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Insider/Outsider Issues: Reflections on Qualitative Research

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Abstract

In this report, we present some of the "outsider/insider" issues involved when carrying out qualitative research with the judiciary, a neglected area within the methodological account. This report highlights the tensions in the research process and interviewing is a former court judge and later doctoral student, then interviewing other court judges. Our position as "outsider/insider" had implications for our ability to understand the terminology, abbreviations, and acronyms used by the participants and the issues raised by them that were specific to the Indonesian court setting. This article contributes to an examination of the ways in which our ethical appraisal navigates our whole methodology.

Keywords

ethical considerations, insider/outsider issues, qualitative research

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Insider/Outsider Issues: Reflections on Qualitative Research

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In this report, we present some of the "outsider/insider" issues involved when carrying out qualitative research with the judiciary, a neglected area within the methodological account. This report highlights the tensions in the research process and interviewing is a former court judge and later doctoral student, then interviewing other court judges. Our position as "outsider/insider" had implications for our ability to understand the terminology, abbreviations, and acronyms used by the participants and the issues raised by them that were specific to the Indonesian court setting. This article contributes to an examination of the ways in which our ethical appraisal navigates our whole methodology.

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Introduction

One of our motivations in uncovering the hidden struggles of fieldwork in academic publications is to explore the gap, particularly in researching the judiciary, as to give further explanation of "outsider/insider" issues in relation to fieldwork. These remained puzzles in methodological accounts. This study is likely to be useful/of interest to local stakeholders similar to other judicial contexts on a more global level; for example, the international researcher who uses a qualitative method in researching the judiciaries. Therefore this study deals with issues with significant, tangible benefits for wider researchers. Our reflections were prepared in response to the following research question: *What opportunities and challenges did we face when researching the judiciary?*

Method

Reflexivity, which supports our research method, necessitates critical reflection on the formation of knowledge as well as on one's professional backgrounds and impact in the research process. With our professional backgrounds, we relate our personal experiences as insiders and outsiders. As Insiders, we reflected on our professional backgrounds as practising judges in rural court Indonesia. The conceptualisation of this study stems from our former self-identities as judges but also our biographies since we are more familiar with the practical pressure and challenges of lower Court judges. Having worked previously at a Rural Court, we had prior experience of the Indonesian court system. As Outsiders, we reflected on our academic roles as researchers. We carried out all the fieldwork for this study in our capacity as full-time doctoral researchers at the University of Stirling. Our concern about the judicial perspective on sentencing comes from our learning journey arising from our experiences as practising judges and doctoral students. During our seven years, as one of the 3034 district court judges in the nation, the third author has sent less serious drug offenders to prison for

standard minimum sentences ranging from one to four years, including women and young adults. However, we believe that such terms of imprisonment are too harsh for drug offenders, whose involvement in drug offending is based on many factors, including economic factors such as income generation. Also, we perceive drug crimes to be less serious than the crime of murder. Previously, we felt conflicted regarding our roles in sentencing minor drug offenders. Regarding the sentencing behaviour of judges, they are likely to face criticism from the public and the media where lower sentences are given for drug offences, as this is perceived as judges being too soft on drug crime. Meanwhile, among the public, drug offences are perceived as a moral issue according to the Islamic religion, and judges' sentencing will be viewed with suspicion as favouring drug offenders. Yet, when we have asked offenders after a drug conviction what they think a fair sentence would be, most of them asked for lower sentences or for the opportunity to receive drug treatment. However, within our jurisdiction, there are no viable resources to support drug treatment in the community. Therefore, any attempt to sentence drug offenders to treatment would be futile. This is an essential instance of the experience of being an insider-outsider that many qualitative researchers struggle with when they study themselves or their own affinity groups.

Previously, we felt that sentencing drug offenders to prison would be the best option because it would protect the public. However, since studying sentencing practices internationally, we realise that there may be more effective sentencing options available for drug offenders (Mustafa et al., 2020). This sentencing option may be true of other Indonesian judges, who may have experienced a lack of understanding about alternatives to imprisonment. Additionally, the topic of sentencing a minor drug offender may touch upon judicial perceptions and accounts. We consider that our background may be beneficial in dealing with this aspect. By studying it, we are presenting the contemporary understanding of judges' perspectives and experiences, which will potentially enable a greater understanding of drug sentencing in the context of delivering justice in Indonesia (Mustafa, 2021a, 2021b). Regarding delivering justice in an Indonesian context, we identified from the judicial training that the sentencing of drug offenders should cover at least three dimensions: juridical, philosophical, and sociological (juridical concerning executable sentences, philosophical in terms of the aims of sentencing, and sociological concerning public acceptance) (Mustafa, 2021c). Therefore, we considered these three dimensions to be essential within the Indonesian context. The study which forms the basis for this paper offers insight into these three dimensions of sentencing in practices. Although the Chief Justice permitted us to study, they exerted no influence on any of the fieldwork, data analysis, or interpretation.

