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The Importance of Standard Language for Legal Certainty in the Protection of Parties within Agreements

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Abstract: This research examines the significance of standard language in agreements and its impact using a qualitative descriptive method. The qualitative descriptive method was selected to provide a comprehensive and in-depth understanding of the complexities between language and the law. This study analyzes agreements to identify the use of standard language and its effect on legal interpretation. The study demonstrates the importance of standard language in agreements, as language influences legal consequences through word choice and sentence structure. These conclusions contribute to an understanding of how standard language affects the law. The use of the Indonesian language in agreements within Indonesia must pay heed to clarity, consistency, and the accuracy of legal terms. The use of non-standard language in agreements can result in several serious legal consequences. The implication is that this study may assist legal practitioners in drafting agreements. This research is significant to the literature on language and law, emphasizing the importance of standard language in agreements.

Keywords: Agreement, standard language, interpretation.

INTRODUCTION

The language officially recognized and adopted by legal institutions, governments, and international organizations is defined as the standard language. In global civilization, language plays a key role. Within communities and social environments, language serves as a connector. In many countries, standard language is the foundation for the clarity, precision, and authority of legal documents. Indonesia possesses state sovereignty over a specific territory recognized by the international community. Differences in legal subjects in international trade agreements are linked to the legal systems of the recognizing states. The recognition of individuals as Indonesian Citizens (WNI) is governed by Indonesian regulations. Consequently, the Indonesian legal system is shaped by regulations applicable to its citizens. The regulations shaped through Indonesia's legal system will have defined territorial boundaries.

In the common law system, the doctrine of precedent is the "soul" of the legal framework. Judges possess the authority to apply the prevailing law. The authority is known as the principle of discretion. In disputes where no established law exists, judges may resolve the matter based on judicial reasoning. This reasoning, the motivation behind a judge's decision, is described as: "the process that occurs between the point when reasoners attend to salient, meaningful information (linguistic or perceptual) and when they draw one or more conclusions based on that information (Khemlani, n.d.). Such reasoning contains legal rules known as *Ratio Decidendi*, a Latin term meaning "rationale for the decision." This term refers "to a key factual point or chain of reasoning in a case that drives the final judgment. When considering earlier cases as precedent, courts often ask parties to be very clear about how they interpret the main guiding principle or *ratio decidendi* of the earlier case (Syauqi, A., Bakri, M., Permadi, 2020)

Furthermore, decisions made based on *Ratio Decidendi* will be followed by other judges in similar disputes. The judges' action is based on *Stare Decisis*, derived from Latin meaning "to stand by things decided." This constitutes the doctrine of precedent. A judge who renders a decision based on *Ratio Decidendi* for a dispute whose resolution was previously unregulated, and subsequent judges follow the decision in identical or similar cases, establishes what is known as "Judge-Made Law."

In Indonesia, judges do not adhere to the doctrine of precedent. However, regulations that require further elucidation necessitate interpretation. The scope of unregulated disputes is addressed through interpretation. Legal interpretation can be explained through several characteristics: "it is object (that is, a good interpretation depends on true propositions that refer to the object), and it is creative (that is, an interpretation does not simply state what everyone knows if they are familiar with the object, but ascribes to it a meaning that someone else might dispute), and it is rational (there can be reasons for arriving at interpretation) (Endicott, 2011). , and the proposition in question is: "a legal interpretation gives a rule for the application of the law (it is applicative, not generalizing), and a legal interpretation is articulate, or propositional (i.e., it can be expressed in propositions).

Similar to the common law system's reliance on *Ratio Decidendi*, judges in courts require standard guidelines to interpret regulations in the context of identical or similar disputes. To produce an interpretation that manifests legal certainty, judges will employ "Best Practices" to guide the interpretation of regulations applied to arising disputes. Judges may conduct research into adjudicated disputes and observe the outcomes of previous rulings that yielded optimal results in conflict resolution.

One of the relevant sources for this study is *Legal Language and Legal Writing: An Introduction* by Reed Dickerson. This work provides insights into how the proper use of language can influence the interpretation of an obligation and the role of standard language in a legal context. To support the arguments in this article, legal sources such as the constitution, laws and regulations, and court decisions are utilized. In the legal aspect, the consequences of using standard language must be clear, including potential sanctions or misinterpretations if the language is not used correctly in an agreement.

