

The Influence of Language in Religious Court in Indonesia VS

The Influence of Religious Court at Language in Indonesia

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Abstract: Several characteristics inherent in humans, even as their edge over other creatures, are having the ability to think and communicate. The ability of the human in thinking-which is communicated in a widest environment-creates ideas on various areas of human life which covers worship, kinship, science, politics, law, economics, health, arts, and so on. Some languages involved in religious court in Indonesia are Sanskrit language (Indian language, clumps of Indo-German) developed in Indonesia with regard to the spread of Hinduism and Buddhism, which originated from Indian culture and Malay language. Arabic (Semitic language family) develops with regard to the spread of Islam. Latin (language family of Indo-German) develops regarding the expansion of the Roman empire to various parts of Europe and Asia, which also carried out the implementation and enforcement of the laws adopted by the empire. English language (language family of Indo-German) develops with regard to the expansion of the European nations outside Europe: Asia, Africa, America, and Australia, including Indonesia.

Keywords: Language, Religious Court, Law, Role

I. Introduction

Two of the several characteristics inherent in humans, even as their edge over other creatures, are having the ability to think and communicate. The ability of thinking is reflected in many ways and the products of thinking namely thought or idea, which is then communicated among them. Their way of thinking is very varied, covering taxonomic thinking, logical thinking, dialectical thinking, symbolic thinking and intuitive thinking. Meanwhile, the product of ideas are expressed verbally or symbolically, using language that can be understood in the communication. In this way their ideas can be disseminated to other generations; and also can be disseminated to the next generation. It shows that language is a part of human culture, both in small communities or among peoples.

The ability of the human in thinking-which is communicated in a widest environment-creates ideas on various areas of human life which covers worship, kinship, science, politics, law, economics, health, arts, and so on. In addition, when increasing human culture, communication is done in writing that is in a tradition of reading and writing. So the idea in written appears in various documents and library materials, commonly called text or script. The last thing shows that the use of written language is one of the characteristics of a cultural tradition. This thing becomes a tradition in the administration of justice.

Language is crucial in the creation and communication of meaning. As is known, there are two main categories of language: *formal* and *natural*. Formal languages use numbers, equations, and algorithms to communicate, and are based on precise measurement and unambiguous reference. Natural (also known as *conventional*) languages are based on the verbal signs that we use to communicate in our everyday interactions. They are representational, or symbolic, systems of signs – that is, their signs always refer to something else. For example, the word “tree” (the *signifier* in Saussure’s linguistics, Saussure 1983) and the plant it denotes in the world (the *signified* in Saussure’s linguistics) are separate, and speakers can conjure images of the plant by using the word, even if no physical tree is present. Also, the image of a tree in one speaker’s mind may be considerably different from the image of a tree in another speaker’s mind, yet on a certain level, both understand the general properties of the object that the word denotes-a quality of “tree-ness” that makes communication in natural language possible.

When the language is composed in text form, as can be read in a variety of documents and library materials, so it can only be understood if referred to the development of a culture and context of the establishment of the text of the language users. Behind the text, it contains a number of ideas that are interconnected. Without knowing the context of the text behind, it will create misunderstanding, because a symbol of the language are bound by cultural and environmental context of its use by users of the language. In the discourse of legal knowledge (Continental Europe), ways of understanding the text is known by a variety of methods of interpretation, including the teleological interpretation or historical-sociological interpretation. The first way refers to the purpose of the formulation of the text; while the latter refers to the social processes in the formulation of the text. A text of the law (legal draft) which covers legal terms in a series of sentences, seems simple. But behind the simplicity of it, there is something very complicated. Text stems from a process of creative thinking that produces an idea symbolized by the term. The idea appears and formulated in a cultural context that is embraced by the framer of the idea. The idea is formulated to meet the specific needs and goals. Then, drawn up in a language that can be communicated and understood by the recipient of the idea.

