

Diction Model and Language Format of Notarial Contracts in Indonesia

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Abstract

The language used in contracts must adhere to the rules of the Indonesian language without diminishing the legal purpose and function, while also serving as a foundation for legal reform in Indonesia. This research is qualitative in nature, aiming to compare legal language in contracts with the standard Indonesian language. The data collected in this study consists of secondary data supported by field research data (primary data). Data collection techniques were carried out through document/literature review, supplemented by observational participation and in-depth interviews. This research identifies the influence of foreign languages, particularly Dutch, which still affects the structure of contract language today. Contract language, which should follow standard Indonesian language rules, often uses unclear, ambiguous, and inefficient terms, which can confuse readers, especially the general public. The results show that the language structure of notarial contracts remains rigid and often improperly structured, leading to potential misinterpretations. However, by using simpler language that adheres to Indonesian language rules, it is hoped that these contracts can be more widely understood by the public, reducing misinterpretations and enhancing clarity and efficiency in legal practice.

Keywords: Diction, Language Format, Notarial Contract.

1. Introduction

Language is a symbolic system that functions as a tool for humans to express or describe desires, feelings, thoughts, and experiences, especially in interactions with others. One manifestation of language variation based on usage is the language used in legal contexts. Legal language is the language used and developed within the legal profession, both in the process of drafting legislation (legal drafting) and in the creation of agreements or contracts (contract drafting).

Research on legal language has been conducted by several legal experts, particularly regarding legislation. One such researcher is Soelaeman (1995) from the Faculty of Law at Unpad (Sulaiman, 1992), who discussed legislative language with specific reference to Article 46 Sub-(b) of the United Nations Convention on the Law of the Sea III (1982). As a continuation of research on legal language, the author attempts to examine the language of contracts, which has its own unique characteristics. The uniqueness of contract language is often poorly understood by the general public.

The language used in contracts must adhere to standard language rules (Keraf, 2004). Contracts in Indonesia are one of the primary sources of law. Therefore, contracts must function effectively. To date, contracts are often written in inefficient language, which can lead to misunderstandings. This may be due to the many legal terms borrowed from foreign languages, particularly Dutch. These Dutch legal terms influence the structure of Indonesian, resulting in contract language that is a blend of Indonesian and Dutch structures. For example:



*"...acting...../representing the company.....in accordance with the deed of establishment.....for which each party is jointly and severally liable (hoofdelijk voor het geheel aansprakelijk) * hereinafter referred to as CUSTOMER. - - - (Book II, p. 182)*

In addition to being influenced by foreign languages, contracts are heavily influenced by legal objectives, namely justice and legal certainty, which require detailed and precise formulations (Salim & Salim, 1991). Regarding legal/contract language, Alisjahbana (1983) states that language and law are manifestations of human life in society, which are part of the manifestation of a culture in a specific place and time.

According to Indonesian legal expert Manan (1990), for legal language to function effectively, it must fulfill several elements: juridical, sociological, and philosophical. In reality, contracts that meet all these elements do not automatically function well due to the use of unclear, ambiguous, and improperly structured language.

As a language variation, contract language is a modern language that must remain clear, monosemantic, and meet aesthetic requirements (J. S. Badudu & Zain, 2001; Y. Badudu, 2003). Notarial contract language, viewed from its function, has its own characteristics. These characteristics lie in the specificity of terms, composition, and style. Although it has unique characteristics, its use must still adhere to the rules and standards of the Indonesian language. Can contract language conform to Indonesian language rules without diminishing its legal purpose and function?

For decades, the legal profession has maintained the use of complex language. However, this cannot be sustained indefinitely, given that legal science and linguistics are fundamentally interconnected systems. Therefore, continuous research and examination of notarial contract language are necessary, both from legal and linguistic perspectives. The results of this research are expected to contribute to the improvement of contract language.

Notarial contract language, as a written document, must be communicated effectively to be understood by a wide audience, similar to language used in economics and technology, which already employs Indonesian language that is widely comprehensible. Based on this assumption, it is necessary to highlight the realities of current contract language practices, which do not use proper Indonesian language structures, particularly in sentence composition, word choice, and semantics. For example, a sentence in a General Notary Deed reads:

*"On this day,
Appearing before me, HERLINA SUYATI BACHTIAR, a Notary with a Law degree in Jakarta, in the presence of witnesses known to me, the Notary, and who will be mentioned at the end of this deed: -----" (Book VI, p. 8)*

When contracts are drafted by or in the presence of a notary, there is a distinct contract language. Generally, this language is a translation from Dutch. The unique and rigid language of notaries is particularly evident in the comparison or conclusion of the deed. Ideally, such contract language should be simplified to align with proper Indonesian language rules. However, legal practitioners are often reluctant to do so.

