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## Qualitative Method Used in Researching the Judiciary: Quality Assurance Steps to Enhance the Validity and Reliability of the Findings

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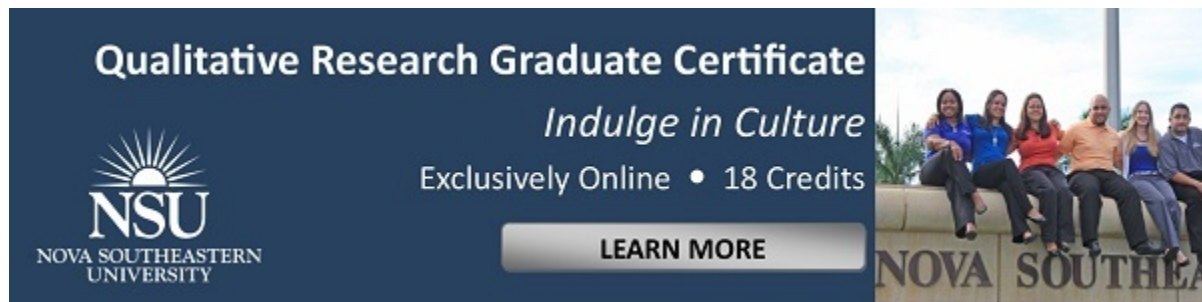
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## Qualitative Method Used in Researching the Judiciary: Quality Assurance Steps to Enhance the Validity and Reliability of the Findings

### Abstract

In this paper, I present a qualitative method used in researching the judiciary. This article highlights the importance of employing a number of quality assurance steps and procedures to enhance the validity and reliability of the findings. I argue that to increase safety and reduce risk, procedural risk-assessment of the study project can be useful to deal with the real time practical difficulties that emerged from the fieldwork. To develop an understanding of what judges are trying to achieve when sentencing minor drug offenders, a total of thirty-one Indonesian judges were semi-structurally interviewed. The findings highlight that my methodology evolved by working in the field. When it was clear that not all participants were willing to be recorded, I decided to take notes. Also, I decided to conduct a kind of focus group by having two judges in the room concurrently. In this regard, I captured the participant's experience without being too intrusive. This paper contributes to the study of the method. The way in which I employed a number of quality assurance steps and procedures to enhance the validity and reliability of the findings. This fastidiousness and vigilance enhance confidence that this study's findings reflect closely the reality of drug sentencing in the courts studied over the period of fieldwork.

### Keywords

qualitative method, semi-structurally interview, practical difficulties fieldwork, judiciary

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# **Qualitative Method Used in Researching the Judiciary: Quality Assurance Steps to Enhance the Validity and Reliability of the Findings**

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In this paper, I present a qualitative method used in researching the judiciary. This article highlights the importance of employing a number of quality assurance steps and procedures to enhance the validity and reliability of the findings. I argue that to increase safety and reduce risk, procedural risk-assessment of the study project can be useful to deal with the real time practical difficulties that emerged from the fieldwork. To develop an understanding of what judges are trying to achieve when sentencing minor drug offenders, a total of thirty-one Indonesian judges were semi-structurally interviewed. The findings highlight that my methodology evolved by working in the field. When it was clear that not all participants were willing to be recorded, I decided to take notes. Also, I decided to conduct a kind of focus group by having two judges in the room concurrently. In this regard, I captured the participant's experience without being too intrusive. This paper contributes to the study of the method. The way in which I employed a number of quality assurance steps and procedures to enhance the validity and reliability of the findings. This fastidiousness and vigilance enhance confidence that this study's findings reflect closely the reality of drug sentencing in the courts studied over the period of fieldwork.