When the idea is disseminated and acrosses the different cultural environment, the interaction between the idea that in the end the absorption or transfer in accordance with the terms and meaning of vocabulary is available in the cultural environment of the recipient of the idea. In the course of the history of the peoples in Indonesia, which consists of hundreds of ethnic (tribal), inter-ethnic communication occurs between nations and within tens of centuries. There is diffusion, adaptation and assimilation between the language in the dissemination of ideas, including the idea of law as one of the normative element in the structuring of human life. In this regard, there are various legal ideas received from several foreign languages, particularly Sanskrit, Arabic, Latin, French, Dutch, and English, which is absorbed and transferred into Indonesian. Various ideas that demonstrate creative thinking of a culture stemming from the normative aspects embraced by the language users, on the one hand; , can enrich the public culture of Indonesian people, especially in the field of law. Because of this, we know a wide variety of languages, including a variety of scientific language, variety of language in law and a variety of literary language. Besides these three different languages, there is a daily life (mother tongue).

Formal language systems are universal and exact. Natural language systems, on the other hand, are varied and dynamic. There are currently 6,912 living languages (www.ethnologue.com), many of which are divided into dialects and sub-dialects. Natural languages lend themselves to the formation of discourses, that is, specialized variants of the main language reflecting the idiom and usage of specific social groups – slang, jargon and “honorific,” status-related speech are examples of such discourses. For instance, technical jargon serves to minimize the risks of misunderstanding and ambiguity by delimiting the uses of particular words to specific instances, and by capturing distinctions that everyday language, with its polysemic aspect, misses.

The realization of a variety of languages is basically the same, as the expression of thinking about life by using a certain way of thinking. However, in each of the language diversity, the product of human thought refers to the specific characteristics and the variety of language functions. Variety of language is an expression of a way of thinking and logical taxonomists which describes and predicts various natural phenomenon of life, human behavior, as well as normative and spiritual element in human life. Variety language in law is an expression of taxonomists and logical way of thinking about the arrangement of human life, both with regard to the relationship between man and the Creator, and human relations in the domestic environment (family) and public (including state organizations), as well as regards to the right -material right and intellectual (ownership, control, exploitation and utilization). Therefore, language is characterized by a specific law, logical, straightforward, prescriptive, and inevitably, as seen in the text of legislation and court decisions. Meanwhile, the variety of literary language is the result of expression of intuitive thinking, sometimes dialectical and symbolic, that describes the behavior and spiritual aspects of human life.

Nowadays the development of various legal systems is influenced and adopted from various countries in the world, namely the system of civil law (civil law) or the Continental European system, Anglo-Saxon legal system (common law), a system of Islamic law (Islamic law system), and socialist legal system (socialist law system). When formed nation states, especially after the nations of non-Europeans break away from colonial nations of Europe, there is a process of formation and development of national legal systems in each country. On the one hand, there is a change of law rooted from the legacy of the colonial government law which comes from the values espoused by the nation that is better suited to the nature of independence. But on the other hand, the influence of colonial legal system can not be removed simply because it has become one of the elements embedded in a social system espoused by the nation state.

The law system in Continental European derived from Roman law which developed since 451 BC. This law is arranged by King of Justinian (528-534) which are applied in all of Western Europe as a common law, except in the UK. When Indonesia was under Dutch colonial, this law has been transferred to the Indonesian legal system, using the principle of concordance. Until now the legal system, including civil and criminal law in force in Indonesia, still rely on the basics of Roman law, both with regard to the mechanisms

and methods and systematic interpretation of the law and the judicial system. Meanwhile, the common law system adopted by the British colonies spreads in various countries, including Malaysia and Pakistan

Islamic law grows and thrives in the long term and spreads in various parts of the world, so it can be referred to the Islamic legal system. Today, the Islamic legal system becomes a competitor to the civil law system and common law system. Islamic legal system applies in several Islamic countries (Islamic states) and Muslim countries, either entirely or partially. In some of Islamic countries and Muslim countries, Islamic law becomes the main source of national legislation program (explicit and implicit), as stated in the constitution of the country concerned such as Bahrein, Bangladesh, Iran, Morocco, Egypt, Kuwait Saudi Arabia, Syria and so on.

