

Legal Text and Problematic in Understanding Law Products

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LEGAL TEXT AND PROBLEMATIC IN UNDERSTANDING LAW PRODUCTS

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Abstract

Legal language is a language that is quite difficult to understand, seems to be rigid, and the sentences cannot be restructured due to its formal and normative characteristics. As a language, the legal language has specific characteristics in its terms. Legal language is loaded with literal meanings and accurate definitions that make it do not load with ambiguities to achieve law assurance. It is intended to support its normative and institutional characteristics, and get the tight force power in order to uphold the truth and justice to make society live in order and peacefully. Indonesian legal terms were originated from Dutch, and few from Latin, applied in accordance with the standard. An ambiguous language might produce multi-interpretation that makes it not able to achieve the objective. Basically, interpretation can be a bridge to remove the gaps between objects formulated and the formulation. Interpretation acts as a function of written law to produce a formulation, while legal text itself is a formulation in the form of language signs organized in a norm system. Semiotics approach is one of the approaches to interpret and get understanding legal text. For Indonesian law practitioners, producing easily understood legal text will help Indonesians have highly law awareness and obedience.

Key words: Legal text, legal language, semiotic approach.

Abstrak

Bahasa hukum adalah bahasa yang cukup sulit dipahami, terasa kaku, dan kalimatnya tidak dapat ditata kembali karena sudah baku. Sebagai bahasa, bahasa ragam hukum memiliki ciri khas dalam penggunaan istilahnya. Bahasa hukum mengandung makna literal dan definisi yang baku dan tidak boleh mengandung ambiguitas supaya memuat kepastian hukum. Hal ini dimaksudkan untuk mendukung cirinya yang normatif dan resmi, bersifat mengikat untuk menegakkan kebenaran dan keadilan agar masyarakat dapat hidup dengan tenang dan damai. Istilah hukum Indonesia berakar dari bahasa Belanda dan sebagian dari bahasa Latin yang digunakan secara baku. Bahasa yang ambigu akan menghasilkan multi interpretasi yang menyebabkan tidak tercapainya tujuan. Pada dasarnya, interpretasi dapat menjembatani adanya gap antara objek yang dirumuskan dengan rumusannya. Interpretasi bertindak sebagai fungsi hukum tertulis untuk menghasilkan rumusan, sedangkan teks hukum itu sendiri merupakan rumusan dalam bentuk tanda bahasa yang dikelola dalam satu sistem norma. Pendekatan semiotik adalah salah satu pendekatan untuk menginterpretasikan dan memahami teks hukum. Bagi para praktisi dan penegak hukum di Indonesia, menghasilkan produk hukum yang mudah dipahami akan membantu masyarakat Indonesia patuh dan sadar hukum.

Kata kunci: Teks hukum, bahasa hukum, pendekatan semiotik.

A. Background of the Problem

"Wherever languages are in contact, one is likely to find certain prevalent attitudes of favor or disfavor towards the languages involved." (Haugen in Ige, 2010: 3047). This happens when we talk about legal language. Actually, legal language is a language that seems to be rigid, not easily to revise due to its formal standard. Its sentence pattern is complex, and finally, it is difficult to understand. Legal language is actually the same as the language of other knowledge with its specific terms which can be categorized as a scientific language of law. The use of legal language is also the same as the ordinary one, the distinction is on what the language is used for. About when and whom to use this kind of language is not restricted by place and time, since it can be applied in making regulation, law, contract/agreement, etc. In its application, the form and structure of the text are different because there are special norms in writing the so called text. For instance, in the use of systematic of 'chapter', 'article', 'paragraph', they should be written in sequence, and then in a letter of decision, there are words such as 'remember', 'consider', etc.