Results

In answer to the study questions, this section presents a result of opportunities and challenges we face when researching the judiciary. This report highlights the tensions in the research process and interviewing, the interviewees being former court judges and later doctoral students and then interviewing other court judges. Nowadays, it is broadly acknowledged that the method of generating knowledge is frequently examined in connection with the scholar's standpoint as well as their life story by means of the method of reflexivity (Lumsden & Winter 2014). The issue of reflexivity in social research has emerged in the literature which contributes to this field. We recognised that data interpretation is influenced by the process of data generation (Bloor & Wood 2006; Creswell, 2007; Mason, 2002; Maykut & Morehouse, 2002). Nevertheless, there are several challenges of the process of data generation which merit more acknowledgment. Scholars have called for further explanation of ethical procedures in relation to fieldwork. Blackman (2007) affirms that uncovered qualitative research is vital in generating knowledge and it reveals, moreover, that the current explanation of how qualitative inquiry is

carried out contains a gap. Part of that 'gap' is uncovered in this report by examining the ways in which our ethical appraisal affects our whole methodology. The following objective was presented for this report: to describe tensions in the research process.

Our study in Indonesia investigated how the judiciary sentenced minor drug offenders. It involved one period of fieldwork from December 2015 to March 2016. The study was carried out in two district courts which we termed the urban court and the rural court based on locations. The key aim was to understand the social conditions against which sentencing was practiced. During the three months, we interviewed 31 judges (17 in the urban court, 15 in the rural court, and three in the Supreme Court). Many of the judges relocated to other jurisdictions; thus, we had to either take a trip to meet them in the new jurisdiction or interview them by telephone. We spent one month in the urban court, followed by several days in the Supreme Court. This experience allowed us to understand leadership expectations regarding sentencing. It is perhaps noteworthy that researching within the Indonesian judiciary was not difficult in terms of access (Suhariyanto et al., 2021). Many researchers engage in research with more difficult access to the judiciary (Ashworth et al., 1984; Feldman et al., 2003; Maxfield, 2015; Tata, 2002). Perhaps, access issues may be eased by the researcher's prior working experience in the court, the management of contact in the fieldwork, and demonstration of basic understanding of organizational routine and culture. While access was relatively easy, we still encountered a range of ethical and practical challenges throughout our fieldwork (De Laine, 2000; Maykut & Morehouse, 2002; Miller et al., 2012; Komalasari et al., 2020, 2021a, 2021b). To work through this process, we utilised our field journal as a way of expressing various challenges and ethical appraisals that we encountered to assist us in carrying out our fieldwork. The field journal developed in numerous forms. Occasionally, it was a Google drive version of the emotional journey of our Ph.Ds. We also wrote notes on our smartphones about our conversations with the gatekeepers. In addition, we wrote emails to our supervisor and began to use them as a form of asking for advice about the real-time difficulties that emerged from the fieldwork. For this report, we selected extracts that show the tensions in the research process and interviewing resulting from being former court judges and later doctoral students, then interviewing other court judges.

As doctoral students, we came to study this topic regarding opportunities and challenges we face when researching the judiciary. We realise that some parts of our doctoral research experiences made us feel like "outsiders." We created a research protocol to follow; this was to secure access to interviewing the judiciaries. It was clear that our research had to employ a number of quality assurance steps and strategies. The first strategy, which was very important, was not to impose on the participants' time. To do so, we wanted to know about the possible time to schedule interviews with them given their full-time schedules. Ideally, we had to interview them within 1 hour. However, we decided to accept the participants' willingness to continue the interviews and as a result, the interviews lasted between 27 and 90 minutes.

The second strategy was that we framed our questions very carefully when we asked each judge about the factors that they thought influenced their sentencing. The questions were open-ended in order to allow for consistency amongst the judges' responses. We asked both district judges and Supreme Court judges about possible solutions in order to help us identify ideas on how the current approach could be improved to support drug users. Attention was also given to asking the judges' thoughts on what was interesting regarding their experiences in sentencing and how sentencing could be made better.