Particularly in Indonesia, the Islamic law (the law of religion in general) is recognized and respected as the law of life in society. It becomes one of the "raw material" in the development of national laws. In the People's Consultative Assembly Decree (MPR) No. IV of 1999 on the Guidelines of State Policy (Guidelines), the development of national laws (among) directed "to organize a comprehensive national legal systems and integrated by recognizing and respecting religious law and customary law and legislation renewing the legacy of colonial and discriminatory national laws, including gender inequality and incompatible with the demands of the reform through legislation". The legal position of Islam in the political context has changed from the previous period. In the reign of the Dutch East Indies colonial, Islamic law occupies the third.

Islamic law is highly diverse, both in dimension and perspective. One dimension of Islamic law which is well known and has a practicality to be transformed into the national legal system is fiqh, a product of thought jurists deduced from the Qur'an and Sunnah. Fiqh is a product of thought, it is known in various schools of fiqh known as mahzab and anti-structure. According to Tahir Mahmood (1987: 10) in his the research, distribution fiqh mahzab in the Islamic world is very varied. In some countries of North Africa: Morocco, Sahara, Tunisia, Algeria, Libya, Mauritania and partially Sudan, dominated by Maliki Mahzab. The Government of Qatar and Saudi Arabia follow the Hanbali Mahzab. Afghanistan and Turkey is Hanafi. The majority of Muslims in Bangladesh and Pakistan adheres to the Hanafi, Shafi'i Mahzab while adherents, Ja'fari (Ithna 'Asyari), and Isma'ili is minority. In some Southeast Asian countries: Brunei Darussalam, Indonesia, and Malaysia adheres to the Shafi'i Mahzab. Iran is dominated by Ja'fari Mahzab. While the Isma'ili sects flourish in Lebanon. Meanwhile, Zaidi sects and 'Ibadi growing in Yemen and Oman (Cf. <http://www.soas.ac.uk/centres/islamiclaw/html>).

In this regard, the administration of justice in Indonesia (religious court) is mixing with the legal system, the legal system of the West and the Islamic legal system, which becomes the national legal system. Western legal systems is the raw material in the formulation of structural hierarchy of the judiciary and court procedures. While the Islamic legal system becomes the raw material in the formulation of substantive law, which is deemed by the legal values embraced by the community of nations. Thus, the idea and the legal terms used in the administration of justice religion, in many ways refers to the two systems. However, because the root of Indonesian culture was strongly influenced by Indian culture and absorbs Western culture and the dominant worldwide.

The transfer of law language diversity of the various foreign languages into Indonesian happens in the long term through various stages. The process of transferring the legal language is one of elements in the process of the idea (concept) and symbols (terms) generally, comes from culture "outside world" is used as a reference, in a specific context. Adaptation occurs and the mixing of cultures (macro), language (meso), and legal terms (micro). Therefore, the meaning of the notion and law terms that come from outside the culture associated with and in the context of culture (cultural context), the context of the situation (situational context), and linguistic contexts.

In this regard, the notion and legal terms derived from western law, as reflected in the basic principles and the rule of law, diverted from Latin, French, and Dutch into Indonesian vocabulary. However, the technical term of the language is still used, especially among academics and legal practitioners. For example, *ius constitutum*, *ius constituendum*, *lex generalis*, *lex*, *testimonium de auditu*, *condemnatoir*, *declaratoir*, *competentie absolute*, *relative competentie*, *volledig bewijskracht*, *bindende bewijskracht*, *dwingende bewijskracht*, *verzet*, *verstek*, *vonnis*, and *zakelijk*.

II. Discussion

A. Some Languages Involved in Religious Court in Indonesia

1. Malay Language

Malay has also functioned as a court language. It was evidently the language of the Sumatran empire of Sriwijaya (9th to 14th centuries). It was also the language of the greatest of all medieval Malay states, Malacca. When Malacca was subjugated by the Portuguese in 1511, its traditions were scattered far and wide and inspired the court culture of smaller successor states like Johor-Riau, Kelantan and Aceh. So modern Indonesian, too,

basks in the glow of prestige which adheres to the language from centuries of use in indigenous administration and court arts.

