law is a right that is classified as basic. The Indonesian Constitution, as stated earlier, regulates the issue of equal position before the law. The embodiment of the concept of equality will be reflected through the products of the legal system itself, especially in matters of handling one's dignity and honor.

They also include connectives that mark a nonlinear order of events ("because" in Example (4)). However, it might not be completely continuous. The later segment can elaborate on the first (it continues the topical focus of the prior segment), but the segments may also be parallel. In theory, the second segment introduces a new point that refers to a higher-level topic or referent (Knott et al., 2001; Pander Maat, 2001, 2002). In Example (4), it does not flow from the first segment as smoothly as elaborations do. Similarly, causal connective signal (*menyebabkan*/causing) in Example (3) exists in legal text. The connective focus to the segment following the prior event. Therefore, the construction of Example (3) indicates that the focus shifts back to the prior event in the sentence (McClure & Geva, 1983).

It is interesting that the two different cases perform identical mental representation of the result of defamation case. As a sexual history, Example (4) puts victim in more objective reason compared to Example (3). Kirchengast (2013), in relation to sexual crime, stated that The reluctance to recognize victims as anything more than a prosecution witness stems from a concern that victims 'will invite potentially subjective and thus prejudicial submissions on matters of state concern'. This strategy is an attempt to compromise the objective and mental public nature of the criminal justice system in more contextual trial (Doak, 2005). The presenting of mental reasoning, based on the analysis, is an attempt to construct sympathy mediated the relationships between perceived victim responsibility, willingness to help the victim, and credibility. We can see that legal text is trying to accommodate the relationship of mental state of victim and the readers. Sperry (2011), in his study, has proved that sympathy for the victim played a key role in those relationships.

Apart from moral theory, individualistic liberalism can also be used as a basis for justifying the criminalization of defamation offenses. The liberal individualistic theory which is based on detrimental to society provides signs for the freedom of citizens' freedom. According to this theory, the power of the State cannot limit the freedom of citizens except for their actions that harm others, so that actions that harm the state have the right to criminalize (Luthan, 2007, 82). The losses in question are of course not only material losses, but also immaterial ones. The impact on actions that contain defamation is more in the form of immaterial losses, namely the loss of one's honor, good name, dignity and dignity. Losses like this have an impact on social relations because these actions can result in negative stigma for someone in society. A person who is a victim of this defamation may be shunned or excluded from social interactions.

Although the impact is more on immaterial losses, defamation can also have an impact on material losses to people who have certain positions, such as businessmen, doctors or others, which causes people's trust to decrease in them. For a doctor or businessman, the decline in people's trust in them can cause material losses because it will affect income. Because it results in material losses, defamation cases in many countries can also use civil law instruments.

Again, the consistency is a major problem in structuring verdicts. While greater credence has been given to victims' rights and interests, the emphasis on a victim's witness status has continued to be reflected in conservative adversarial reform. Despite such changes, most victims continue to be supported by mental reasoning but in different method. There is no standard of giving more acceptable clues of being embarrassed or so forth. This can be an insensitive treatment by authorities and distressing cross-examination, become exacerbated, increasing the likelihood of secondary victimization (Doak, 2008). Therefore, these findings can be a fundamental prove to improve the capacity of procedural justice in making standard of constructing mental reasoning in verdicts. The urge of this thing has been discussed in a study conducted by Iliadis (2019).

Furthermore, several findings are found regarding the sentence that represents the victim's actions, as explained in the following two examples.