Indonesian legal language rooted from Dutch language for its historical background because Indonesian law was also adopting Continental Law from Dutch that was made it appropriate with Indonesian condition when enforced. Hadikusuma, in his book entitled *Bahasa Hukum Indonesia* (1992: 2), cited the symposium agreement on language and law in Prapat, Medan, on 25 – 27 November, 1974, held by Department of Judicial Affairs of the Republic of Indonesia in coordination with Faculty of Law University of North Sumatera, "Indonesian legal language is an Indonesian that is used in the field of law. Due to its function, it has its own characteristics; therefore, Indonesian legal language should fulfill Indonesian language rules." (see BPHN document, 1974: 106). When in legal products such as laws, regulations, jurisprudence, People's Advisory Assembly's Decisions, contracts, or court decisions, there are very long and complex sentences, to understand them needs very long time, too. The characteristic of legal text is that the sentence may not contain ambiguity in order not to have multi-interpretations. Different interpretation makes it incorrect in its implementation, so does in understanding the regulations, decisions, etc. If one party agrees, but the other has different opinion, it will be very dangerous. Therefore, the needs of legal professional experts such as legal academicians, legal practitioners, legal consultants were faced with law that must have effective solution (Hartini, 2014: 9).

In case about how to understand legal language, it is closely related to the legal upholders who use that language. In Indonesia, legal upholding enforcement relates to four legal upholders, namely judge, prosecutor, attorney, and policemen called as a "four-kinship" or in Indonesian it means *catu wangsa*. In compliance with time progress, this four-kinship develops into two more kinships, those are members of Corruption Elimination Commission and the Judge of Constitution Court. They use Indonesian legal language in giving argument, making laws, making accusation, or making decision. The language they use is Indonesian that must refer to Indonesian language rules based on *Ejaan Yang Disempurnakan* (official spelling system). This language is used in rules of state and nation lives domain, even in *Undang Undang Dasar 1945* (Indonesian Constitution), Article 36, which mentions that national language is Indonesian. While in Law no. 24 of 2009 concerning Flag, Language and Symbol of State and National Anthem, Article 2, it is mentioned that agreements involving an Indonesian private or public entity entered into after July 9, 2009 which are not in Bahasa Indonesia will similarly be in violation of that law and therefore, void the Law no. 24 of 2009. It shows that the status of Indonesian language is firm and valid proven by the law above. Legal opinion is needed as an important discourse besides mastering the language and legal systems among the states. The official Indonesian spelling system (EYD) shall be obeyed although it is not used in linguistic and literary fields so that there will not occur misinterpretation in law enforcement, because both legal upholders and people will understand it.

Apart from the above reality, it cannot be denied that Indonesian (language) development, in fact, is very vast in line with time progress. In the era of globalization, Indonesian language faces various serious challenges. In time the states begin to open the world relations, Indonesian language shall be able to exist

there. In other words, Indonesian language should be able to compete with other international communication languages. Due to this fact, Indonesian language might get contaminated by foreign languages and foreign terminologies which have also developed in Indonesia. It is proven by the use of foreign names to business products, shops, restaurants which are sometimes inappropriate with their context and condition. It needs awareness of all parties, especially scientists, to keep national and state language not too much to borrow and adopt foreign words in their own field of study. They should find the suitable definition in accordance with Indonesian terms standard (Hartini, *op.cit.*: 13).

Language and law cannot be separated because law without language will not exist and function, and that language and law interrelate, inter-influence and considered as the transformation of culture and society (Hartini, *loc.cit.*). There is soul between law and society that keeps social life in order. Therefore, the writer is going to discuss about how to understand legal text easily without rising misinterpretation.

B. Discussion

The functions of legal language

Bilingualism in law contains some linguistic aspects, especially related to meaning and interpretation. Legal language should be seen from its functions. Law is one of means of creating social order. Law decision is primarily formulated in the language, that is legal language. Mahadi (in Hartini, *op.cit.*: 14) says that legal language is a language used to formulate and state the law in a certain society. Law will be effective if it is written in exact legal language and reflects the values existing in society and should be communicated well to the purposed law subjects. The previous explanation can be assumed that legal language is a rule and regulation to achieve justice and orderliness, to keep public and private interests in the society. Law is a set of rules serving as a means of socially regulating human conduct. In order to fulfill its function, Knapp (2007) says that law must be seen as a type of information. In this perspective, law is a particular language and, therefore, gives rise to linguistic problems, links to the technical characteristic of juristic discourse. Linguistics and sociological aspects of legal language attempt to pinpoint some trends of inter-lingual development (1 – 17). Since legal language discussed in this paper is about Indonesian legal language, Hadikusuma adds, "... Indonesian legal language is part of Indonesian modern language, that must be consistent, clear, mono-semantics, and complies with the aesthetic requirements of Indonesian language in its application." (1992: 3). Those are the main requirements of legal language in order not to raise multi interpretation and to keep legal assurance. Mono-semantics means single meaning. Semantics of law is a legal knowledge to search meaning or significance of law, relation and changes of legal terms from time to time according to time and place, and condition. For example, the Indonesian term *hukum perdata* (civil law) was translated from Dutch law *privaatrecht*, then it was interpreted by adapting Arabic language *huk'm* meaning *hukum* (law) and Old Javanese language *pradata* (Hadikusuma, *op.cit.*: 10).

