

Conference Paper

The Effectiveness of Sympathy Appeal as Strategy in Law Case

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Abstract

Sympathy may provide *motive* which result in why people behave in such a given way. People tend to behave according to what they feel. In law cases in which the suspects have a tendency of difficulty proving that he is innocent, the effort to attract public sympathy is then, seen as logical strategy. This article was intended to analyze the effectiveness of sympathy appeal as strategy in law cases. The effectiveness will be analyzed by the context of *The case of 'bullying' by Muhammad Arsyad, a satay seller, against President Joko 'Jokowi' Widodo (2014)*. It sought causal relation of sympathy appeal and its effect in legal decision through linguistic evidences. This study employed *Judgement*, sub-systems of Attitude in Appraisal devices following a model proposed by Martin and Rose (2003). The finding indicates that Arsyad effectively used sympathy appeal as a strategy to mitigate the sentenced. The effectiveness of the sympathy appeal might be proven by these positive judgements provided by the addressee.

Keywords: Effectiveness, Sympathy Appeal, Judgement

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Received: 21 May 2019

Accepted: 26 June 2019

Published: 7 July 2019

Publishing services provided by

Knowledge E

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Selection and Peer-review under

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1. Introduction

Sympathy may provide *motives* which result in why people behave in such a given way. People tend to behave according to what they feel. Sverdlik (2008) even stresses that this *motive* is even morally superior to sense of duty (p.2). The influence of sympathy to behavior has been stressed by Hume (1888, p.52) as cited in Decety & Chaminade (2003, p.128). This behavior may be referred to as prosocial behavior. It refers to voluntary actions that are intended to help or benefit another individual or group of individuals – a pattern of social activities including sharing, comforting, rescuing, helping and donating. To this behavior, the minds are the mirror to one another: they reflect one another's passions, sentiments, and opinions. We may feel what others feel and imagine if such situation happens to us (Dovidio, Piliavin, Schroeder & Penner, 2012, p.5-6). There were some studies on this claim. Ncube (2010), Kandil (2011), Rajagopal (2006), Garrett (2015), Casci (2006), and Sasongkojati (2016) had conducted investigations that impliedly acknowledge that sympathy is an effective trigger to win the society consent.

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In law cases in which the suspects have a tendency of difficulty proving that they are innocent, the effort to attract public sympathy is then, seen as logical strategy. This had been successfully demonstrated by some law cases in Indonesia; *Prita Mulyasari Case (2008)*, *Minah's Cocoa Beans Stealing Case (2008)*, *The case of 'bullying' by Muhammad Arsyad, a satay seller, against President Joko 'Jokowi' Widodo (2014)*, *The case of teenager, a Tionghoa ethnic, who bullied the President Joko Widodo (2018)*. It was argued that such a success was just due to the press exposure. Carroll and Ratner (2010) argued that press functions as an influencer and a promotive tool toward the proposed view. However, some legal cases, attempting to use sympathy as strategy which were exposed by the press seemed not to work well. The indication of strategy failure might be the convicted suspect in these cases. These cases might be demonstrated well by *Ahok Case (2017)*, *Buni Yani Case (2017)*, and other children sexual harassment cases by sympathetic attributive doer (poor, old, man, teenager). What had been done by all the suspects of those cases were basically convincingly violated the articles in KUHP (Criminal Code). Yet, under the high exposure of the press, they were treated differently; some gained freedom while others were sentenced.

This article was intended to analyze the effectiveness of sympathy appeal as strategy in law cases. The effectiveness was analyzed by the context of *The case of 'bullying' by Muhammad Arsyad, a satay seller, against President Joko 'Jokowi' Widodo (2014)*. It sought causal relation of sympathy appeal and its effect in legal decision through linguistic evidences.

2. The Case of “Bullying” by Muhammad Arsyad, a Satay Seller, against President Joko “Jokowi” Widodo

Arsyad – Arsyad Assegaf, 24, was arrested for defaming President Jokowi, a crime punishable by up to 12 years of imprisonment. Police stated that apart from the primary charges under the 2008 Pornography Law, the suspect was also charged under articles 310 – 311 of the Criminal Code for defamation and libel. Arsyad was arrested at his parents' home in Kramat Jati, in East Jakarta, on Oct. 23rd, based on a report filed in July by Henry Yosodiningrat, an Indonesian Democratic Party of Struggle (PDI-P) law maker and a member of the party's legal team, when Jokowi, then the governor of Jakarta, was engaged in a campaign battle with Gerindra Party leader, Prabowo Subianto.

