CHAPTER 2
GENERAL DESCRIPTION OF THE OBJECT OF THE STUDY

2.1. THE NATURE OF LEGAL LANGUANGE

Both language and law, according to Sutan Takdir Alisyahbana (1974 : 21), are a manifestation of human's life in their society. In a certain place and time, there is a relationship between language and law.

In addition, in talking about law, in term of law enforcement, law implementation, or law maintenance, we are exposed to human being as a major factor. Since human being need language as a mean of communication and play an important role in legal context, from the very beginning step – formulating the bill to the practical one – the law implementation and enforcement , language can not be separated from law. (Mahadi & Sabaruddin, 1979 : 35 – 6).According to Danet (1980), legal language has particular characteristics which distinguish them from other variety or ordinary language. Legal language tends to become elaborated, stylized, formalized and differentiated from ordinary language. Hilman states:

> *It is different from vocabularies used in general literature which coveys a felling or thought, which is possible to show cause and effect relationship Of what has been undergone, vocabularies used in form of legal language does not only state or give an evaluation but it is also imperative... containing 'command and prohibition'... enforcement, is also common (Hilman, 1984 : 12 –3)*

Indonesian legal language is Bahasa Indonesia which is used in legal context. It has a particular characteristics and obeys the rules of Ejaan Yang Disempurnakan (EYD). Stable, clear, monosemantic, logic and aesthetic (Perumusan Komisi I Simposium Bahasa dan Hukum, 1974). Whereas, Hilman

(1984) suggested that language used in legal context must be clear, simple, exact and objective. (1984 : 18)

2.1.1. WRITTEN LEGAL LANGUAGE

It should be noted that written legal language occurs in some degree in everyday Bahasa Indonesia, but it is their greater frequencies and co-occurences that characterized legal language can be characterized as follow:

1. Legal language is extraordinary wordy. "*Melakukan perbuatan untuk menjalankan perintah* " is use instead of "*melaksanakan perintah*" (KUHAP art. 51). "*memalsukan*" would appear to be sufficient but the lagalese (written legal language) is likely to contain "*meniru atau memalsukan* ".
2. Legal language has many distinctive characteristics most not common in any other style of Bahasa Indonesia. Legal language is used to make and record contracts, to impose conditions, to confer right and privileges, to register information for future scrutiny, etc. Legal language, therefore, intends to be mono-semantic. Thus, sentences tend to be long, self-contained units with minimal linkage to other sentences (either preceding or following them) in order to convey essential information and not to be ambiguous. For instance, one article in KUH Pidana says :

> *Barang siapa yang menyiarkan, mempertunjukkan kepada umum, atau menempelkan, atau untuk disiarkan, dipertunjukkan kepada umum, atau ditempelkan , membuat , memasukkan ke dalam negeri, mengeluarkan dari negeri atau menyimpan, atau dengan terang-terangan atau dengan sengaja menyiarkan tulisan menawarkan tidak atas permintaan orang atau menunjukkan boleh didapat tulisan yang diketahui isinya atau gambar-gambaratau*

barang yang dikenalinya melangggar kesusilaan, dihukum dengan hukuman penjara selama-lamanya satu tahun empat bulan atau denda sebanyak-banyaknya tiga ribu rupiah,"

Repetition of full phrases and references is necessarily used instead of anaphora. In order to minimize confusion and ambiguity, adjectives are infrequent and intensifying adverbs *(cukup, sangat, lumayan, etc)* are absent.

2. Legal language has peculiar vocabularies

- technical terms : special words commonly used in legal context such as *barang siapa, menimbang, memperhatikan, mengingat, memori/risalah banding , terdakwa, tergugat, penggugat saksi, kasasi* etc.
- formal expressions such as *Yang Mulia, di hadapan sidang sekalian, para hadirin, hakim terhormat*
- Dutch loan- words such as *bezit, zeden, opzet, boete, erfdientbaarheei,* etc
- attemps at extreme precisision such as *dengan sengaja , keadaan yang sebenar-benarnya.*

2.1.2. SPOKEN LEGAL LANGUAGE

William O'Barr and his colleagues (1979) studied language varieties used in American courtrooms. They found that there were four registers used in courtroom – formal legal language, standard English, colloquial English, and subcultural varieties (O'Barr et al cited in O'Barr, 1982:25).

The four registers used in American courtrooms as explained by O'Barr can be applied as the guidance to explain registers used in Indonesian courtrooms, in term of spoken legal context, especially in Surabaya. Register is a sort of linguistic variety which occurs in any situation involving members of a particular profession or occupation, or in other words, it is the result of an occupational situation (Trudgill, 1974:104).

There are four basics registers used in Indonesian courtrooms – formal legal language, standard Bahasa Indonesia, colloquial Bahasa Indonesia and sub-cultural varieties.

a. Formal Legal Language

It is the variety of spoken legal language used in courtroom that most closely parallels to written legal language used by the judges in instructing the attorneys, passing the judgement and speaking to the record. It is also used by the lawyers when addressing the court, making motions and requests, etc. For instance, *"Majelis hakim yang terhormat"*, *"Apakah anda siap disumpah menurut agama anda ?"*, etc.

This variety is the closest spoken actualization of written legal language. Sometimes written language is actually read aloud in court. It is linguistically characterized by the long sentences containing many professional jargons and employing a complex syntax.

b. Standard Bahasa Indonesia

The variety of spoken language typically used in courtrooms by lawyers, most witnesses and accuseds is generally labelled 'correct' Bahasa Indonesia.