Law should have been a key position to omit ambiguity spread out in the society. Mastering the language is one of important things had by legal professionals, legal academicians, and legal upholders. They must have more ability in understanding and must give the society understanding about meaning and functions of law for human's life. They are required to apply the language better in order to make two-way communication well. They are required to open themselves and begin to position the standard Indonesian language as a must for the sake of law conduct. Hartini (*op.cit.*: 14) mentions the functions of legal language as follows

1. As a rule, law is made to manage the state and nation lives. Rules of law are written in the forms of laws, decisions, etc.

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2. As a specialty giver, legal language is different from other scientific languages. This language has specific characteristics in sequential aspects such as accurateness, chronology, cause and effect relation, specific style of language containing specific sense, and distinctive discourse in the long sentences.
3. As a legal wisdom carrier, legal language contains instructions and prohibitions.
4. As a reference for legal professionals and theoreticians in conducting law. Rules of law are being the references in settling law cases.
5. As an Indonesian language enrichment, Indonesian legal terms were adopted from Dutch, English, Arabic, Latin, and local languages which enrich Indonesian vocabularies.

The adoption of languages into Indonesian legal language

Nowadays, modern Indonesian legal language has not been rigid as before. It has been rich with other foreign languages. Nevertheless, its users are customized in using compound-complex sentences. Even though it adopted other foreign languages, it was only in particular terms. For instance in making agreement or contract, the language is still formal and standardized such as the use of the specific words "undersigned", "hereunder", "aforementioned", "abovementioned", "hereinafter", etc., and also the use of "shall" in "public affairs shall mean ..."; and then instead of saying violating the law, it is used Dutch term *onrechtmatige daad* to make the decision bind. It seems that code mixing and code switching are found frequently in legal texts.

For Indonesian people, Indonesian language has varieties so that it might be contaminated by foreign and local languages, but not for their legal language. It is a formal and standard language that must be kept its accurateness. If there are legal practitioners use combination of legal language with daily language in their arguments, it can be assured that they actually still keep the standard legal terms. Using terminology out of legal terms will not make sense of law. For example, when someone wants to submit a document "at the same time", she/he does not use the word "immediately", "directly" or "all at once", but she/he uses "forthwith" to emphasize that time is very important and lapse of time will affect the uncertainty of law. Another example, to say that the contract is "invalid from the outset": the contract is void *ab initio*. These are heard very commonly in the world of law. It is clear that legal language tends to use uncommon language which sounds colloquial and less standard. The adoption of language will not affect Indonesian legal language provided it can assure not to damage the legal language itself.

Indonesian language always develops in line with time progress, and the language adoption is becoming language adaptation. Some Indonesian terms are even derived from foreign languages such as *cangkir*, *cawan* from Chinese; *syukur*, *kursi* from Arabic; *lampu*, *buku* from Dutch; *alto*, *dictum* from Latin; and many more. Now, there are English words adapted to Indonesian such as *partai*, *dijabel*, *tabel*, *konkrit*, *sirkulasi*, *struktur*, etc.