Arsyad was charged with defamation and spreading pornographic material, a violation of the 2008 Pornography Law, and could face 12 years in prison. The team reported

a Facebook account registered under the name of Arsyad Assegaf that had posted a series of pornographic images with the faces of Jokowi and Indonesian Democratic Party of Struggle (PDI-P) chairwoman Megawati Soekarnoputri. Many have come to Arsyad's defense, saying that his prosecution would not bode well for freedom of speech under Jokowi's administration. Among those who have taken a stand against the arrest is Gerindra politician and deputy speaker of the House of Representatives, Fadli Zon. Fadli accompanied Mursidah to the National Police headquarters on Friday in an effort to bail out Arsyad. On November 3rd 2014, Arsyad had been released by the National Police. They even escorted him home. Iriana Jokowi (the president's wife) and Fadli Zon also donated some money to him to run a business. His legal files had never arrived at the trial process.

3. The Concept of Sympathy Appeal

Aforementioned in the background of the study, sympathy appeal may serve potency as strategy in the law case. The effectiveness of the appeal need to be illuminated through the relationship between power position, power perception and sympathy appeal.

Shirako (2011) in her studies revealed that in an sympathy practice involving sympathizee, sympathizer (agent) and observer the most benefited party will be the sympathizee. The sympathizee basically is the party who obtain the sympathy. They generally obtain sympathy by two means. The first is that they may take a passive stance by exploiting the natural characteristics they have. This natural characteristics must be able to evoke the sympathetic feeling of a sympathizer as well as an observer. However, the effectiveness of this option will rely on the degree of sensitivity of the sympathizer. The second, they may take an active stance by making an appeal. Shirako stressed that to be effective, the sympathizee should be in a low position of power. This low position should be perceived by the sympathizer and observer. The sympathizer as well as observer should perceive that the sympathizee has no possibility to have strategy and/or opportunity to control over source (Shirako, 2011).

From the sympathizer perspective, she found out that in case sympathizer encounters a sympathy appeal, his respond will depend on whether he is in a single or joint decision-making situation. In a single decision-making situation in which the absolute decision is on him and only an option is provided, he tends to rely on 'gut level' responses based on what they "want" to do rather than what they "should" do. This condition is also affected by the past experience of the sympathizer. Having been in such situation experienced by the sympathizee in the past, he willingly expresses his sympathetic feeling to him

(Shirako, 2011). In a joint decision-making situation, in which the sympathizer is not the only decision maker that also has no such experience, he tends to rely on norms of rationality. Hence he makes decisions based on “should” rather than “want”. She further claims that the sympathizee should either select a time when the sympathizer feels powerful, or should somehow put him in a powerful state of mind before making the sympathy appeal. It is due to her investigation that a sympathizer who is not currently feeling powerful is unlikely to respond positively to sympathy appeals. Thus, low power individuals can effectively appeal to the sympathy of their counterparts for their own strategic gain, and more specifically, that low power individuals can cope with their weaknesses through the strategic use of sympathy in order to mitigate the disadvantages of lacking power (Shirako, 2011)..

4. Judgement as Decision Indicator

The study picked out *Judgement*, sub-systems of Attitude in Appraisal System (Martin & Rose, 2003), as a tool to provide linguistic evidences of causality. The selection is based on its intrinsic capacity contained by judgement. Judgement refers to the act of judging people’s character in Discourse. People tend to make Judgements about morality, legality, capacity, normality, etc by their own individual experiences, expectations, assumptions and beliefs (White, 2001).