It is important to remember that standard language also involves cultural, social, and political contexts and is not merely a matter of grammar. The use of irregular or imprecise language will inevitably hinder communication between speakers and readers (Fuady, 2024). A broad and profound understanding and knowledge of linguistics is required to create order and precision in language. By understanding the importance of standard language in an agreement and its implications, this article aims to provide a perspective on the necessity of standard language in an agreement and correct interpretation, and to provide protection to the parties and legal certainty within an agreement.

METHOD

This study employed a qualitative descriptive method. A qualitative analysis was used to provide a holistic description of the role of standard language in influencing the validity and effectiveness of agreements. A descriptive research methodology is appropriate for achieving an in-depth understanding of the significance of standard language in agreements. To explore the context related to standard language in agreements, a qualitative descriptive research method was required. This was necessary to address the limitations of quantitative methods, which cannot fully address the objectives of this research. An in-depth analysis of how standard language can create or influence legal interpretation was conducted through a qualitative descriptive approach. In determining the meaning and legal certainty of an agreement, observations of key terms, phrases, and sentence structures in the agreement were required.

RESULTS AND DISCUSSION

The Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata) serves as the legal foundation for the law of obligations in Indonesia. These regulations originated from the colonization by the Dutch Republic through its trading company, known as the *Vereenigde Oost-Indische Compagnie* (Britannica, n.d.-b). The VOC was established in the Dutch Republic, formally known as the Republic of the United Netherlands (*Republiek der Verenigde Nederlanden*, 1588–1795). This state, whose territory represented the predecessor to the Kingdom of the Netherlands, held global power during the 17th century (Britannica, n.d.-b). (Britannica, n.d.-a). The VOC achieved great prosperity and served as an instrument for the Dutch Republic. VOC colonization implemented a legal system derived from the Dutch Republic. The legal system adopted by the Netherlands was then applied to Indonesia. In essence, this legal system did not originate from the Netherlands but from France. Previously, France had colonized the Netherlands and implemented the French Civil Code with certain adjustments. The Civil Code was established by Napoleon Bonaparte with the assistance of scholars from universities. The laws governing private matters and trade that originated from the Netherlands are: (D.Laiman, Alamo, Dewi Savitri Reni, Ronald Lengkong, n.d.).

1. The Civil Code or *Burgerlijk Wetboek voor Indonesie* S. 1847-23.
2. The Commercial Code of 1847 or *Wetboek van Koophandel voor Indonesie* S. 1847-23.

The principles, concepts, theories, and philosophy of the law of obligations refer to the Indonesian Civil Code (KUHPerdata). The Civil Code is a translation of the *Wetboek van Koophandel voor Indonesie* S. 1847-23k (BW). Any individual could translate the code freely. Consequently, the Civil Code in its translated form has never been officially ratified by the state. Neither the President nor the House of Representatives (DPR) has ever established a Civil Code. To date, there has never been a specific legal basis that formally enacts the Civil Code. Both the public and the state subject themselves to the Civil Code, which is, in fact, a collection of private translations.

Ideally, the government should produce an official translation so that the KUHPerdata can serve as an official elucidation of the original BW, similar to how Laws (*Undang-undang*) include an "Elucidation" section at the end. Such elucidation can serve as a reference in interpreting the law. Certainly, ratifying the KUHPerdata as an elucidation of the BW would not turn the BW into a Dutch-language regulation. This represents a legal vacuum that needs to be addressed until the state establishes new regulations to replace the KUHPerdata.

Indonesian citizens and individuals living in Indonesia possess the same Human Rights based on the 1945 Constitution (UUD 1945). No individual has a higher position than another. All individuals are equal before the law. The provisions of the 1945 Constitution

have equalized individual and citizen rights. The state must be able to protect these individual rights. This protection is carried out through the establishment and implementation of valid regulations against any deviations. This is the only way to restore order. Therefore, one individual cannot impose their rights upon another. However, regulations do not automatically protect individual rights within society.