This research aims to examine and analyze the objective reality of diction and language format in Indonesian contracts today, analyze the influence of foreign languages in contract models on the substance of Indonesian legal language and cultural practices, and formulate alternative diction and language formats for notarial contracts that are effective and efficient, in accordance with applicable Indonesian language rules. The urgency of this research relates to the increasing dominance of Indonesian language models in contracts, which has led to

various legal issues, such as the general public's lack of understanding of legal language in contracts, potentially harming them in legal matters. Several expert views are referenced in this research, particularly regarding legal language, considering grammatical aspects and word choice to create a contract language model that can serve as a guideline for drafting contracts in Indonesia. To examine contract language issues, this research uses theories from legal and linguistic experts with an eclectic approach.

2. Methods

2.1. Type and Approach of Research

This research uses a qualitative approach with a descriptive-analytical method. This approach aims to understand the relationship between language, law, and humans in the use of language in legal contracts.

2.2. Data Sources

a. Secondary Data :

- a) Collection of contract documents
- b) Literature review related to the use of language in contracts
- c) Study of various relevant legal regulations

b. Primary Data :

- a) Field research to identify issues in the use of language in contracts that may potentially cause harm to the public/users of notary services
- b) Interviews with legal practitioners, legal experts, and affected members of the public

2.3. Data Collection Techniques

a. Documentation Study : Reviewing various contract documents and related literature to obtain an overview of language usage patterns in legal contracts.

b. Field Observation : Directly observing the practice of language use in legal contracts and its impact on the involved parties.

c. Interviews : Conducted with legal practitioners, notaries, academics, and members of the public who have experienced the impact of language use in contracts.

2.4. Research Location

The research was conducted in Bandung and Jakarta, involving Legal Aid Institutions, namely PBKH (Pusat Bantuan Konsultasi Hukum), several legal practitioners, and legal experts.

2.5. Data Analysis Techniques

The data obtained were analyzed using a descriptive-analytical method, which involves presenting and analyzing linguistic facts actually used in legal contracts today. The analysis was carried out by:

- a) Identifying patterns of language use in legal contracts.
- b) Examining issues arising from the use of language in contracts.
- c) Providing interpretations of the findings based on language and legal theories.

3. Results and Discussion

3.1. Analysis Results

3.1.1. Analysis of Notarial Contract Diction

Unlike scientific language, which tends to be neutral, word choice in contracts is typically firm and extreme. This is done to eliminate multiple interpretations of the words used, thereby preventing any potential disadvantage to one party. As long as the meaning remains accountable, this approach should be maintained.

Some examples of diction in notarial contracts:

(1) The Guarantor binds himself not to file objections or protests against the BANK Holding the Funds for the transfer of Deposit Funds to the BANK according to the provisions... The BANK is obliged to return any excess Deposit Funds paid to the BANK, however, without the right to claim interest or any losses from the BANK. (Book I, p. 94)

The use of the words "...any excess paid to..., however..." is inappropriate because it confuses the reader. It should be rearranged as follows: *"The BANK is obliged to return the excess amount of Deposit Funds paid by the Borrower to the BANK. However, the Borrower has no right to claim interest or any losses from the BANK...."*

(2) The Borrower hereby grants authority to the Bank Holding the Funds to transfer all Deposit Funds, including interest, to the Bank in accordance with this Collateral Guarantee Agreement. The Bank Holding the Funds is hereby released from all claims and demands from the Guarantor regarding the execution of this agreement, including but not limited to the investigation of any negligence/violation as stipulated in the Credit Agreement/Debt Acknowledgment made between the Borrower and the BANK, as stated in Credit Agreement/Debt Acknowledgment No. dated made before (Book I, p. 95)

The improper use of words in certain places confuses the reader.

The correction is:
"The Bank Holding the Funds is hereby released from all claims and demands from the Guarantor regarding the execution of claims and demands from the Guarantor, including the execution of this agreement, but not limited to the investigation of any negligence/violation as stipulated in..."