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## **Introduction**

One of my motivations in uncovering the hidden struggles of fieldwork in academic publications is to explore the gap, particularly in researching the judiciary, as to what actually happens at the micro level interaction between the researcher and participant. These remained puzzles in methodological accounts. Punch (2012) notes the importance of discussing challenges related to fieldwork. My study addresses a gap in the body of knowledge in this the topic of fieldwork. This study likely to be useful/of interest to local stakeholders similar to others on a more global level, for example the international researcher who uses qualitative method in researching the judiciaries. Therefore, this study deals with issues with significant, tangible benefits for wider researchers.

Numerous studies have explored the challenges of conducting fieldwork abroad. Those studies focus on practicalities (Cornet, 2010), procedure (Scott et al., 2006), negotiating access (Sultana, 2007; Tyldum, 2012), power relation (Jabeen, 2013; Schuermans & Newton, 2012), and dilemmas (Okoli, 2014). In this article, I provide examples of where I compromised my research approach as a result of the practical difficulties which arose.

Conceptualisation of this study stems from my former self-identity as a judge but also from my biography since I am more familiar with the practical pressure and challenges of lower Court judges. Having worked previously at a Rural Court, I had prior experience of the

Indonesian court system. I carried out all the fieldwork for this study in my capacity as a full-time doctoral researcher at the University of Stirling. My concern about the judicial perspective on sentencing comes from my learning journey arising from my experiences as a practising judge, and doctoral student. During my seven years, as one of the 3034 district court judges in the nation, I have sent less serious drug offenders to prison for standard minimum sentences ranging from one to four years, including women and young adults. However, I 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 for income generation. Also, I perceive drug crimes to be less serious than the crime of murder. Previously, I felt conflicted regarding my role of 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 I 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 my 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.

Having felt that sentencing drug offenders to prison would be the best option because it would protect the public, since studying sentencing practices internationally, I realise that there may be more effective sentencing options available for drug offenders (see 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. I consider that my background may be beneficial in dealing with this aspect. By studying about it, I am presenting the contemporary understanding of judges' perspectives and experiences, which will potentially help a greater understanding of drug sentencing in the context of delivering justice in Indonesia. Regarding delivering justice in an Indonesian context, I 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 term of the aims of sentencing and sociological concerning public acceptance (Mustafa, 2020). Therefore, I 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 them to study, they exerted no influence on any of the fieldwork, data analysis or interpretation.

This article highlights the importance of employing a number of quality assurance steps and procedures to enhance the validity and reliability of the findings. 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 (see Lumsden and Winter 2014). The issue of reflexivity in social research has emerged in the literature which contributes to this field.

I recognised that data interpretation is influenced by the process of data generation (see Bloor & Wood, 2006; Creswell, 2007; Maykut & Morehouse, 2002; Mason, 2002). Nevertheless, there are several challenges of the process of data generation which merit more acknowledgment. Scholars have called for a more apparent uncovering of challenges occurring before, during and after fieldwork. Blackman (2007, p. 771) 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 article by examining clearly the themes that emerged in my field journal and by examining the

ways in which my methodology evolved by working in the field. The challenges occurring before, during and after fieldwork motivated me to explore the key challenges of fieldwork.

### **Objectives**

The following objectives were presented for this study:

- To highlight the key challenges of key challenges of fieldwork.
- To highlight a number of quality assurance steps and procedures to enhance the validity and reliability of the findings.

### **Method**

My 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 I 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, I interviewed 31 judges to reach data saturation. Many of the judges relocated to other jurisdictions, thus I had to either take a trip to meet them in the new jurisdiction or interview them by telephone. I spent one month in the urban court, followed by several days in the Supreme Court. This experience allowed me to understand leadership expectations regarding sentencing. The case study approach was used for this study (Yin, 2013). This approach chosen offers insight into judicial' views of sentencing in practices (Csete & Catania, 2013).

It is perhaps noteworthy that researching within the Indonesian judiciary was not difficult in terms of access. Many researchers engage in research with more difficult access to the judiciary (see Ashworth et al., 1984; Feldman et al., 2003, Maxfield, 2014; Tata, 2002). Perhaps, access issues may be eased by the researcher's prior working experience in the court, the management of contact in the field work, and demonstrating a basic understanding of organizational routine and culture.