As stated in Article 1233 of the Civil Code: “*Tiap-tiap perikatan dilahirkan baik karena persetujuan baik karena Undang-undang. Sumber dari Perikatan adalah Persetujuan atau Perjanjian.*” (“Every obligation is born either of an agreement or of the law. The sources of obligations are Assent or Agreement.”) Meanwhile, Article 1338 of the Civil Code states: “*Semua Perjanjian yang dibuat secara sah berlaku sebagai Undang-undang bagi mereka yang membuatnya*” (“All agreements legally made shall apply as law for those who make them.”) The principle of the binding force of an agreement serves as the basis for Article 1338 of the Civil Code, namely *Pacta Sunt Servanda* or “Keep Your Promise.” This means, “Hold fast to your promise!” In an agreement, the bound parties will bind themselves. To be released from an agreement, the parties must fulfill their rights and obligations. In the execution of these rights and obligations, the agreement will rely on morality, the morality that binds the individual from within. This morality firmly held binds the parties to perform actions that constitute their rights and obligations.

According to Article 1239 of the Civil Code, the acts in question consist of doing something, refraining from doing something, or giving something. Parties are moved to do something when it is linked to rational self-interest. Rational self-interest is a component of the “invisible hand” analogy that drives the Market Mechanism. Individual interest arises from materials to satisfy themselves. This theory was posited by Adam Smith in his book *The Wealth of Nations*. An individual possesses rational self-interest when they derive maximum satisfaction from their actions.

When individual interests are linked to an agreement with morality as the binding force, then *Pacta Sunt Servanda* applies. However, individuals acting as parties who bind themselves in an agreement with an economic motive must perform actions consisting of the fulfillment of rights and obligations that can achieve maximum satisfaction. Contractual compliance is grounded in the principle that parties must adhere to the provisions agreed upon in the contract (Hasan, 2009). Contractual compliance with the agreed-upon contract is necessary for an individual to fulfill a promise and protect the interests of the promisee. Hugo Grotius in Natural Law stated that ‘promises are binding’ (*pacta sunt servanda*) and ‘promises must be fulfilled’ (*promissorum implendorum obligatio*). One of the most fundamental principles in natural law is the keeping of promises (Friedman, 1960).

The assumption that a contract is naturally and inherently binding gives rise to the principle of *pacta sunt servanda*. This occurs for two primary reasons. First, individuals must interact and cooperate with others, which requires mutual trust, honesty, and loyalty, a simplicity that serves as the initial reason. The second reason is that every individual possesses a fundamental right to property that is transferable. If an individual has the right to release their property, there is no reason they should be prevented from releasing less significant rights, such as those through a contract (Grotius, 1646).

This principle of *pacta sunt servanda* is universally recognized, has been developed by the courts, and has been codified into laws and regulations. This includes legal systems based on Roman Law, the Napoleonic Code, and civil law systems in other European countries, well as Anglo-Saxon Common Law and Islamic Shariah (LIAMCO v. Libya, 1981). Every contractual relationship is based on the principle of *pacta sunt servanda* (Sapphire v. National Iranian Oil Company, 1967).

In everyday terminology, a contract refers to a written agreement that creates obligations for the Parties. *Contractus* is the Latin term for contract adopted by the Dutch

language. Dutch legal experts use "*overeenkomst*," or termed as "*persetujuan*" ("assent"), as a synonym for "contract." A contract is an agreement that gives rise to an obligation or an obligatory agreement. "*Verdrag*" is also known in Dutch as a translation of *contractus*, which is exclusively used for agreements based on International Law.

According to Subekti, "*perjanjian*" ("agreement") also means "*persetujuan*" ("assent") as two parties agree to perform actions. "Contract" has a narrower meaning as it pertains specifically to written agreements or assents. Wirjono Prodjodikoro utilizes the term "*persetujuan*" ("assent") for *overeenkomst* and equates specific terms of agreement to certain types of assents. *Overeenkomst* is applied by Sri Soedewi Masjchoen Sofwan for the term "*perjanjian*" ("agreement"), such that the words "*perjanjian*" ("agreement") and "*persetujuan*" ("assent") are synonymous in meaning.