(5) *Bahwa **saksi belum memaafkan** tuduhan yang dilakukan terdakwa.* (Teks 1, Halaman 6, Baris 25)

(5) Whereas **the witness has not forgiven** the accusations made by the defendant. (Text 1, Page 6, Line 25)

(6) *Bahwa **saksi tidak mau memaafkannya** karena saksi sudah cukup malu akibat perbuatan terdakwa.* (Teks 1, Halaman 7, Baris 24)

(6) Whereas **the witness did not want to forgive him** because the witness was quite ashamed as a result of the defendant's act. (Text 1, Page 7, Line 24)

Examples (5) and (6) are presented to show significant differences in describing the roles and positions of the victims after the events that led to court. Principles and establishment of roles and

positions of the victims, in both examples (5) and (6), show striking differences. As demonstrated in the examples (3) and (4), Text 2 emphasizes elaboration with the phrase "... *karena saksi ... dst.*/... because the witness ...." Interestingly, the sentence in example (6) actually has a potential for multi-interpretation since the clitic of *-nya* in the word *memaafkannya* (forgive him) does not refer to the defendant's actions (note that the defendant's actions were mentioned after the clitic appeared). The events should be seen as a clausal reason for the defendant to have new motive in doing crime. The victims have objective reason to not forgive the defendant. Therefore, the victims face a new problem of protection after the process. Braun (2019) has conducted a study about the importance of enhancing victim protection in order to provide victims with an improved experience in the criminal justice system. It does so by commenting in closing on the merits of introducing or expanding legal representation schemes for victims.

From both examples (5) and (6), it appears that there is a disregard for institutional aspects and powerlessness. In this case, both sentences actually demonstrate the power in the victim's hand to forgive or not forgive the defendant. These findings corroborate a study conducted by Holly and Narina (2008) which suggests that there is a relationship between juror gender, victim gender, and case types. From a legal perspective, this is certainly understandable considering that defamation cases are complaints that can be hindered as long as the victim forgives the defendant and revokes his report to the police. However, the process cannot stop if it has reached the court; therefore, remission is only a consideration point in the judge's decision. Weisbrot (2020) considers this as a support for the survivors of defamation case. Through the study, it has been known that defamation claims against gender-based violence survivors to assess the viability of their legal strategies for future defendants faced with an impending defamation lawsuit after they have disclosed their experience of abuse.

The last point that needs to be stated in this section is that this study did not find an elaboration of proof by exploring the tools, namely language, which is used in the 'crime' of defamation. As shown in examples (3) and (4), the main points of consideration in decision making are precisely 'feelings' of shame or not shame, not how the charges for crime are proven empirically. This is important to note since the copy of court decisions is classified as a legal product that has a binding power for the parties involved.

CONCLUSION

Data interpretation and final conclusions of this study raise several important points regarding the representation of victims in a copy of the court decision. First, this study has revealed the reproduction of logic of certain parties in a copy of criminal justice decisions. This is found in Text 2, as shown in example (1). In Text (1), language production tends to be more neutral even though the neutrality does not guarantee that there is no reproduction of logic, given that this report only raises one example due to the limited reporting space.

Second, this study finds the features of victim marginalization to balance justice retributively and restoratively, as shown in examples (3) and (4). Clearly, in example (4), there is a production of language with a pattern that is not the same as example (3). Thus, there are indeed significant differences found based on these examples.

Third, the establishment of the roles and positions of victims in the discourse of defamation tends to ignore institutional aspects and powerlessness. Generally, people view the victim as being wronged; however, in the copy of the defamation court decision, the victim implicitly appears to have a power over the court to "forgive" the defendant. The victim seemed to have the power to forgive eliminating the aspect of helplessness that usually accompanies the victim's position.

Thus, it appears that the victims did not become the center of the discourse in the production of the text of a copy of the court ruling of defamation case. In fact, the victim was the most important part of the defamation case considering that this case was classified as a criminal complaint. Defamation is about mutual respect. Everyone needs to be able to value one's self-esteem. In this life, there are consequences for all the acts we do, if we don't like to have the wrong consequences, then we should avoid the wrong actions. So respect others, just as we want to be respected. In life, we must be able to humanize people. There is a possibility of any deviant act in the form of legal penalties and social sanctions that any perpetrator of an offense must bear. Furthermore, elaboration in copies is only focused on the actions of the defendant with linguistic features that continue to repeat without showing a significant verification process by exploring the language used as a tool of crime in this case. This needs to be noted since the copy of the court decision has overmatch on the parties involved in the discourse.

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