



UNIVERSITI PUTRA MALAYSIA

**WRITING STYLES AND STRATEGIES IN
DRAFTING THE STATEMENT
OF CLAIM**

GERALDINE DE MELLO

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DRAFTING THE STATEMENT
OF CLAIM**

By

GERALDINE DE MELLO

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September 2002

Chairperson: Dr. Shameem Khan @ Shameem Rafik-Galea

Faculty: Modern Languages and Communication

This study examined the generic structure of a legal document, namely, the statement of claim. The writing styles and strategies employed by Malaysian lawyers in the drafting of the statement of claim, particularly pertaining to contracts were also identified whilst looking at the generic structure.

Legal writing in English is a branch of English for specific purposes (ESP) particularly in ESL/EFL contexts and as such, theories pertaining to general and ESP writing were looked into. The writing product in most legal writing involves the conventions of the particular genre involved.



The first research question looked at why the statement of claim as a legal genre is structured the way it is. The subsequent question aimed at discovering the intricacies and processes that influence the writing styles and strategies employed by lawyers in drafting the statement of claim. The research looked at sentence structures, choice and arrangement of words and sentences, and finally how ideas are conveyed. Finally, the third research question sought to determine whether years of work experience among lawyers in any way influenced their writing styles and strategies.

The study sample comprised fifteen lawyers practising in the town of Seremban, Negeri Sembilan, Malaysia. Data collection was via questionnaires, analysis of standard formats of statements of claim, and statements of claim drafted by the sample group. Interviews were also carried out based on semi-structured questions.

The findings suggest that firstly the English Language still holds a dominant position in the courts of law, despite the fact that Bahasa Malaysia is the official oral and written language of the courts in the country.

Secondly, the statement of claim as a legal genre was found to have a formulaic structure with certain obligatory moves which enable lawyers to identify with them, thus assisting them in drafting their statements of claim effectively, and

optional moves that make for some level of creativity, and hence, variation within the prototype.

The writing styles and strategies also varied among the lawyers. In this study, the perceived styles and strategies of the lawyers were discussed. The findings indicate that lawyers follow the recursive nature of writing and do constant revision in the process of drafting in order to produce an effective and yet clear and concise statement of claim.

Finally, the findings also reveal that work experience influences the writing styles and strategies of lawyers in their document writing process.

It can be concluded then that the significance of this study is to guide and assist lawyers, students and legal practitioners as to the drafting of statements of claim.

Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia sebagai memenuhi sebahagian keperluan untuk ijazah Master Sastera.

GAYA DAN STRATEGI PENULISAN DALAM PENYATA TUNTUTAN

Oleh

GERALDINE DE MELLO

September 2002

Pengerusi: Dr. Shameem Rafik Khan @ Shameem Rafik-Galea

Fakulti: Fakulti Bahasa Moden dan Komunikasi

Kajian ini mengkaji struktur generic dokumen perundangan, ia itu, penyata tuntutan. Kajian ini juga menyenaraikan gaya penulisan dan strategi yang digunakan oleh para peguam di Malaysia dalam menulis penyata tuntutan, khususnya penyata tuntutan kontrak.

Penulisan perundangan dalam Bahasa Inggeris adalah sebahagian daripada bidang Bahasa Inggeris untuk tujuan khusus English for Specific Purposes atau *ESP*, teori-teori mengenai tulisan biasa dan tulisan *ESP* yang berkaitan. Penulisan dalam bidang undang-undang mempengaruhi kelaziman dalam sesuatu genre yang berkenaan.



Soalan pertama melihat bagaimana pernyataan tuntutan sebagai genre undang-undang distruktur. Soalan seterusnya bertujuan mendapat tahu kerumitan dan proses-proses yang mempengaruhi gaya penulisan dan strategi yang digunakan oleh para peguam dalam merangka pernyataan tuntutan. Kajian ini menyelidiki struktur ayat, pemilihan dan susunan perkataan serta ayat dan akhir sekali, bagaimana idea-idea ini disampaikan. Soalan penyelidikan ketiga bertujuan untuk menentukan samada pengalaman bekerja di kalangan para peguam mempengaruhi strategi, cara serta gaya penulisan mereka.

Sampel pengajian terdiri daripada 12 orang peguam di Bandar Seremban, Negeri Sembilan. Pemungutan data adalah melalui soal selidik, analisa pernyataan tuntutan yang mempunyai format piawai serta pernyataan tuntutan yang dirangka oleh kumpulan sample Temubual dijalankan berdasarkan soalan-soalan yang bersifat separuh struktur.

Dapatan kajian menunjukkan bahawa Bahasa Inggeris masih memegang posisi yang penting di Mahkamah-makamah perundangan walaupun Bahasa Malaysia adalah digunakan secara resmi untuk semua urusan lisan dan penulisan.

Kedua, pernyataan tuntutan sebagai sebuah genre perundangan didapati mempunyai struktur formulaic dengan beberapa perubahan tertentu yang

mbolehkan para peguam dapat mengaitkan diri mereka dengan perubahan tersebut. Ini dapat membantu mereka merangka penyata tuntutan secara berkesan.