The very earliest records in Malay are inscriptions on stone using a syllable-based script derived from the indigenous scripts of India. With the coming of Islam in the fourteenth and fifteenth centuries, Arabic script was adopted to write Malay. Called Jawi script (*huruf Jawi*) or Arab-Malay script (*huruf Arab-Melayu*), today this script is still used in Malaysia and Brunei in a small number of publications, most notably in the Kuala Lumpur daily newspaper *Utusan Melayu*.

2. Sanskrit Language

Sanskrit language (Indian language, clumps of Indo-German) developed in Indonesia with regard to the spread of Hinduism and Buddhism, which originated from Indian culture. When adherents two religions became a political force, grow and Hindu and Buddhist kingdoms, such as in Java, including Mataram Kingdom, Janggala, Kadiri, Singhasari, Majapahit, Galuh, Parahyangan, and Pakwan Padjadjaran. It has spread and transfer, in the form of acceptance Sanskrit into local languages, among others, on the island of Java, the Javanese and Sundanese, two languages, which today, is used as a lingua franca.

This situation causes Sanskrit language spreads and transfers into Indonesia, including a variety of language in law as it was used in the kingdom and in the society. This situation became the judicial affairs of the king, who called the case *pradata*; while the case is not a matter for the judiciary king called *coherent case*. In addition, there are various ideas and legal terms derived from Sanskrit transferred into Javanese and Sundanese. In Cirebon, for example, during the Islamic sultanate -which refers to the culture of Java-known as *jaksa kang pinalakarta* dan *jaksa kang amalakarta*. Meanwhile in Priangan -which refers to Sunda- culture known three kinds of courts, namely the *religious courts*, *drigama court*, and the *court cilaga* (scheidsgerecht, Bld.) Part of the idea and the term of the legal order of the regional languages were transferred to the treasury Indonesian until now. For example, civil law, criminal law, religious courts, religious courts, prosecutors, clerks replacement, registrar, bailiff, state power, and cases.

3. Arabic Language

Arabic (Semitic language family) develops with regard to the spread of Islam. While the law and political ideas come from the culture of Islam in Arabic, Persian language is also transferred into the local language into a political force, as seen in the various Islamic sultanate spreading almost all over the archipelago in Indonesia. Therefore, the Malay language became the forerunner of Indonesian as the national language, the idea of law and politics that became treasury in Indonesian. Arabic form of expression is then absorbed into the Indonesian formulated by Nurcholish Madjid (1994: 62) which can be seen in the following sentences: "the deputies in the assembly and the board is obliged to practice deliberation and consensus to establish order, security, and law in order to create a society ridla fairly prosperous with Allah Subhanahu wa Ta'ala ". The sentence contains a variety of ideas and terms: deputy (vice), folk (ra'iyah), assembly (majlis), council (diwan), mandatory (compulsory), charity ('amal), deliberation (consultation), consensus (muwāfaqah), bina (bina '), orderly (tartib), safe (safe), law (hukm), form (form), affluent (ma'mur), ridla (rida'). In Indonesian, it is difficult to find the synonym of the words.

Today the idea and law terms derived from Arabic is used by academics and law practitioners which has been grown in general. Therefore, it can be learned in a written source of law (*lex scripta*) and can be found in the source unwritten law (*lex inscripta*). The process of transferring idea was carried out with regard to the dissemination of Islamic law through the infrastructure and superstructure of society, namely the family environment, environmental education (schools, madrassas), and the environmental community, including public powers (the judiciary and public administration). In the operation of religious courts, can be seen the substantive law, the law of Islam-though mostly expressed in the vocabulary of the language so on, especially in marriage law, inheritance law, the law grants, probate law, benefaction law and economic law. The substance of the law was composed and recorded in the Compilation of Islamic Law (KHI) and the Economic Law Compilation Shariah (KHES).