Judgement could be positive or negative, and they could be judged explicitly or implicitly. In Implicit Judgement, people should consider the term Provoked and Evoked Judgements. Noticing the difference between Explicit and Implicit Judgement is not always easy. White (2001) offers solution by identifying points in the text where some value of Judgement is, at least potentially, activated. Indications of the Judgements are: Inscribed, Provoked, and Evoked. Inscribed Judgement occurs when Judgemental wording is expressed explicitly, for example, “The children were *rudely* talking”. Provoked Judgement occurs when there are no Explicit Judgement wordings but other evaluating elements direct the reader to a Judgement, for example, “Although he asked for quiet, the children kept on talking”. Evoked Judgement occurs when there is a purely ‘factual’ description which, nonetheless, is likely to lead to some inferences of good/bad, praiseworthy/blameworthy, appropriate/ inappropriate behavior, for example, “The children talked while he was presenting the lesson”. Moreover, Martin and Rose (2003) describe that the term ‘Judgement’ can be thought of as the institutionalization of feeling.

In making judgement people tend to be influenced by their feeling and preferences. In a strong sense, it is stated that being evoked by a given emotional exposure (e.g. watching handicapped) the basis of the judgement is sympathy (Craven, 1992, pp. 8-9). Further, this judgement-based-sympathy may override rational consideration in making decision (Keren & Bruine in Hardman & Macchi, 2003, p.355). Hardman & Macchi (2003) further postulate relation of causality that our sympathetic feeling forms our judgement, and our judgements may inform our decision making. Hence, through the judgement analysis the effectiveness of sympathy appeal to influence the legal decision may be revealed.

5. Conceptual Framework

In law cases, the suspects often employ strategy to free themselves or reducing the sentence. Sympathy appeal may be regarded as an effective strategy dealing with this case (Wibowo, 2010; Murdoko, 2016). The effectiveness of this appeal may be indicated by the judgement of the addressee. Positive judgement of the addressee, sympathetic one, may be an indication of the effective appeals; the appeals works well. While negative judgement, unsympathetic one, may be an indication of the ineffective appeals; the appeals do not work well.

In cases of defamation, the first addressee of the appeal may be party that make legal complaint. The corrective-positive judgement of him, after a suspect appeals for sympathy, would possibly mean that he is willing to withdraw his lawsuit. This may lead to the suspect freedom. While negative judgement of him, after a suspect appeals for sympathy, would mean that the suspect is going to have a trial process. Thus, he will possibly be sentenced. The second addressee of the appeal would be the public. Getting public sympathy is also considered as beneficial. Public sympathy may rally solidarity which may force the victim to withdraw his lawsuit or intervene the trial process.

The conceptual framework of the study is presented in the following chart:

The effectiveness of sympathy appeal may be indicted by the statements of the addressee. Sympathetic statements on behalf of the addressee may be a preliminary indication that the appeal is successfully influence the addressee. The ultimate evidence to see its effectiveness, consistency of addressee appeal, then reflected from the addressee action. The opposing explanation draws its ineffectivity. In law cases this action may be in the form of judge (addressee) decision to free as well as to sentence the suspect.

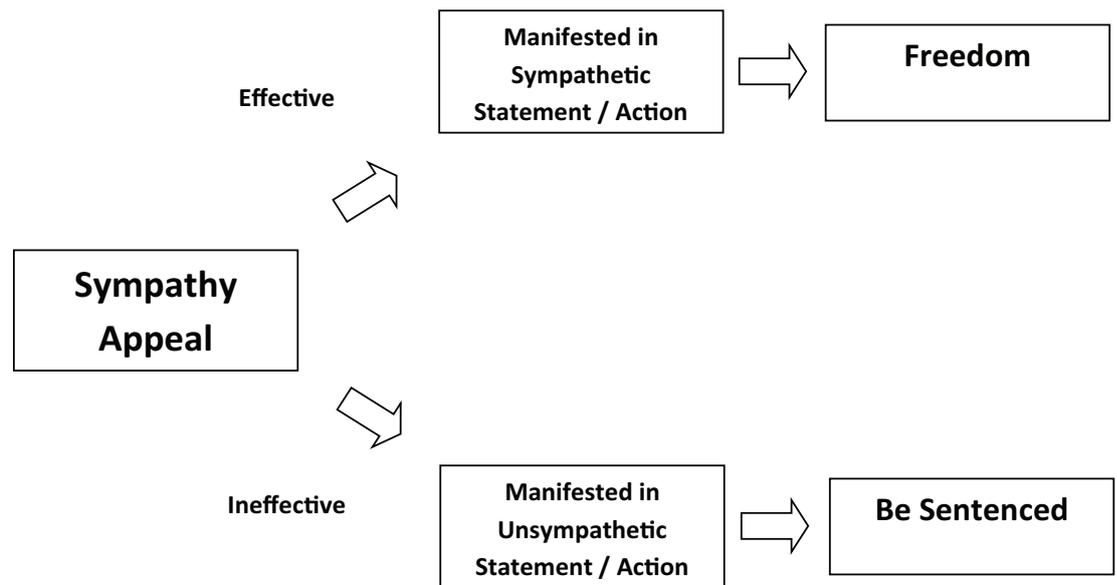


Figure 1: Figure of Conceptual Framework.