While access was relatively easy, I still encountered a range of ethical and practical challenges throughout the course of my fieldwork (see De Laine, 2000; Maykut & Morehouse, 2002; Miller et al., 2012). To work through this process, I utilised my field journal as a way of expressing various challenges and ethical appraisals that I encountered to assist me in carrying out my fieldwork. The field journal developed in numerous forms. Occasionally, it was a Google drive version of the emotional journey of my Ph.D. I also wrote notes on my smartphone, about my conversations with the gatekeepers. In addition, I wrote emails to my 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 article, I selected extracts that show the key challenges that occurred: ethics in practice and practical difficulties.

The basic steps to my fieldwork were as follow: a compilation of protocols was translated for application in Indonesia. These include: interview schedules for key informants, individual interviewees; and emails of information, confirmation, and appreciation. Piloting was done to gain feedback on content, layout, language, and clarity of concepts (Bell 2005). A descriptive coding book and qualitative data analysis was performed using Microsoft excel software. The data were sorted and merged in Excel tables. Theme and sub-theme that were found were presented in the following results section.

## Results

### Practical difficulties

#### *Logistics*

*6 Dec 2015: Feeling tired looking for accommodation, return travel from fieldwork site to temporary accommodation which is 2-6 hours' peak time by bus*

The opening diary entry together with the above text illustrates several practical challenges which I encountered in the field. Me and my wife are both PhD students with two children ages six and seven. We conducted our fieldwork in Indonesia for the same period. This adds challenges in terms of childcare, one of us swift to take care of our children. Frequently, I had to return from the fieldwork site to temporary accommodations because I could not leave my children alone at night. Adding an explanation of our situation to the gatekeeper and the research participants help to ease the data collection.

Logistic issues also arise in terms of living expenses, because we have to pay the rent both in the UK and in Indonesia. Fortunately, the living expenses were funded by the government. In doing so, I appreciated, also, the importance of financial support from the Indonesian Endowment Fund for Education during the fieldwork.

This helped me to cover day to day logistic issues:

*10 Dec 2015: One of the participants, who is, also, a colleague of mine, wanted to give me money from his own pocket money for transportation, the money was not a bribe. On the first occasion, I refused politely by saying that my transportation costs have been covered by the scholarship. On another occasion, he asked me again whether I had money for transport; I said that I had, and he began to offer me money again. I refused politely again by saying that "I am fine with transport, that I really appreciate your kindness, I highly respect your help."*

#### *Time-management*

At times, I had to remain in the judge's room as this was a place where I waited when the participating Urban court judges were busy with the court calendar, panel meetings, and meetings regarding ceremonial matters. Constant reference to the court calendar in my field journal assisted me to take into account the time constraints on managing court hearings. When local judges complained that the prosecutor came late to court, I became more aware of the difficulty in holding a court hearing on time at 9.00 am. Thus, I felt more compassion for the judges who were multi-tasking and not only managing judicial tasks but managing ceremonial tasks. In doing so, for my colleagues in the second study sites, I negotiated morning interviews.

*20 Dec 2015: I wonder if I should wait for the participant or go home. This is because the time will be 4.30pm, after asking the gatekeeper, "Is it worth going home and trying again tomorrow?"*

### ***Environmental hazard***

Being uncomfortable with cigarette smoke was my personal struggle in the field. This is because I am allergic to smoke and I have been operated on previously for my sinusitis. Every time I approached the male judge's room, the first smell would be the cigarette smoke. Yet, no cigarette smoke was smelled in the female judge's room. Similarly, waiting outside the courtroom, I smelled smoke most everywhere. Although it was comparable to the previous experience of living in Indonesia; that did not make it more comfortable. Lee-Tre week (2000) reminds us of a range of potential hazards, including emotional and physical trauma during fieldwork. To increase safety and reduce risk, procedural risk-assessment of the study project can be useful; the following diary entry illustrates my physical trauma at times:

*18 Jan 2016: I plan to complete all interviews this week. However, due to medical considerations, I plan to have a surgical operation. It is not necessarily an emergency since it is a benign tumour/ Struma on my neck; it is estimated I will be hospitalised for three days after the surgical operation and will require about several weeks for recovery. My family is available during the surgical operation.*

*27 Jan 2016: Waiting for the court hearing is a very uncomfortable thing, sitting in the corner of the corridor, watching the availability of the panel to examine the drug offender, trying to avoid the prosecutor and the clerk who smoke. Looking at the clock showing 4.13pm, (working hour will be until 4.30pm on Friday), at the same time checking other participants, whether he is coming back into the court and continuing with the sentencing hearing.*

### ***The quality assurance steps and procedures***

Previously, I created a research protocol to follow; this was to secure access. I was clear that my research had to employ a number of quality assurance steps and strategies. The first strategies were that it was particularly important not to impose on the participant's time. In doing so, I wanted to know about the possible time to schedule interviews with them given their full-time schedules. Ideally, I had to interview them within 1 hour. However, I decided to accept the participants' willingness to continue the interviews and, therefore, as a result, the interviews lasted between 27 and 90 minutes.

The second strategies were that I framed my questions very carefully when I 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 judge's responses. I asked both district judges and Supreme Court judges about possible solutions in order to help me to identify ideas on how the current approach could be improved to support drug users. Also, attention is given, also, to ask the Judges' thoughts on what was interesting regarding judges' experiences in sentencing and how sentencing could be made better.

I wanted to interview more judges to ensure that I obtained rich data and, consequently, I composed interview guidelines whereby my question was followed by the participant's response. I reworded the question during the interview to allow the participant to understand the specific issue being asked. In order to persuade the participants, I changed my approach to explain carefully about my position as a doctoral researcher in order to generate an understanding of their perceptions as well as an appreciation of their views and also, how it would help me to complete my Ph.D.

*14 Dec 2015: I felt shocked; one of the participants who is a colleague of mine 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 me, also, because the question about the perceived effectiveness of his sentencing should not have questioned him but rather the role of the society. I explained that this research would help me to finish my PhD and would contribute, also, to greater understanding of the judicial perspective on sentencing.*

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

I realised that my methodology evolved by working in the field. When considering that not all participants were willing to be recorded, I decided to take notes. Also, I was able to record the phone interviews of the participants whom I was physically unable to meet. In addition, I 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, I was able to capture the participant's experience without being too intrusive:

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

My observations of the sentencing hearings by a panel of judges were mostly carried out after the interviews. As Anleu and Mack (2017) suggested observational data was useful to add insight to the interview data and to illuminate the arrangement of the routine court hearing. For example, the observational study in the Australian contexts was useful to add 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 not as a member of the panels. Since the Australian judges' sit alone at the bench, their statement in the courtroom might reflect the individual judge's attitude toward the offender. This is perhaps different with the Indonesian context where I 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, but also limitations. The observational study was

useful to understand the influence of ‘court culture’ on sentencing and to illuminate the relationship between the various court actors. However, the limitation of the observation is that after several observations, the researcher becomes aware about the tedious nature of court hearing. In Baldwin’s (2008) study, the researcher could easily spot the delay in the court calendar, that may upset the researcher's energy and time and enthusiasm to observe ‘the lively dynamic of court actors. In this study, the offender that was often vulnerable, weak, sleepy, concentrated, and looked 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 with my experience when my appearance may influence participant behaviour, (as some participants asked for comments on their performance). In Baldwin’s (2008) study, the researcher felt that the decision making has been made elsewhere before the court hearing. This is perhaps different to my experience where I felt that the decision making was made in the foreground of the court hearing.