In common law jurisdictions, a "contract" is defined as a promise or a set of promises and consequences of breach or violation thereof, which the law provides a remedy or recognizes a duty for the party in breach, accompanied by sanctions for its performance. It can be stated that a contract is an agreement enforceable by a court based on applicable law, equity, and reasonableness. A contract is entered into through a process involving at least two parties: the offeror and the offeree, followed by the acceptance of the offer according to the common law jurisdictions. A statement regarding the intention to enter into a binding agreement with the offeror, and immediately accepted by the offeree, is an offer that can be made in writing, orally, or through conduct. The terms offered must be clear, and the offer must be submitted with the intention of being bound upon acceptance.

In English Law, contracts are classified into three types: bilateral, unilateral, and formal contracts. A bilateral offer involves the mutual exchange of promises between the parties. Meanwhile, a unilateral offer is made by one party, the offeror, and can be accepted only by the performance of an act or deed by the offeree. Since promises are not always reciprocal through either a counter-promise or an act, Formal Contracts are executed by deed (Brownsword, 2006).

Based on the explanations, a contract is a written agreement between parties to jointly execute legal obligations grounded in mutual understanding to perform actions in the future. Contract law concerns promises and agreements; however, its scope, execution, and the meaning of "agreement" cannot be sufficiently explained without considering the evolution of law, such as obligations, the emergence of contractual remedies, and the underlying theories regarding the intent of Contract Law (Hasan, 2009).

An agreement, as stipulated in Article 1313 of the Indonesian Civil Code, is an act by which one or more persons bind themselves to one or more other persons. An "act" in this context refers to a legal act. According to civil law experts, the definition in Article 1313 of the Civil Code is incomplete as it only formulates a unilateral agreement. Furthermore, the definition also encompasses acts within the field of family law, which differ in nature from the Agreements regulated in Book III of the Civil Code, where the criteria can be assessed materially (Badruzaman, 2001).

Obligations may also arise from the law, either from the law alone or from the law as a consequence of human actions, namely from lawful acts or unlawful acts (*onrechtmatige daad*) (Kurniawati et al., 2021). Obligations that establish a legal relationship between the parties upon the occurrence of certain events, regardless of the parties' will, are obligations originated solely from the law. For example, upon the death of an individual, the obligations previously binding them transfer to their heirs. The law attaches legal consequences in the form of an obligation to such person; hence, this is an obligation originated from the law as a result of human acts. Damage caused to others due to an unlawful act requires the person whose in fault to provide compensation for the said loss.

Agreements can be distinguished by their subject matter (such as sale and purchase, lease, construction, etc.), by their type (whether they follow a standard form or are individually negotiated), or by their designation as established in the Indonesian Civil Code, which categorizes agreements into two types: nominate and innominate. Nominated agreements (*benoemd*) are those specifically named and regulated by the legislature or are recognized within the Civil Code and other statutes. These specific agreements are found in Chapters V through XVIII of the Civil Code (Hasan, 2009).

Agreements that arise, develop, and evolve within society are referred to as innominate agreements (*onbenoemde overeenkomst*). The number of such agreements is unlimited, for example, cooperation agreements, marketing agreements, and management agreements. These agreements arise in practice based on the principle of freedom of contract, the power to enter into agreements, or party autonomy (Badrulzaman, 2001). Article 1319 regulates innominate agreements, stating:

“Semua perjanjian, baik yang mempunyai nama khusus maupun yang tidak dikenal dengan suatu nama tertentu tunduk pada peraturan umum yang termuat dalam bab ini dan bab yang lain.”

(“All agreements, whether they have a specific name or are not known by a particular name, are subject to the general regulations contained in this chapter and other chapters.”)

Parties entering into these innominate contracts are subject to the provisions and various regulations governing them in the Civil Code. Within specific legal provisions, innominate agreements are subject to the principle of *Lex specialis derogat lex generalis*.