We wanted to interview more judges to ensure that we obtained rich data and, consequently, we composed interview guidelines whereby our question was followed by the participant's response. We reworded the question during the interview to allow the participant to understand the specific issue about which we were asking. In order to persuade the participants, we changed our approach to explaining carefully about our position as doctoral

researchers in order to generate an understanding of their perceptions as well as an appreciation of their views (and also, how it would help us to complete our Ph.D.s). The study received ethical approval from the University of Stirling Ethics Committee.

14 Dec 2015: We felt shocked; one of the participants, who is a colleague of ours, warned other participants not to disclose too much information about the reality of the judicial approach to sentencing because the research data would be used by outsiders from a western university. His statement might have made one of the other participants limit his responses by giving shorter answers. The participant criticised us, also, because the question about the perceived effectiveness of his sentencing should not have questioned him but rather the role of society. We explained that this research would help us to finish our Ph.D.s and would contribute, also, to a greater understanding of the judicial perspective on sentencing.

The above extract highlights the importance of focusing on the positive consequences of our research. Eventually, it became clear that our research would be used to complete our Ph.D.s and would be disseminated at the Indonesian judiciary research centre and in academic publications. During the interviews, we also focused on the aspect of seeking solutions to promoting better approaches to sentencing.

We realised that our methodology evolved by working in the field. When considering that not all participants were willing to be recorded, we decided to take notes. We were also able to record the phone interviews of the participants whom we were physically unable to meet. In addition, we decided to conduct a kind of focus group: having two judges in the room at the same time with the participants who were unwilling to partake in a one-to-one interview. In this regard, we were able to capture the participants' experiences without being too intrusive:

17 Dec 2015: Interviewing the senior participant is challenging. After we met with him and asked about his willingness to participate in our study, he agreed, and we looked for free time to do the interview. We realised that he was very busy, and we waited for the participant until 5.00 pm; it seemed that he was still holding a court session and, therefore, we postponed our plan. The next morning, we saw him again as he was inspecting the courtroom. We had, also, a feeling, that perhaps the participant did not as yet have time to arrange an interview with us and perhaps he might be uncomfortable about the questions directed to a member of the judiciary about "to what extent is the influence from the external, the senior judges (which is about him)." This became our strategy: to understand from the participants what factors they thought influenced the judges when sentencing minor drug offenders.

Our observations of the sentencing hearings by a panel of judges were mostly carried out after the interviews. As Anleu and Mack (2017) suggested, the observational data added useful insight to the interview data and illuminated the arrangement of the routine court hearing. For example, the observational study in the Australian context was useful in that it added a nuanced insight to the individual judges' performance at the court hearing (Anleu & Mack, 2017). However, it is noteworthy that in the Australian context, the judges acted in their capacities as non-members of the panels. Since the Australian judges sit alone at the bench, their statements in the courtroom might restate the individual judge's attitude toward the offender. This is perhaps different from the Indonesian context where we considered that during the observations, the judges acted in their capacities as members of the panel, and

therefore, the judges' statements in the courtroom during sentencing might reflect the panel's attitude towards the offender.

Regarding the use of court observations as a method, Baldwin (2008) discussed court observation as a method and its usefulness and limitations. The observational study was useful in understanding the influence of 'court culture' on sentencing and illuminating the relationship between the various court actors. However, the limitation of the observation is that after several observations, the researcher becomes aware of the tedious nature of the court hearing. In Baldwin's (2008) study, the researcher could easily spot the delay in the court calendar, which may upset the researcher's energy, time, and enthusiasm to observe 'the lively dynamic of court actors'. In this study, the offender was often vulnerable, weak, sleepy, concentrated, and looking down. The offender was often not familiar with the court process in contrast to the prosecutors. In Baldwin's (2008) study, the researcher has no influence on the theatre of courtroom drama. This is perhaps different from our experiences when our appearance may have influenced participant behaviour, (as some participants asked for comments on their performance). In Baldwin's (2008) study, the researcher felt that the decision-making had occurred elsewhere prior to the court hearing. This is perhaps different than our experiences, where we felt that the decision-making was made in the foreground of the court hearing.