6. Research Design

This study was basically Critical Discourse Analysis. It employed *Judgement*, sub-systems of Attitude in Appraisal devices following a model proposed by Martin and Rose (2003). It sought causal relation of sympathy appeal and its effect in legal decision through linguistic evidences. Concluding a causality in qualitative study should not be regarded as impossibility. It is due to the fact that there is no difference “in principle” between causality in qualitative and quantitative research, because both are supported by the same basic logic. The thesis developed that reflects the causality in quantitative and qualitative research is based upon the same “experimental logic”(Tacq, 2010, p. 281, p.289). To maintain the casual relation, Riffe, Lacy & Fico’s two indicators integrated in the study (2005, pp. 46-48). These two indicators are:

1. Time Order

The cause should precede the effect. In this case, it had been clear that the sympathy appeals preceded the legal decision.

2. The Control Management

It refers to the attempt to control factors that may influence the result. The study attempted to control the hypothesized relation through theoretical review of the Role of Press (Carroll & Ratner, 2010), the sympathy applier’s criteria and the sympathy’s addressee perception (Shirako, 2011).

The data used in the study is the written expressions related to the practice of sympathy in the case of “bullying” by Muhammad Arsyad, a satay seller, against President Joko “Jokowi” Widodo which was taken from mass media.

By modifying Warsono’s step of analysis (2007), several steps were taken in analyzing the data, as follows:

1. Reading the text to have comprehensive understanding of their content. This comprehensive understanding of the text content forms the basis for further analysis.
2. Grouping the text into sympathy appeal, sympathetic statement/ action and unsympathetic statement/ action. A)
3. Translating the text into target language (English) and numbering the lines for ease of references.
4. Segmenting the data into chunks or clauses for further analysis.
5. The next step was analyzing the judgment– asa part of appraisal device expressed in the transcript based on the appraisal system network offered by Martin and Rose (2003).
6. The last step was analyzing the effectiveness of the appeal based on linguistic data provided and *Causation theory*.

7. Results and Discussion

Appeals to sympathy had been made by Irfan (Arsyad’s Relative), Abdul Aziz (Arsyad’s Lawyer) and Ersah (Arsyad’s Aunt). Irfan made three sympathy appeals, Abdul Aziz made an appeal while Ersah made six appeals. They exploited many words which evoke sympathy, such as *poor, uneducated, living on the river bank, working as skewer, not knowing what he did, frightened, looked depressed, weak, wants to kneel at Jokowi’s feet*. Those words directly addressed to the basic values of morality and humanity.

Those appeals invited various responses from the addressee. These addressee consisted of public figures and the victims of Arsyad’s defamation; in this case is President Joko Widodo and PDIP. Those public figures were *Tjahjo Kumolo (PDIP politician who is also Minister of Home Affairs), Yasonna Laoly (Ministry of Justice and Human Rights), Syarief Hasan (Daily Executive Chairman of the Democratic Party), Neta S. Pane (Chairperson of Indonesia Police Watch Presidium), Muhammad Jusuf Kalla (Vice President), Ridwan Kamil (Bandung Mayor), Fadli Zon (the Deputy Chair of the*

House of Representatives), Eva Sundari (PDIP politician), and General Sutarman (Police Chief). These public figures statements and actions represented public opinions upon this case. The statements were ranging from sympathetic and unsympathetic ones.

Being analyzed using *Judgement*, sub-systems of Attitude in Appraisal device, it was revealed that the addressee addressed their judgements toward Arsyad, Police Institution, Government, and Criminal Article Proposed to Arsyad Case. These judgements will be summed up in the following table.

TABLE 1: Table of the Distribution of Judgement.

