RESEARCH ARTICLE

The Position of Forensic Linguistics Experts In Malaysia

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ARTICLE INFO	ABSTRACT
	Currently, the crimes that take place incorporate aspects of linguistics. Whether it involves scam calls, threat notes or texts, bribery, or sexual harassment, each of these cases entails communication that necessitates a particular skill set for effective investigation or prosecution of the offenders. Forensic linguists in western countries are recognized as a collective of specialists who possess the expertise to aid investigators and courts in unravelling the concealed messages within criminal cases. Nevertheless, the initial findings of this article clarify that forensic linguistic experts are not employed in the criminal cases adjudicated in Malaysia. This article adopts a critical analysis approach by examining laws, cases, and relevant references related to forensic linguistics. Therefore, this article aims to achieve the following objectives: i) To explicate the concept of forensic linguistics; and ii) To examine the position of forensic linguistic experts in the investigative and evidential processes in criminal cases in Malaysia. The preliminary findings of this article explains that the role of forensic linguistic experts is unambiguous within the investigation and evidential processes, despite numerous criminal cases have demonstrated that a solid understanding of linguistics is essential for investigators, prosecutors, lawyers, and judges in Malaysia. This is due to the fact that forensic linguistic experts' opinions might potentially help the courts analyses these cases critically based on solid ground, ultimately leading to a comprehensive judgement.

INTRODUCTION

1MDB Audit Report Case: 2-hour 40-minute audio recording of the meeting in Putrajaya revealed.

(Astro Awani News, 2019)

Communication is essentially the key to human civilization, and life without communication is certainly impossible (Fareez, 2019). Nevertheless, the development of human civilization has also shown that criminal activities have also evolved. This becomes clear when we view several newspaper snippets, such as the ones mentioned above, demonstrate how modern crimes remain focused on language and communication. For this reason, Sweta Sinha (2016) stated that forensic linguistics experts' opinion in court has emerged as a speciality of forensics that aids investigators, prosecutors, and attorneys in gathering evidence for civil and criminal cases (Dana Waskita, 2014).

According to Tiersma et al. (2002), Forensic linguistics is an interdisciplinary field that emerged from the domains of linguistics and law, developed in the United States and Europe in 1997. Forensic linguistics is a subfield of forensic science that analyses an individual's language and speech using voice recordings, written notes, and pertinent paperwork in a criminal case. Forensic linguistic analysis enables investigators and the court to identify explicit and implicit meanings, character qualities, educational background, race, and origin of an individual, based on speech or writing style (Tiersma et al., 2002). Another definition elucidated that Forensic Science entails the application of scientific disciplines to legal issues, encompassing both criminal and civil cases (Bell, 2004). A more comprehensive definition of forensic science includes all scientific disciplines employed in investigations to achieve justice for criminals.

The question remains whether or not forensic linguistics is utilised during the investigative and evidentiary phases in Malaysia. To what extent will law enforcement, prosecutors, and the judiciary utilise the analyses provided by forensic linguistics experts in civil or criminal cases, as stipulated in section 45 of Act 56, while adhering to the evidential procedures established by law? Therefore, this article will critically analyse the notion of forensic linguistics based on the discussion, relevant books and articles from the scholars of forensic linguistics to further understand this subfield of forensics.

LITERATURE REVIEW

2.1   The Concept of Forensic Linguistics

MacMenamin (2002) stipulated that there are multiple interpretations and discussions emerging concerning the definition of forensic linguistics. Forensic linguistics utilises the systematic examination of language to address forensic goals and contexts. Nevertheless, the research does not rely exclusively on conventional language evaluations, which may result in ongoing challenges. In forensic linguistics, the use of statistics, along with both subjective and objective viewpoints, as well as top-down and bottom-up procedures, is justified when supported by substantial evidence and measurable outcomes. Forensic linguistics relies on a systematic analysis of language, incorporating both basic and advanced linguistic components.