In the common law system, the doctrine of precedent is the “soul” of the legal framework. Judges possess the authority to apply the prevailing law. Authority is known as the principle of discretion. In disputes where no established law exists, judges may resolve the matter based on judicial reasoning. This reasoning, the motivation behind a judge's decision, is described as: “the process that occurs between the point when reasoners attend to salient, meaningful information (linguistic or perceptual) and when they draw one or more conclusions based on that information.” (Khemlani, n.d.). Such reasoning contains legal rules known as *Ratio Decidendi*, a Latin term meaning “rationale for the decision.” This term refers “to a key factual point or chain of reasoning in a case that drives the final judgment. When considering earlier cases as precedent, courts often ask parties to be very clear about how they interpret the main guiding principle or *ratio decidendi* of the earlier case.” (Institute, n.d.).

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Similar to the common law system's reliance on *Ratio Decidendi*, judges in courts require standard guidelines to interpret regulations in the context of identical or similar disputes. To produce an interpretation that manifests legal certainty, judges will employ "Best Practices" to guide the interpretation of regulations applied to arising disputes. Judges may conduct research into adjudicated disputes and observe the outcomes of previous rulings that yielded optimal results in conflict resolution.

The definition of Best Practice can be applied to guidelines or to standard methods for legal interpretation. To make a decision that possesses legal certainty, a judge must follow standard procedural guidelines. Naturally, the standard procedure followed must be a valid one. However, a valid standard procedure is not the sole benchmark in adjudicating a dispute. Judges decide based on "good" standard procedures, which are Best Practices.

Best Practice is defined as a procedure proven through research and experience to yield optimal results and has been established or proposed as a suitable standard for widespread adoption. (Merriam-Webster, n.d.). Research is necessary to observe the experiences of rulings that can produce maximal results. While the principle of precedent is not recognized in the Indonesian legal system, "good procedures" can serve as guidelines to be applied by other judges in court.

The rights and obligations of parties in a transaction based on an agreement are to deliver something, to do something, or to refrain from doing something, provided the agreement does not violate the law. Default is an act whereby a party to an agreement fails to deliver the object of the agreement that should have been delivered to the bound party. In such cases, the aggrieved party in the agreement must pursue legal remedies. A lawsuit for default can be filed by the aggrieved party against the defaulting party in court. A default lawsuit in civil law requires a considerable amount of time. The procedural process begins at the District Court, proceeds to the High Court, and then to the Supreme Court to obtain a decision with permanent legal force (*inkracht van gewijsde*), allowing the party to seek damages or demand the specific performance of the object of the agreement.

A party requiring performance based on an agreement will face difficulties if the other party, who has the obligation to deliver the object, fails to perform. Another party that has an obligation to deliver the object of the agreement may intentionally delay the performance of its obligations. This represents a weakness in agreements that fail to instill a sense of fear in the other party, which can ultimately disrupt the order of commercial transactions in society.

In civil transactions, matters that were originally contractual in nature can be converted into criminal offenses based on justifying grounds. Civil legal acts of an individual nature can constitute a violation of public criminal regulations. Civil and criminal laws possess overlapping domains, allowing an event to be framed as either a civil or criminal matter. An aggrieved party may file a complaint regarding their matter with the police. The use of coercive instruments through criminal law can instill a sense of fear, particularly due to the existence of imprisonment for the perpetrator. Metaphorically, much like a stage production, the background can be swapped in a short time to stimulate the audience's perception of a different atmosphere. This applies to an event not inherently bound to civil or criminal law, which automatically can shift in its contextual framing. In such instances, the distinction between a civil and a criminal event is no longer maintained. Consequently, law enforcement will seek a criminal legal basis to categorize the event.