Type	Negative Judgement to Arsyad	Positive Judgement to Arsyad	Negative Judgement to Police Institution	Negative Judgement to Government	Negative Judgement to Criminal Article Proposed
Inscribed	5	10 (5 Actions)	3	1	—
Provoked	3	2	2	—	2
Evoked	1	—	—	—	—

Referring to the table above we may notice that the eight negative judgements toward Police Institution, Government, and Criminal Article Proposed to Arsyad Case were actually implied supports for Arsyad. They were reluctant to claim sympathy explicitly toward Arsyad as they could not deny that what had been done by him was actually violating the law. Those eight negative judgements made by Yasonna Laoly, Syarif Hasan, Neta S. Pane, Eva Sundari, Fadli Zon and Ridwan Kamil. Even Yasona also contributed to one positive judgement, he chose the provoked mode. He did not use the inscribed mode as he knew very well that Arsyad was guilty by the law. He mitigated his sympathy by providing Negative judgment to Police institution. The choosing mode of judgement might be an indication of self confidence. The inscribed mode indicated the strong degree of confidence while provoked and evoked might indicate sense of unconfidence. It was also the case for Neta, and Syarif Hasan. Even they contributed to two positive judgements to Arsyad, they did it in provoked mode. While Eva Sundari and Ridwan Kamil tried to mitigate their four negative inscribed judgements upon Arsyad, they tried to criticize the Criminal Article proposed by suggesting social sanction. It might be an indication of his sympathetic feeling toward Arsyad. Fadli Zon chose to do two sympathetic actions (*attending Arsyad home and providing lawyer*) rather than giving inscribed positive judgements.

Surprising data obtained dealing with six positive judgements came from the victim of the case. President Joko Widodo and his wife gave four inscribed positive judgements and two sympathetic actions (*willing to meet Arsyad and his family and giving them*

money). This followed by one inscribed positive judgement and a sympathetic action (*making Arsyad free*) from the Police Chief, General Sutarman. This case was basically over along with the positive judgements and sympathetic actions provided by the victim, the president, and police.

The effectiveness of the sympathy appeal might be proven by these positive judgements provided by the addressee. This result somewhat confirmed Hardman & Macchi (2003) postulate of causality. Sympathetic feeling forms judgement, and judgement may inform decision making. Sympathetic appeals proposed by the Arsyad party formed the addressee (victim and public figures) judgements, and these judgements informed the victim (the president) decision making (*instructing the police to free Arsyad*). In this case the public figures judgements might strengthen, as well as pressure, the victim conviction in making decision.

To maintain the causality, it was mentioned in the design of the study that the control management was conducted through role of press (Carroll & Ratner, 2010), the sympathy applier's criteria and the sympathy's addressee perception (Shirako, 2011). Press exposure was not an absolute criteria for suspect to gain liberty in law cases. It was illustrated by *Ahok Case (2017)*, *Buni Yani Case (2017)*, and *other children sexual harassment cases by sympathetic attributive doer (poor, old, man, teenager)*. This study also complied Shirako theory of sympathy appeal which mentioned that to be effective, an applier of sympathy should be in a low position of power. Arsyad, the suspect of this law case, certainly had the attribute. Then, Shirako postulate that the addressee should perceive that the applier has no possibility to have strategy and/ or opportunity to control over source. Through the positive judgements provided by the addressee implied that they confirmed this postulate.

8. Conclusion

In the case of "Bullying" by Muhammad Arsyad, a Satay Seller, against President Joko "Jokowi" Widodo, Arsyad effectively used sympathy appeal as a strategy to mitigate the sentenced. His appeals met its objective that was to obtain public responses. These responses even provided by influential public figures. They varied ranging from sympathetic to unsympathetic ones. Those categorization was based on judgements evaluation contained in the public figures statements. The study also found out that the mode of judgements indicated the sympathetic degree felt by the addressee of the appeal. Inscribed mode of judgement might be an indication of the addressee strongest degree of sympathy. It might be leading to actions for the shake of the applier. The

provoked and evoked mode which are also referred to as implicit judgement might be indication of the addressee low degree of sympathy.

Public responses toward sympathy appeals might not only in the form of statements but also in the form of actions. This, as if indicated that sympathy has a power to trigger massive actions. This somewhat provides direction toward future research.

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