It is closely paralleled to what is thought as the standard in schools. It is characterized by somewhat more formal lexicon than everyday lexicon. For example, here is a question given by a judge to a witness, *"Coba ceritakan apa hubungan anda dengan terdakwa?"*

c. Colloquial Bahasa Indonesia

It is a variety of language spoken by some witnesses, accuseds and few lawyers, judges and attorneys in lieu of standard Bahasa Indonesia. It tends to lack many attributes of formality that characterize standard Bahasa Indonesia. This variety is used by a few lawyers and judges as their particular styles or brands of courtroom demeanors.

Q. Siapa yang pinjem?
A. Ndak pinjem Pak.
Q. Kok gitu?

d. Subcultural varieties

They are varieties of language spoken by segments of society who differ in speech styles and mannerisms from the larger community. In this case Madurese and Chinese dialects are frequently found in used by speakers who come from those ethnic groups.

In some trial processes judges may also use Javanese in quesstioning witnesses and accuseds, such as displayed below.

Q. Yang dibacakan jaksa ini sampeyan ngerti opo ora to?
A. Inggih Pak, saya mengerti.

2.2. THE COURT

2.2.1. THE LAW

In a bench trial system, just like in Indonesia, a trial process may involve at least 6 or more people. The judge bench usually consists of three judges. One as the leader is called '*hakim ketua*' and the rest are the members called '*hakim anggota*'. Besides the bench, there are one public prosecutor or litigant called '*jaksa penuntut umum*' and one recording man called '*panitera*' who will makes any written document about the process. Other party which must be present is the accused with or without defender(s) in addition to several witnesses. In criminal trials, the accused is called '*terdakwa*', while in the civil one he/she is called '*tergugat*'.

The rule of civil and criminal procedures allow legal decision makers to rely on demeanour evidences, that is, to use style, paralinguistic cues, and nonverbal behaviour to reach a decision about a witness' or an accused's credibility (O'Barr, 1982:42).

Legal decision, as mentioned in Indonesian Code of Criminal Law Procedure (KUHAP) article 184, can be drawn from some legal evidences. They are witnesses' testimonies, experts' testimonies, documents, clues and accused's testimony.

2.2.2. LANGUAGE STRATEGIES IN COURTROOMS

In a court, a judge hears oral testimonies and reaches a verdict just as a jury would. A judge or a jury member may use the demeanour of a witness as the

basis for believing or disbelieving any or all of the testimony, or even for reaching a conclusion that is contrary to the weight of evidence. The judge is allowed to determine trustworthiness, credibility, and so on, using the same evaluative criteria used in daily life (O'Barr, 1982:16)

Danet (1980) in her article Language in Legal Process notes that a trial process constitutes a dispute-processing session in which disputants manipulate the content of their cases to their advantages and they package their arguments linguistically. In short, linguistic strategies may be used in a trial to surpress the truth in order to win by attorneys or used by defenders as the best way to bring out the truth.

Danet also classifies the linguistic strategies usually employed by lawyers in trial processes into question forms, mitigation, the manipulation of eyewitness testimony, register, norm of address, and other linguistic forms.

Question form commonly used is leading questions. A question (Busch, 1960: 25-6 cited in Danet (1980)) is leading when, by its substance or form, it suggests a desired answer. If a question is made up of an unqualified statement of an assumed fact, unproved or contested, followed by an interrogation as to that fact, it is almost necessarily leading and objectionable. Danet and her colleagues have developed a typology of question forms in terms of the degree to which they coerce or constrain the answer; declaratives, interrogative yes/no or choice questions, open-ended *wh*-questions, and requests.

The advantage of leading questions is that they allow lawyers to assert their own versions of reality and the legal justification is that they help to control the witness (Wellman, 1903; Jeans, 1975 cited in Danet 1980).

Mitigation, the second strategy, is used to mitigate responsibility from wrongdoing through substantive justifications and excuses. Defendants can mitigate the form of their utterances by using a rhetorical device to soften the impact of some unpleasant aspect of an utterance on the speaker or the hearer (Fraser, 1979 cited in Danet, 1980).

Other strategy is the manipulation of semantic presupposition in questioning eyewitness. The semantic manipulation can significantly alter the truth-value of the answer to those questions or to later ones and can even affect verdicts.

The use of legal registers that are not understandable by laymen may be used by some lawyers. Lawyers may use double-talk and register to impress and mistify speakers so that the speakers may feel being intimidated and will tell all they know.

Norms of address may be used by some lawyers to obtain their own benefits. Patterns of address are generally accounted for by two variables, power and solidarity. Modern courtrooms generally require everyone to use the equivalent address in a formal situation.

Other linguistic strategies are rhetorical questions, manipulation of audience identification, and repetition. Rhetorical questions do just the opposite of declarative questions. The lawyers use question form to make an assertion

rather than declarative form to ask question. A strategy of manipulating the way in which the audience or the decision-makers identify various people may be also useful. The defence attorney may try to use the first person plural pronoun in order to suggest agreement between him and the judges. Repetition is a versatile device. For one thing, it is an effective way to stress critical proportional content.

CHAPTER III

DATA PRESENTATION AND ANALYSIS