Dapatan kajian ini menunjukkan pengalaman bekerja mempengaruhi gaya penulisan dan strategi penulisan dalam proses penulisan dokumen tersebut. Kepentingan kajian ini adalah untuk memberi panduan dan membantu para peguam, pelaja dan pengamal undang-undang dalam perangkaan penyata tuntutan yang lebih efektif.

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DECLARATION

I hereby declare that the thesis is based on my original work except for quotations and citations, which have been duly acknowledged. I also declare that it has not been previously or concurrently submitted for any other degree at UPM or other institutions.

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GERALDINE DE MELLO

Date:



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CHAPTER I

INTRODUCTION

This chapter sets out the background to the study, identification of the research problem, the research questions and the purpose of the study and the limitations within. Last but not least, this chapter sets the parameters for the findings by stating the significance of the study and the definition of key terms.

1.1 Background to the Study

In Malaysia today there is much talk concerning the role of the English language. Policy makers are, on one hand, very comfortable with English as an unofficial language, but on the other, the impact of globalization and the Information Technology era have inevitably enhanced the position of English to a higher status. The legal profession in Malaysia is bound by the language policy of Malaysia. When Malaysia achieved Independence in 1957, the language policy was to achieve 'nationalism' and 'nationism'. 'Nationalism' according to Fishman (1968:41) is a "process of transforming from fragmentary and tradition-bound ethnicity to unifying and idealized nationality". Thus, Bahasa Malaysia or Malay was chosen to serve the purpose of developing self-identity and group identity. 'Nationism' is a "process where the political boundaries are most salient and most efforts are

directed towards maintaining and strengthening them, regardless of the immediate socio-cultural characteristics of the population they embrace” (Fishman, 1968:42). The use of English was maintained because it was deemed practical and pragmatic.

This dual language policy was not meant to be divisive. In fact, it was aimed at accelerating development and progress. Hence, as a developing, industrialized and innovative society, Malaysia has pragmatically chosen the English Language for facilitating the needs of international communication, that is, a language that is to be used globally to access both knowledge and education.

In order to trace this aspect of nationalism, the Federal Constitution, the Supreme Law of our land, must be adhered to. Article 152 of the Federal Constitution, states the position of language use in Malaysia as follows:

Clause (1) – that the national language is the Malay language or what is now known as Bahasa Malaysia (BM), but this is read together with the subsequent clauses provided for the use of English

Clause (2) – English is deemed as an official language for a period of ten years after dependence (up to 1967). This retention

is fully endorsed in Clause (3).

Thus, BM became the national language. But with the realization that a drastic switch is more harmful than good, the government had accorded a flexibility in the use of English for official purposes for a period of ten years after independence. One of the official purposes relevant here was the law-making process (Noraini, 1998: xviii).

Specifically, this study is an attempt to understand the drafting of the statement of claim as a legal genre, and to see how this genre resides within the academic and professional community. The study focuses on the issues relating to the writing styles and strategies of Malaysian lawyers in the drafting of the statement of claim as a legal genre. The fair copy of the statement of claim is currently filed into court in BM. However, most of the drafts of the statement of claim is drafted in English and then translated into BM.

1.1.1 Language and Law-Making

When Malaysia was formed in 1963, the coalition of various political parties which represented the various groups in Malaysia made it necessary for the continued use of English as BM (as mentioned earlier) was only just introduced, and had yet to gain widespread acceptance. Hence, English was allowed to be used for official purposes, albeit for a period of ten years only.

An instance of this official purpose is the conduct and mode of law-making, that is, the passing of Bills or acts of Parliament (Noraini, 1998: xix). Since law-making is a very important process, the flexibility in using English (for a period of ten years) was granted in Article 152, as follows:

Clause (3) – that all authoritative texts (Bills or Acts of Parliament, to be introduced or amended) shall be in the English language.

Clause (4) - that all proceedings in the Supreme Court shall be in English unless otherwise pleaded, and

Clause (5) - that all proceedings in the subordinate courts, other than the taking of evidence shall be in English

Hence, it can be seen that Clause (3) above is concerned with the making of written law, whereas Clause (4) and Clause (5) are more concerned with the use of English in courts. This flexibility in language for court proceedings was for a very practical reason: most of the judges and the counsels at that time were well versed in English only. English, therefore, became the main language of the legal service, and it was preserved lest miscommunication should hinder the meting out of justice or, in other words, “to see that justice was upheld” (Asmah, 1992:109).

In addition, other reasons that contributed to the use of English relate to the fact that the Constitution and earlier laws were drafted in English and then translated into Malay, and that most draftsmen were, by confession, not well versed in Malay (Asmah, 1992: 44).

1.1.2 Language and the Judiciary

The flexibility accorded to the law-making processes mentioned above had a parallel effect on the judicial processes. During the initial years, proceedings were carried out in English even when the parties in contention were Malays. This went on until the 80s, when the use of BM was implemented, albeit very gradually. In the lower courts, BM was implemented only in 1981, while in the higher courts, the implementation was only in 1990 (Noraini, 1998:xix).

Malay has been the language of the courts since 1 June 1990. The amended Section 8 of The National Language Act 1963/67 states:

“All proceedings (other than the giving of evidence by a witness) in the Supreme Court, the High Court or any Subordinate courts shall be in the national language: Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be in the national language and partly in the English Language”.

It is clear from the above wordings that English could not be used wholly in any proceedings in any of the courts. The provision of discretion to allow the