Shuy (2006) a prominent scholar in forensic linguistics, has pointed out an increasing trend in the availability of college courses focused on various aspects of forensic linguistics. Forensic linguistics utilises structured language to assist students in conveying and articulating their thoughts with clarity. The scientific study of linguistics, focussing on the qualities of language communication and knowledge systems, is crucial in different scenarios. In addition to Shuy (2006) interpretation, forensic linguistics experts like Malcolm Coulthard and Johnson claimed that the field has attained a level of maturity in its academic development. The domain of forensic linguistics has developed its own professional community, recognised as the International Association of Forensic Linguistics, which was established in 1993. Additionally, a specialised journal known as the International Journal of Speech, Language and Law was established in 1994 which formerly referred to as the Journal of Forensic Linguistics and a biennial International Conference(Coulthard & Johnson, 2010.

In retrospect, Svartvik (1968) which is a linguistics professor in England, introduced the term" forensic linguistics" in 1968. In analysing Timothy John Evans' admissions, Svartvik utilised the conception that he was wrongfully convicted and executed for the murder of his woman and 13-month-old son. This case has generated significant debate and is seen as a major mistake and confinement of justice, leading to vital arguments that eased the invalidation of capital discipline in the United Kingdom in 1965 (Svartvik 1968). The notion of "forensic linguistics" remains relatively distinct and necessitates further research and thorough academic investigation, despite its widespread implementation and complete integration into advanced university courses (Olson, 2008).

Forensic linguistics as outlined by Olson & Luchjenbroers (2013) is the examination of language related to the law, whether as evidence or legal speech. The language provided incorporates the attribution of authorship and the clarification of meaning. Legal discourse includes the language of statutes, judicial discussions, courtroom dialogue, and interactions between lawyers both within and outside the courtroom. Forensic linguists have examined various interactions, including those who are in jails and within law enforcement agencies. A developing aspect of forensic linguistics also is the interpretation of legal terminology (Olson & Luchjenbroers, 2013). From this discussion, it is understood that scholars in this field divided forensic linguistics into several subfields which are:

language in law;

language in investigation and evidence; and

language in the courtroom.

However a research conducted by Silvar (2018) from the University of North Sumatra outlined a different subfield of forensic linguistics yet still considered under the same umbrella, which elucidates that the field of language studies has been increasingly used in Indonesia. The domain of forensic linguistics can be utilised in three (3) aspects particularly:

Language in legislative documents;

Language in legal proceedings; and

Language as a component of evidence in conversational and written contexts.

However, there are several definitions opined by other academicians that are in line with the definition by Olson & Luchjenbroers (2013) and Silvar (2018), in which forensic linguistics has a significant correlation between language and law, language in courtroom and language in investigation and evidence. For instance, Dana (2014) in her article *Transitivity In Telephone Conversation In A Bribery Case In Indonesia: A Forensic Linguistic Study* has structured the discipline of forensic linguistics for criminal cases into multiple tiers which are:

Investigation Stage;

Trial Stage; and

Appeal Stage.

Therefore, it can be inferred that the definition provided by Olson & Luchjenbroers (2013) concerning the subfield of forensic linguistics is significantly broader than others. In furtherance of the subfield provided, this article shall examine the common forensic linguistics tools adopted by forensic linguists in relevant criminal cases which shall be elaborated under the next subtopic.

3.0   METHODOLOGY

3.1   Method's of Analysis Utilised by Forensic Linguist

Considering the established publication of forensic linguistics in academic journals, many universities remain hesitant to further investigate this field, as indicated by prior discussions among forensic linguistics scholars. Nonetheless, numerous linguistic tools exist for the investigation of criminal and civil cases that incorporate linguistic elements. To answer the first objective of this article which is to explicate the concept of forensic linguistics, this article will discuss several basic forensic linguistics tools that are accessible to both linguists and ordinary readers who are without specialised expertise in linguistics. Olson (2018) in his book titled *More Word Crime: Solving Crime with Linguistics* outlines the standard procedure whereby clues must be meticulously examined and studied by forensic linguistics as follows:

i.   Spelling punctuation, or any feature of orthography;

ii.   Grammar;

iii.   Lexicon, which refers to vocabulary; and

iv.   Idioms.