The way to understand legal products

Understanding legal text is a special skill for it is usually written in very long and complex sentence using uncommon terms. To meet the objective takes time to read repeatedly even though it is in Indonesian. Reading repeatedly means to attain concrete understanding. In his book, Susanto (2005: 16) wrote that law, in recent years, is compartmentalized, lonely, and alienated from the vast changes. It is strengthened by Prof. Satjipto Raharjo who said that law will be matured if there is a process of interpretation (17), and inspired by Dragan Milovanovic in the movement under paradigm called critical legal studies; as well as by Prof. Soetandyo Wignjosebroto who explained about coordinate system of legal language, Susanto, (*ibid*) argues that legal language needs interpretation to make society understand the aim of

making the written law so that law will make human's life more meaningful.

Although not all legal experts and legal practitioners agree with him, he has written a book entitled *Semiotika hukum: dari dekonstruksi teks menuju progresivitas makna*. He wrote about how to understand legal text by using semiotics approach. Semiotics of law is used to process the legal studies or studies on legal products. There are some semiotics approaches introduced in different perspectives such as Peircean, Greimasian, Lacanian, etc. Semiotics of law, according to Soesanto, will always base itself on one or two mainstreams of semiotics, European or American (Jackson, 1985 and Corrington, 1993 in Susanto, *op.cit*: 45).

So far, Susanto writes that European tradition, as Milovanovic said, pays more attention to (a) structural and semantics analysis; (b) non referential. While American tradition is based on (a) pragmatism; (b) theory of referential meaning; and (c) characteristic of meaning in triadic relation (*op.cit*: 46). In Peircean's semiotics of law approach, Peirce focuses on abduction, three orders (firstness, secondness, and thirdness), musement or pure play, and pragmatism (53). The other approach is Greimas' that roots from structuralists' tradition, that to unveil the meaning of legal language he uses "semiotic square" based on its semantic variations (54). Greimas' semiotic square is a tool used in structural analysis of the relationships between semiotic signs through the opposition of concepts such as feminine-masculine, beautifully, and of extending the relevant ontology. He considers the semiotic square to be the elementary structure of meaning (Susanto, *op.cit*: 86). There are some more approaches to understand the legal products, that is why critical legal studies were conducted based on sociology of law. It is clear that legal products are read and interpreted, then analyzed through their sentence structure to find the meaning.

Conclusion

From the previous description, the writer draws conclusion that legal text has particular characteristics of language seen from the structure of the text that is written in accordance with its correct sequences.

Indonesian legal language practices code mixing and code switching because the terms used in the text are adopted from foreign languages, especially Dutch, but in practice the adoption is becoming language adaptation. Although the language is a form of adaptation, the law products are using an Indonesian standardized legal language.

1. TO UNDERSTAND THE MEANING OF LEGAL TEXT, ONE SHOULD KNOW THE FUNCTION OF LEGAL LANGUAGE, IN WHAT PURPOSE THE LANGUAGE IS USED FOR. IF WE DO NOT KNOW THE FUNCTION, THE TEXT WRITTEN IN LEGAL LANGUAGE WILL BE LET UNREADABLE. THERE ARE SOME SEMIOTIC APPROACHES TO UNDERSTAND THE MEANING OF LEGAL PRODUCTS SUCH AS PEIRCIAN, GREIMASIAN, LACANIAN, ETC. THOSE APPROACHES ARE IN THE AREA OF SOCIOLOGY OF LAW, THAT SEMIOTICS IS THE FIRST CRITICAL STEP TO ANALYZE AND REVEAL THE LEGAL LANGUAGE OF LAW PRODUCTS. IT WAS EXPLAINED THAT SOME SYSTEMS OF LINGUISTIC COORDINATE EXACTLY EXIST IN INTERPRETING THE LEGAL TEXT. WHEN LANGUAGE IS USED TO PRESS SOMEBODY, IT MIGHT PRODUCE A SYMBOLIC VIOLENCE. IN THE PROCESS OF MAKING A DECISION, THERE MUST BE ANY PRESSURE IN SOMEONE'S MIND. THE SIGN OF LANGUAGE AND THE PROCESS OF PRODUCING A DECISION HERE ARE THE DOMAINS OF SEMIOTIC STUDY.

Recommendation:

It needs awareness of the Indonesian legal academicians, practitioners, and legal upholders to use a standard Indonesian legal language in conducting their profession in order to make society "keep awake" of the law.

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