We adopted outsider/insider positions. As outsiders, we considered it important to establish our status as researchers. We never sought the responsibility of sitting on the bench or making the judgment of the case. We were sure to consider the implication of the finding and its contribution to knowledge. In order to persuade the participants, we changed our approach to explaining carefully about our position as doctoral researchers in order to generate an understanding of their perceptions, an appreciation of their views, and how it would help us to complete our Ph.Ds. Although the Indonesian government has funded our research, they did not determine the formulation of our research question and the research design. The formulation of the research question resulted from our own reflection. We were also aware of the need to adhere to the principle of independent research. We take responsibility for the interpretation of the data and for presenting an argument reflexively and contextually. Our claim to such epistemological privilege is based on a careful reconstruction and retracing of the route by which we arrived at this interpretation (Mason, 2002). In doing so, data analysis, data generation, and theory were developed concurrently in a dialectical process. We also explained to the participants our positions as researchers and as people who wanted to know more about the subject area. Then, the participant judge introduced us to the audience in the courtroom. After the court hearing ended, the participant judge asked us to comment on the panel's courtroom "performance." We are aware that the participants wanted us to evaluate their performance. This might have occurred because the participants regarded the researchers as former judges who are already familiar with the procedural aspect of a court hearing, and due to studying abroad, may be expected to improve the procedural aspect of the court hearing. We explained that we are not in the position to evaluate the participants' performances.

As insiders, we reflected on our professional backgrounds as practising judges in rural court Indonesia. Access issues may be eased by our prior working experience in the court, the management of contact in the fieldwork, and demonstrating a basic understanding of organizational routine and culture. The Indonesian Government also funded our study; perhaps our professional backgrounds and sources of funding for the study were determinants to the first impression with study participants, which may have made it challenging for the participants to say "No" to our study invitation. This is an essential instance of the experiences of being former court judges and later doctoral students that may be more typically attributed to researching the judiciary that adopts the common law system.

The tensions in the research process

Concerning the tensions in the research process, Sultana (2007) notes the importance of paying attention to building rapport in the study. This was clear to us when one of the court staff complained to us during the court ceremonial, in which the higher court attended the celebration of the urban court's achievement of international standard (ISO) for case management, because we still planned to interview the judges. She was concerned that we were still using tags as researchers and bringing our folder containing the interview guide, information sheet and consent form, tape recorder, and observation checklist. Implicitly, she expected us to discard all of our study materials. This was despite the gatekeepers advising us to take advantage of the court community ceremonial as an opportunity to interview senior high court judges and Supreme Court judges. We realised that we had not consulted the court staff about our intention to interview the senior Supreme Court judges during the court community ceremonial. This ceremonial was a time when perhaps we should have taken a step back and not interviewed the senior Supreme Court judges. In that situation, we realised that it was not the right time to interview the judges. Jabeen (2013) reminds us of the importance of adapting to this setback of power relationships. The plan of the interview was often canceled due to the potential participants' situations. Mason (2002) notes that using qualitative interviewing reduces power imbalances since a high degree of trust is generated between study subject and researcher. Therefore, responsibility for data interpretation was considered, since an interpretation of the judge's perspectives is essential to avoid misinterpretation and to balance the competing interests of the study participants, our profession, our colleagues, our sponsors, and our institution. Our claim to such epistemological privilege was based on a careful reconstruction and retracing of the route by which we arrived at this interpretation. In doing so, data analysis, data generation, and theory were developed concurrently as moving back and forth within the context of ethical considerations (Komalasari et al., 2022). It was evident that ethical dilemmas occurred due to the judges' protective occupational culture. To minimise the possibility that awareness of being observed for study might affect the participants' behaviour, we positioned as a complete observer. During the court hearing, the participants looked natural in making statements in the courtroom. Then, we explained that observation was based on the observation checklist as described in the information sheet. We adopted an outsider/insider position.

Conclusion

In this report, the concept of "outsider/insider" can be used to highlight positionality issues in qualitative research. More flexible ways to understand the potential participants' situations are arguably worth considering, especially when researching the judiciary. We drew on our experiences being former court judges and later doctoral students, then interviewing other court judges. We consider that our background may be beneficial in dealing with this aspect. Our positions as "outsider/insider" had implications for our ability to understand the terminology, abbreviations, and acronyms used and issues raised by the participants that were specific to the Indonesian court setting. We were careful to avoid making assumptions about the field as far as possible. Through each discussion, we carried out checks on our understanding. This report can be considered original in the field of methodology generally and in relation to ethical appraisal particularly. This report contributes to an examination of the ways in which our experiences might have value in other judicial contexts.

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