4. Latin Language

Latin (language family of Indo-German) develops regarding the expansion of the Roman empire to various parts of Europe and Asia, which also carried out the implementation and enforcement of the laws adopted by the empire. The notion and legal terms of the Latin language, transferred into French (Latin vulgar) and into Dutch. When Indonesia under the Dutch and the Netherlands under French rule, there is a transfer legal system in France to Indonesia, namely the civil law system. Civil law, criminal law, commercial law which codified and valid in Indonesia until now, basically is a part of the Dutch East Indies government product that reflects the legal system. Civil law is derived from the code of civil and criminal law in the penal code based on the French legal system, which is also known as the Code Napoleon (See: Sunaryati Hartono, 1997: 252).

5. English Language

English language (language family of Indo-German) develops with regard to the expansion of the European nations outside Europe: Asia, Africa, America, and Australia, including Indonesia when Stamford Raffles became *walinegara-muda* in Java (1811-1816). The expansion was accompanied by the spread of the law, even the legal system adopted by the English, the common law or the Anglo-Saxon system. In addition, when English became the international language, the ideas in the vocabulary of the English language is developed, especially the notion of international law, administrative law and economic law. Today, when there is communication among nations globally, various ideas and legal terms in English vocabulary absorbed into Indonesian, as seen in the language of political determination by the Indonesian government. With this policy, gradually a number of ideas and legal terms is very well known by the people of Indonesia, which is gradually shifting other foreign language vocabulary that has been developed previously. Ideas and the legal terms, among others: the welfare state, the rule of law, law enforcement, law is a tool of social engineering, legal framework, judicial power, judicial, social justice, equal before the law, equal protection on the law, equal justice under the law, contempt of court, trial by press, the presumption of innocence, and formalistic legal thinking.

B. Characteristics of Statutory Language

First, the statutory language is prescriptive or normative. It reflects the law as a normative aspect in human life, which stems from the idea of justice, which shares human values that are ideal. Concrete form the ideal value, which is what should be done and what should be left out so that the value can be realized. In other words, basically the law contains a number of commands (*al-awāmir*) and prohibition (*al-nawāhī*) the owner or caretaker authority.

Second, the statutory language is definitely (*qath'i*, or *exact*), although it is still open to interpretation. Matters relating to the subject requirements and law actions are uncertain. When the subject and law acts meet the requirements, then valid as a legal subject to and in performing legal acts. When the opposite occurs, then the law acts of the subjects of the law is canceled. The requirements to obtain the court's permission for a man in position as husband to be more of a woman's wives (polygyny), for example, are uncertain and cumulative, as set out in Article 5, paragraph (1) of Law No. 1 of 1974 on Marriage:

1. To be able to apply to the court, as referred to in Article 4 paragraph (1) of this Act, must meet the following requirements:

- a. the approval of wife / wives
- b. the certainty that the husband is able to guarantee the necessities of life of his wife/wives and their children;

(2) the assurance that her husband would be fair to wives and their children.

Third, the specific legal language. That is, every term used has a special meaning in accordance with the intention of setting a specific legal field. It was stated in various legislation, which is generally placed at the beginning of the "torso", which is in Chapter I: General Provisions. Raw phrase used as, "In this Law is meant by" (hereinafter the term which was given a special meaning). For example, in article 1 point 1 of Law No. 7 of 1989 jo. Law No. 3 of 2006 Law No. 50 Year 2009 stated: "Religious Courts is justice for people who are Muslims". Meanwhile, in point 4, "Employee Registrar of Marriage is the Registrar of Marriage Officer at the Office of Religious Affairs".

Fourth, legal language is logical, combining inductive and deductive thinking. Preamble legislation deduced from the ideals that are ideal law and juridical basis of higher. In addition, induced from the reality of life that had been developed. In this regard, to assess the truth of testing the coherence of legal norms by legal norms of higher social status according to the sequence order of legislation. The truth of a court decision, for example, tested by the rule of law which is used as reference.

Fifth, legal language is straightforward and concise. That is, directly on the core according to a systematic it came in, among others, in the form of chapters, , and verse. In addition, the language used sparingly arranged and scope of its meaning clear.