Regarding positionality, I adopted an outsider/insider position. As an outsider, I considered it would be important to establish my status as a researcher. I never sought the responsibility of sitting on the bench or making the judgement of the case. I was ensuring to consider the implication of the finding and its contribution to knowledge. In order to persuade the participants, I changed my approach to explain carefully about my position as a doctoral researcher in order to generate an understanding of their perceptions as well as an appreciation of their views and also, how it would help me to complete my PhD. Although the Indonesian government has funded my research, they did not determine the formulation of my research question and the research design. The formulation of the research question resulted from my own reflection. I was also aware of the need to adhere to the principle of independent research. I take responsibility for the interpretation of the data and for presenting an argument reflexively and contextually. My claim to such epistemological privilege is based on a careful reconstruction and retracing of the route by which I arrived at this interpretation (Mason, 2002). In doing so, data analysis, data generation, and theory were developed concurrently in a dialectical process. Also, I explained to the participants my position as a researcher and as someone who wanted to know more about the subject area. Then, the participant Judge introduced me to the audience in the Courtroom. After the court hearing ended, the participant Judge asked me to comment on the panel's Courtroom "performance". I am aware that the participants wanted me to evaluate their performance. This might have occurred because of the participants regarding me as a former judge who is 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. I explained that I am not in the position to evaluate the participants’ performance.

As an Insider, I reflected on my professional background as a practising judge in rural court Indonesia. Access issues may be eased by the researcher's prior working experience in the court, the management of contact in the field work, and demonstrating a basic understanding of organizational routine and culture. Also, the Indonesian Government funded my study. Perhaps, my professional background and sources of funding for the study were determinant to the first impression with study participants which may pose challenges for the participants to say “No” to my study invitation.

## **Discussion**

It can be seen from the results explored in the result section that the role of quality assurance steps and procedures is considered useful in order to enhance the validity and reliability of the findings.

As a newly experienced doctoral researcher, it is well known that the PhD supervisor's support during fieldwork is crucial (see Bryman, 2015; Huyghe, 2012). The way in which PhD supervisors supported and encouraged me to continue with the initial method of data collection enabled me to inform the participants about the importance of my chosen method and to respond effectively to those participants who requested that the researcher change the interview into a questionnaire. The level of supervision was sensible in the way that I needed to email my supervisor at the time the issue with the participant emerged. In this way, the supervisor was able to offer constructive advice to ease the key challenges of the fieldwork. Due to the time difference between Scotland and Indonesia (7 hours' difference), we should be able to adjust the time to approach the supervisor during working hours (Scotland's time). This would allow them to receive on time support.

This article has highlighted the role of qualitative method in researching the judiciary via the representation of diary entries from my fieldwork. It has discussed the need of academia to recognise the procedural and practical dimension of fieldwork, and how this contributes to the production of knowledge. This article has suggested that being constantly aware of potential issues before, during, and after researching the judiciary is valuable for the researcher, the knowledge obtained, and the participant. Also, the potential benefits and limitations have been discussed. The limitation of sharing about "procedurally important moments in research practices" of fieldwork might be both time consuming, and tiring. Moreover, it may not always provide a better understanding about the data itself and sharing diary entries in an academic publication may make us exposed and uncomfortable. However, being open about what actually happens during fieldwork may encourage us to learn from our human errors.

This article is not suggesting that researching the judiciary should be aimed at making judgements about the participants. By contrast, in this article I aimed to appreciate the participants' willingness to engage in the research process. As Scott et al. (2006) notes, writing and reflection on fieldwork might be regarded as giving something back to the participants. For some researchers, who wish to research the judiciary, this article might shed light on the importance of the flexibility of our research approach towards the participants and conducting fieldwork within a relatively short period of time.

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### Author Note

Cecep Mustafa is a Doctoral Researcher at the University of Stirling, United Kingdom. The working title of his Doctoral Research is “The Judicial Perspectives on the Sentencing of Minor Drug Offenders in Indonesia.” He is interested in qualitative research. Please direct correspondence to [cecepmustafa97@gmail.com](mailto:cecepmustafa97@gmail.com).

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