The factors outlined are interconnected and essential elements of language. Orthography and punctuation are crucial in discerning the unique characteristics of the author. This strategy aims to equip forensic linguists with the ability to meticulously discern various characteristics, such as spelling patterns and an author's punctuation usage (Olson, 2018). One notable instance of the application of Forensic Linguistics occurred in the "Unabomber" case, in which the Federal Bureau of Investigation (FBI) sought the expertise of Professor Roger W. Shuy, a distinguished Forensic Linguist in the United States, to perform a criminal profile of the perpetrator, Theodore Kaczynski (Shuy, 2005). He perpetrated a serious offence by constructing a homemade bomb at the University of Chicago, resulting in the deaths of three (3) Americans and injuring two dozen additional bystanders. He even issued a threat to set off explosives on airlines in the United States. Consequently, the FBI launched an operation codenamed "UNABOM," an acronym for "University and Airlines Bombing." Shuy (2005) a prominent forensic linguistic expert was requested to create a behavioural profile based on his threat notes, and his conclusions successfully negate the FBI's assessment that Theodore is an uneducated suspect. This is attributable to Theodore's use of advanced terminology in the danger notes, including "surrogates," "over specialisation," and "tautology". Shuy (2005) also observed that Theodore uses religious terminology, such as "God's will," indicating that his upbringing is inclined towards Catholicism. When Theodore was arrested by

the FBI in 1996, the language analysis accurately reflected his age, geographic origin, residences, level of education, and religious background (Shuy, 2001).

3.2   Sequential Information Flow in Speech Events

Shuy (2013) in his work named *The Language of Bribery Cases* explains a methodology for assessing the sequential flow of information within various speech events. He elaborated that certain speech events demonstrate similar terminology to the expected sequences of information flow, and he outlined the similarities between the speech event of business transactions and bribery (Shuy, 2013). he further elucidated that the framework of the speech event pertaining to business transactions encompasses two parties, namely the "seller" and the "buyer," characterised as follows (Shuy, 2013):

Phases	Buyer	Both	Seller
1.	Problem The Buyer state the difficulties he/she is encountering and requested assistance		The seller shows interest and propose the condition
2.	Proposed Negotiation The buyer suggest the dimensions of offers and may establish the following conditions		The seller takes into consideration the dimension and might set further conditions.
3.	Offer The buyer makes offer		The seller negotiates the offer, which will end with an agreement or disagreement
4.	Completion The Buyer completes the transactions	Handshake; sign contract; or decline the offer	The seller completes the transaction
5.	Optional Extension The buyer might offer to extend the business relationship	Both sides might discuss other possible deals	The seller agrees or disagrees regarding future deals

From the table above, Professor Roger W. Shuy basically structured out a specific sequence that can be utilised in analysing bribery cases, in which he pointed out that the speech event of a business transaction has a significant correlation with the bribery transaction (Shuy, 2013). For this reason, he also demonstrates the speech event's framework in the "Abscam" bribery case which involved several United States Politicians like Senator William. In the case of Senator Williams, The Federal Bureau of Investigation (FBI) recorded the transcript of a conversation between an individual named Farhart and Senator Williams concerning the bribery conversation. The relevant conversation text indicates that certain elements of corruption and abuse of power are not clearly evident from a linguistic viewpoint as follows (Shuy, 2013):

"Farhart: I will, for your help, uh, assistance, I would like to give you….some money for, for permanent residence.

Williams: No. No. No. No, **when I work in that kind of activity, it is purely public, not uh, No, within my position, when I deal with law and legislation**, it's not within…(*telephone rings, interrupting*). My only interest **is to see this come together**.

(*De Vito then enters the room and tells the sheikh to take the call in another room*)

The clip of the dialogue between Senator Williams and Farhart in this case breaks down the structural elements of the speech event concerning the bribery transaction as follows (Shuy, 2013):

Phases	*Sheikh Farhart*	*Senator Williams*
1.	Problem "I need legislation"	"There have to be good reasons"
2.	Proposed Negotiation "I would like to give you some money for permanent residence"	"No. No. No. No. When I work in that kind of activity, it is purely public, not uh, No, within my position, when I deal with law and legislation, it's not within…(*telephone rings, interrupting*)."
3.	Offer None	None
4.	Completion None	None
5.	Optional Extension None	None