The use of the Indonesian language in agreements within Indonesia must prioritize clarity, consistency, and the accuracy of legal terminology (Fuady, 2024) Provisions regarding the mandatory use of the Indonesian language in business agreements are stipulated in Article 31 of Law No. 24 of 2009 and Article 26, Paragraph 1 of Presidential Regulation No. 63 of 2019. Both articles contain similar wording, stating that "*bahasa Indonesia wajib digunakan dalam nota kesepahaman atau perjanjian yang melibatkan lembaga negara,*

instansi pemerintah Republik Indonesia, lembaga swasta Indonesia, atau perseorangan warga negara Indonesia” (“the Indonesian language must be used in memorandums of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or any Indonesian citizens.”) Article 26, Paragraph 2 of Presidential Regulation No. 63 of 2019 further states that any business agreement involving any foreign party must also be written in the national language of said foreign party and/or in English. In the event of a different interpretation between translation or its equivalent, the governing language is the language agreed upon in such memorandum of understanding or agreement. Nevertheless, there are no explicit sanctions or termination of agreements when Law No. 24 of 2009 and Presidential Regulation No. 63 of 2019 are not fulfilled. However, there have been legal cases seeking the termination of agreements or documents on the grounds of non-compliance with the laws and regulations. Such lawsuits include credit agreements, sale and purchase agreements, lease agreements, board of directors' resolutions, agreements governed by foreign law, and petitions to set aside arbitration awards. Therefore, it is advisable for parties to draft agreements in a bilingual format as a preventive measure against disputes. This considers court rulings that have nullified agreements written solely in English for violating Law No. 24 of 2009, as well as cases where agreements in violation of Law No. 24 of 2009 led to the annulment of arbitration awards.

The selection of precise words in the Indonesian language can prevent dual interpretations and ensure that the intended legal meaning is clearly conveyed. Several studies, such as that by Sutedi (2012) in “Bahasa dan Undang-Undang di Indonesia” (Language and Law in Indonesia), highlight the critical link between language and law in Indonesia. In general, the choice of language in legal documents in Indonesia is an integral part of an effective and equitable law-making process. By considering linguistic diversity, cultural relevance, and applicable legal principles, legal documents can achieve their intended enforceability at the national level.

The use of non-standard language in agreements can result in several serious legal consequences. In legal literature, there is a consensus that linguistic clarity and precision are key elements in drafting effective legal documents. A study by Adams (2018) published in the “Journal of Legal Language” emphasizes the importance of precise and clear language in preventing legal uncertainty. The use of non-standard language, particularly when inconsistent with recognized legal terminology, can create ambiguity and increase the risk of multiple interpretations. This can lead to legal obscurity, which in turn may trigger disputes and legal conflicts. Furthermore, the use of non-standard language can hinder legal accessibility. The general public, especially those without a formal legal background, may encounter difficulties in understanding legal documents using complex or uncommon language. A study by Chen (2019) in “Legal Literacy and Access to Justice” demonstrates that understanding of legal language is a key factor in legal accessibility, and the use of non-standard language can be a serious barrier to creating a more inclusive legal system. The impact of non-standard language in agreements can also extend to global and international aspects. Non-standard language can hinder legal harmonization at the international level, particularly when accurate translation becomes difficult. Difficulties in translating and interpreting legal documents using non-standard language can complicate negotiation processes and the implementation of international agreements, increasing the risk of misunderstandings and disputes. Ethically, the use of non-standard language also raises questions about inclusivity and justice. Complicated legal language can make it difficult for laypeople to understand their rights and obligations. Consequently, the use of non-standard language in agreements can result in clear and profound legal repercussions. One significant risk is related to varied interpretations and potential legal uncertainty. Linguistic obscurity

can leave room for diverse interpretations by the involved parties or even by authorities, including judges.

CONCLUSION AND RECOMMENDATIONS

An agreement is a written consent between parties to jointly perform legal obligations based on mutual understanding for future action. In a written agreement, the use of proper and correct Indonesian language in accordance with the law is mandatory. The use of the Indonesian language in agreements within Indonesia must pay heed to clarity, consistency, and the accuracy of legal terms. The use of non-standard language in agreements can result in several serious legal consequences. Business agreements involving foreign parties must also be written in the national language of the foreign party and/or in standard English. In the event of a discrepancy in interpretation between the translation and its equivalent, the governing language is the language agreed upon in the memorandum of understanding or agreement. To avoid lawsuits, the annulment of agreements, and legal disputes, parties are encouraged to draft agreements in two languages as a preventive measure. The importance of selecting precise words in the Indonesian language can avoid dual interpretations and ensure that the intended legal meaning is effectively conveyed.

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