Sixth, the language law is uniform and documented, which applies nationwide. It gives an opportunity for the reviewer and the law users to have the same understanding, although there are opportunities to be interpreted. When found the word or, then meaningful alternatives or options; it does not mean the same or cumulative. Nevertheless, whenever there is a significant expression of the other, it means an exception, or specialization.

Seventh, the statutory language is expressed in the form of sentence statement. Although it contains the meaning of the command or prohibition, is not expressed in the form of a command sentence; especially in the form of a question sentence. Legal provisions are imperative expressed by the sentence statement. For example,

in the provisions of Article 39 paragraph (1) of Law No. 1 of 1974 stated: "Divorce can only be done in front of the Court of Justice after the relevant court and unsuccessfully tried to reconcile the two sides".

C. The Supreme Court of the Republic of Indonesia

The **Supreme Court of the Republic of Indonesia** (Indonesian: *Mahkamah Agung Republik Indonesia*) is the independent judicial arm of the state. It maintains a system of courts and sits above the other courts and is the final court of appeal. It can also reexamine cases if new evidence emerges.

- Jurisdiction

The Supreme Court is independent as of the third amendment to the Constitution of Indonesia. The Supreme Court has oversight over the high courts (*Pengadilan Tinggi*) and district courts (*Pengadilan Negeri*). There are about 68 high courts: 31 General Courts, 29 Religious Courts, 4 Administrative Courts and 4 Military Courts, There are around 250 district courts with additional district courts being created from time to time. The Supreme Court is the final court of appeal (kasasi) following appeals from the district courts to the high courts. The Supreme Court can also reexamine cases if sufficient new evidence is found. Constitutional matters, however, fall within the jurisdiction of the Constitutional Court of Indonesia, established in 2003.

- Justice

According to the Constitution, candidates for Supreme Court Justices are required to have integrity and be of good character as well as be experienced in law. Candidates are proposed to the House of Representatives by the Judicial Commission. If the House of Representatives approves them, their appointment is then confirmed by the president. As of mid 2011, there was a total of 804 courts of various kinds in Indonesia. About 50 justices sat in the Supreme Court while other high and lower courts across Indonesia employed around 7,000 judges.

- Chief justice

The chief justice and his or her deputy is elected by the Supreme Court justices from among the members of the court. Sometimes the process is controversial and attracts public criticism. For example, in early 2012 rumors about vote buying were reported in the Jakarta press as speculation mounted about the arrangements underway for the selection of new chief justice to replace Harifin A. Tumpa (who retired as chief justice in March 2012). There was said to be "all-out competition" for the post of chief justice because of the influence that the position holds and it was rumored that the competition might include payments.

Based on the scope and elements of religious courts above, there are various legal terms used in the administration of justice religion, as set forth in the description below. The terms are disclosed in the Indonesian vocabulary. Therefore, when the term is used, in many ways requires its equivalent in foreign languages, especially Arabic, Dutch, and English. Arabic legal term appears in substantive law (Islamic law), while the Dutch-language legal term in the procedural law. However, what is presented in this paper only covers some of the terms briefly, because the legal term used very much.

III. Conclusion

What is presented above shows the diversity of the law terms used in the administration of religious courts. The term indicates a symbol of legal ideas expressed in various languages which become the Indonesian vocabulary. Of course, the idea is a reflection of the basic ideas of law and justice that emerged and developed in a cultural circle, which become the treasury in a culture of Indonesian people. Therefore, it is difficult to sort out which are purely derived from the Islamic law system or from other law systems, except those contained in the substantive law. Islamic law is the values and rules of life which are transformed into the national legal and judicial system. Meanwhile, the national law system, in many ways, adopts the Continental European legal systems.

Acceptance of the idea of the legal process into the idea and legal provisions in the national legal system is done by searching for common ground between the various law systems which made the reference. That trend will continue, especially when interactions between society and culture more open and touching different areas of life. A culture that seeks to develop the creativity of thinking in many areas of life that has the ability to transmit ideas and legal terms into the treasury of the legal system of other communities. And vice versa.

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