In this case, Shuy (1993) contends that the bribery transaction is irrelevant. This is due to the fact there is a clear rejection from Senator William based on the conversation transcript. However, the jury still convicted the accused based on several other corroborated facts in various transactions, indicating that Senator William had committed the offence of accepting bribes. The two cases cited exemplify the active involvement of forensic linguistic experts in the investigative and evidentiary processes in the United States (US). Although their view aligns with the facts of the case through critical analysis, it is upon the jurisdiction of the court to decide whether or not their opinion is relevant and admissible (Shuy, 1993). Hence, it is inferred that forensic linguists played a significant role in solving several criminal cases like in the US. The question arises is what is the position of Forensic Linguistic expert in Malaysia? This issue will be further discussed in the next subtopic of this article.

4.0   RESULTS AND DISCUSSION

4.1   The position Forensic Linguistics Experts In Malaysia

Generally, the admissibility of expert opinions is clearly stated in the Evidence Act 1950 (Act 56). Nonetheless, to elaborate further on the acceptance of linguistic expert testimony in Malaysia, it is significant for this research to explain the definition and admissibility of expert opinions in Malaysia based on relevant laws and cases. According to Act 56, the expert opinions are mentioned in Part II under the category Opinions of Third Persons When Relevant. In summary, Part II has seven (7)

provisions, starting from section 45 to section 51, which provide for third-person opinions. Although there are seven (7) provisions under section II that explain third-person opinions, not all of the provisions are related to expert opinions. This is due to the fact that third-party opinions under Act 56 are divided into two (2) categories (Rafiah & Cheong, 2013):

Expert opinion testimony (Section 45 to 46); and

Non-expert opinion testimony (Section 47 to 50).

This article will focus more on expert opinion testimony under section 45 Evidence Act 1950 which states as follows (Act 56):

(1) When the court has to form an opinion upon a point of **foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions**, *are relevant facts.*

(2) Such persons **are called experts**.

With reference to section 45 (1), the court in this case outlined four (4) areas of expertise namely:

Foreign law;

Science;

Art; and

Identity or genuineness of handwriting or finger impression.

Therefore, the main issue that needs to be analysed is how the courts interpreted the term "experts" under Act 56 is? According to the case of Public *Prosecutor vs. Muhamed bin Sulaiman* (1982) 2 MLJ 320 FC, Lord President Suffian in his judgement stated as follows:

*It is true that the witness who is called upon to give evidence founded on a comparison of handwritings must be peritus; he must be skilled in doing so; but we cannot say he must be peritus in the way of his business or in any definite way. T***he Question is, is he peritus? Is he skilled? Has he adequate knowledge?**

Based on the judgement by lord President Suffian (1982) 2 MLJ 320 FC, it is unequivocally clear that Lord President Suffian has outlined several elements to determine an individual as an expert in handwriting are elucidated as follows:

a) The individual must be skilled;

b) The individual is skilled at doing such things;

c) However, it cannot be stated that the individual must be proficient and accurate in their field.

Although an expert is defined as an individual with "specific skills," it does not determine that the individual must go through a specific education system. It is likely that the individual has extensive experience, and without the professional educational background will only implicate the burden of proof and not on the admissibility of their opinion in a certain case. Therefore, Marriette (2013) elucidated that experts who are referred to as "semi-skilled" or "semi-professionals" are also qualified to be called as expert witnesses.

In the case of *Kong Nen Siew v. Lim Siew Hong* (1971) 1 MLJ 262, a semi-skilled psychiatric nurse was recognized by the court as someone possessing "specific skills" in accordance with the interpretation of Section 45 of the Evidence Act 1950 (Act 56). In addition, the level of skill and expertise required by the Court also depends on the circumstances and complexity of the evidence that needs to be proven. This matter has been clarified by the Court in the case of *Junaidi bin Abdullah v. Prosecutor* (1993) 3 MLJ 217, SC:

The **more scientific and complex the subject matter, the more extensive and deeper will the court be required to inquire into the ascertainment of his qualification or experience in the particular field of art, trade or profession**. *But in the final analysis, it is for the trial judge himself as both judges*

of fact and law to determine the weight to be attached to such evidence notwithstanding the outstanding qualification or experience (or the lack of it) of the expert.

*The lack of qualification or experience on the part of the expert will necessarily affect the weight of the evidence rather than admissibility. But **where the evidence is of a complex and scientific nature, the absence of [either] qualification or experience can certainly affect admissibility.** No hard and fast rule should be laid down on the issue of the competency of an expert witness. In an uncomplicated matter considerable laxity should however be applied in practice.*

Based on the judgement, the court has decided that a chemist from a government department who provided testimony on the operability of the revolver pistol is competent and it is needless for the court to question his academic qualifications and experience, although such process could be requested by the court. However, for cases that entail an opinion regarding Deoxyribonucleic Acid (DNA) profiling, the lack of formal training may have implications for the admissibility of the evidence presented in court as stated in the case of *Public Prosecutor v. Mat Kilau* (2012) 5 CLJ 147*.*

According to the preceding case in the Supreme Court, *Junaidi bin Abdullah vs. The Public Prosecutor* (1993) 3 MLJ 217, Supreme Court Judge Mohamed Azmi (SCJ) has stated the qualifications and admissibility of expert testimony as follows:

*In our view, the test to be applied for the purpose of s45 of the Evidence Act 1950 is this. First, **does the nature of the evidence require special skill**? Second, if so, **has the witness acquired the necessary skill either by academic qualification** or experience so that **he has adequate knowledge to express an opinion on the matter under enquiry**? The answer of both questions must depend on the facts of each particular case".*

Based on the judgement by Mohamed Azmi SCJ, there are two (2) elements that need to be comprehended. First, the testimony provided by someone with specialised skills. Second, the testimony given by that individual must have qualifications. Usually, the court will determine whether a person is an expert by examining their academic qualifications (Mohd & Ramalinggam, 2015). The preceding cases have shown that the courts in Malaysia have a certain rule for the admissibility of expert opinion. The basic principle for someone to be deemed as an "expert" by the court is they are equipped with "special skill", academic qualification, adequate knowledge and experience in a certain field of expertise. Basically, forensic linguistics experts are categorised under the sub expertise of "art" and "Identity or genuineness of handwriting or finger impression" as mentioned in section 45 of the evidence act 1956 (Act 56). The previous judgement from several cases unequivocally indicated that the opinion of any expertise like forensic linguistics is accepted by the court as long as it remains as an "opinion" to aid the court in making decisions. Ultimately, it is the prerogative of the courts to determine the admissibility of an expert opinion provided that it is relevant and corroborates with the facts of the case. This principle is clearly outlined by the late Chief Judge, Raja Azlan Shah regarding the role of an expert in the case of *Wong Swee Chin v. The Public Prosecutor* (2022) 9 CLJ, which is considered significant as follows:

*Our system of jurisprudence does not, generally speaking, remit the determination of dispute to experts. Some questions are left to the robust good sense of a jury. Others are resolved by the conventional wisdom of a judge sitting alone. In the course of elucidating disputed questions, aids in the form of expert opinions are in appropriate cases placed before juries or judges. But, **except on purely scientific issues, expert evidence is to be used by the court for the purpose of assisting rather than compelling the formulation of the ultimate judgments**. In the ultimate analysis it is the tribunal of fact, **whether it be a judge or jury, which is required to weigh all the evidence and determine the probabilities. It cannot transfer this task to the expert witness, the court must come to its own opinion**.*

Raja Azlan Shah in his judgement (2022) 9 CLJ commented that certain issues in a case can only be adjudicated by a jury or at the judge's discretion. In cases concerning scientific matters, the role of an expert witness is to aid the court rather than influencing its decision. The task and burden rest on the Judge and jury to evaluate all presented evidence and ascertain its probability. This obligation cannot be delegated to an expert in which the court must maintain its independent judgement. It is therefore can be deduced that the same principle applies to the forensic linguistics experts should their opinions be needed to assist the courts in particular cases involving the elements of linguistics.

Be that as it may, the role of forensic linguistics in the investigative process remains ambiguous. In the case of *Public Prosecutor v. Rosmah Mansor* [2022] 9 CLJ, the facts of the case revealed that the accused, at the relevant time, was the Prime Minister's wife, who through her Special Officer Rizal Bin Mansor (hereinafter referred to as SO), illicitly received a bribe of RM187.5 million from the managing director of Jepak Holdings Company (JHC), Saidi Bin Abang Samsudin, constituting 15% of the contract value. The reward serves as a mechanism for JHC to get a Solar Project in Sarawak valued at RM1.25 billion via direct negotiation with the Malaysian Ministry of Education. The offence is penalised under Section 16(a) and Paragraph 24(1) of Act 694.

After examining all the evidence presented by the Prosecution and the Accused, the High Court decided that the Accused was guilty of all of the charges and sentenced with 10-years imprisonment for each charge to run concurrently, along with a fine of RM970,000,000 for all charges, and an additional 10 years in prison should the accused failed to pay the fine. The issue arises is when the SO brought the money to the accused, the facts the case are as follows [2022] 9 CLJ:

Rizal had confided to Ahmed that the two bags contained cash and were meant for "Mem". *Ahmed knew that the "Mem" that Rizal referred to was the accused, as he had known Rizal for quite some time. He also knew that Rizal was the accused's special officer and that he had always referred to the accused as "Mem".*

The accused had, upon seeing Rizal and the two bags, asked him "berapa?" (how much), to which Rizal replied, "Lima" (five). *Rizal came out about 30 minutes without the bags and returned to his car. He told Ahmed that it was settled. They both left Seri Perdana in Rizal's car.*

A few days later, ***Rizal asked the accused whether she was satisfied with the amount given by Saidi. She lamented that she needed a lot more for political purposes. She also remarked, "Pandai-pandailah dia orang jaga you."*** *(They should be smart enough to take care of you). Rizal decided to raise his stake from RM20 million to RM25 million, which Saidi readily agreed to. He gave Rizal RM500,000 cash on 23 December 2016 at Rizal's residence.*

After conducting critical analysis on the case mentioned above, it is clear that elements of linguistics need to be considered in order to determine that the accused through her SO did accept the bribe from the Director of the JHC. There are many speech acts like "how much?" or "They should be smart enough to take care of you" that need further clarification from the linguistics point of view which can only be ascertained by forensic linguistics experts. Unfortunately, none of the forensic linguistics analysis was involved in the investigative process as the prosecution was seen to be focusing more on the direct evidence such as money transactions and other relevant evidence that corroborated with the witness statement. Therefore, it is concluded that despite the courts having a wide interpretation regarding the admissibility of the expert opinion, the investigative processes remain inflexible in employing alternative expertise, such as forensic linguistics, in helping them to solve relevant criminal cases.

3.0 CONCLUSION

In this modern era, it is undeniable that the elements of crime are becoming more dynamic from time to time. The perpetrators involved certainly will improve their modus operandi to ensure that every step is moving surreptitiously without getting apprehended by the enforcement agencies. Several criminal cases that are referred to in this article exemplifies how criminals will communicate in a peculiar pattern of speech acts to achieve their agenda. In light of this issue, the investigative process needs to be improved by incorporating various techniques of investigation such as forensic linguistic analysis in Malaysia. Western countries like the US have shown that forensic linguists play a critical role in solving criminal cases that are entangled with the elements of linguistics. This is how the enforcement agencies like the FBI are always one step ahead of the criminals due to their continued effort in collaborating with various experts including forensic linguists in solving crimes.

After conducting critical analysis on the relevant laws, cases and documents with regards to the concept forensic linguistics, it is high time for the Enforcement Agency in Malaysia like The Royal Malaysian Police (PDRM) and The Malaysian Anti-Corruption Commission (SPRM) improved their method of investigation by applying forensic linguistic analysis particularly in the cases that involve the elements of linguistics. Such efforts are critical for the prosecution team in order to present a

strong and comprehensive chain of evidence. From the evidential aspects, the courts in Malaysia have established a broad interpretation of expert opinion based on relevant cases, yet still set a certain standard for someone to be deemed as an "expert". Apart from that, there is an unambiguous stand practised by the courts that the expert opinion including forensic linguist shall remain merely as an "opinion" and it is upon the prerogative of the court to decide whether the opinion is relevant and admissible according to the rules of evidence. This stand remains firm to ensure that every judgement issued by the courts is independent and impartial, thus preserving the sanctity of the judiciary.

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