(3) - Today, Tuesday, the thirteenth of May, nineteen ninety-seven (13-5-1997). -----

- Appeared before me, HERLINA SUYATI BACHTIAR, Bachelor of Law, Notary in Jakarta, in the presence of witnesses whom I, the Notary, know and whose names will be mentioned at the end of this deed: ---- (Book II, Part 1, p. 379)

There is no subject in the statement or contract, which changes the meaning of the sentence. Who appeared before me?

The correction: *Person A appeared before... or Person A appeared before me...*

(4) The Guarantor hereby guarantees and promises irrevocably and..., whether due to bank guarantee facilities, collateral, bills of exchange, promissory notes, acceptances, or other commercial documents signed by the Debtor as an acceptor, endorser, drawer, or avalist, or based on any other grounds. (Book II, Part 1, p. 381)

The use of foreign terms in a contract should be avoided unless there is no precise equivalent in the local language. Foreign terms should be italicized. The correction: *"..., whether due to bank guarantee facilities, collateral, bills of exchange, promissory notes, acceptances, or other commercial documents signed by the Debtor as an acceptor, endorser, drawer, or avalist, or based on any other grounds."*

(5) Deviating from the provisions in Article 3, in the event of any of the following occurrences, the BANK has the right at any time, without observing any specific grace period, to immediately and simultaneously terminate this agreement in its entirety regarding all debts of the BORROWER arising under this Credit Agreement, including both principal and owed by the BORROWER to the BANK under this agreement, which may be collected by the BANK and must be paid immediately and in full by the BORROWER upon the first demand made by the BANK, and therefore... (Book II, Part 2, pp. 80-81)

The phrase "...immediately and simultaneously..." in the above example should be replaced with *"...at that very moment..."*

(6) All costs arising from this agreement, including but not limited to costs related to the preparation of guarantee deeds, BANK for assessing collateral items, must be paid by the BORROWER.

In contract example (28), the word "including" is misplaced, possibly a direct translation from a foreign language. Many words or sentence structures in contracts are translated, often from English.

(7) Starting today, what has been transferred and conveyed:
a. becomes the property of the Second Party:
b. is transferred into the ownership and possession of the Second Party in the condition as of today;.... (Book III, p. 113)

The phrase *"...in the condition as of today..."*—can the condition really be determined?

(8) Regarding this deed and all its consequences and execution, the parties have chosen a permanent and unchangeable legal domicile at the Clerk's Office of the District Court of Jakarta in Jakarta.

The phrase *"...legal domicile..."* is deemed inaccurate. It is better to use *"...legal office..."*.

(9) Made as a minute and executed in Jakarta on the date mentioned at the beginning of this deed, in the presence of and, both employees of the Notary Office residing in Pacet, whom I, the Notary, serve as witnesses.

This statement lacks clarity—what was made? The statement should specify that it is a contract.

(10) The Articles of Incorporation were made and signed by the Notary on stamped paper in accordance with the example set out in Annex II of this Minister of Justice Decree. (Book III, p. 174)

The phrase *"on stamped paper in accordance with the example"* is unnecessary because the stamp is visibly affixed to the agreement; there is no need to refer to an example.

(11) ..., this meeting is valid in its composition and has the right to make valid decisions on all matters discussed, even if no prior notice was given... through a newspaper.... (Book IV, p. 3)

The phrase "*...this meeting is valid in its composition...*" is illogical as it does not explain the meaning of "composition."

(12) Since the meeting agenda was previously known to all participants, the Chairman of the Meeting immediately proposed necessary matters. After the necessary discussions, the Meeting unanimously decided: (Book IV, p. 163)

The above statement is illogical as there is no causal connection.

(13) - according to his statement, in this matter acting under a Power of Attorney made under hand dated the eleventh of December, nineteen ninety-six (11-12-1996) duly stamped and attached to this minute deed, as an attorney of Mr.... (Book IV, pp. 195-196)

The phrase "*duly stamped and attached to...*" is unnecessary because the stamp is visibly affixed to the agreement. The purpose of mentioning this is to reinforce the legitimacy of the contract, ensuring that the parties respect and do not easily breach it.

(14) - according to their statement, in this matter acting jointly in their positions... and therefore, for and on behalf of themselves, domiciled in Jakarta, whose articles of association were published in the State Gazette of the Republic of Indonesia on the sixth of October, nineteen ninety-two (6-10-1992), Number 80, Supplement Number 4956; (Book IV, p. 200)

In contract example (36), the phrase "*for and on behalf of themselves*" differentiates between acting for oneself and acting in one's own name. It is standard contract language to combine both phrases into "*for and on behalf of themselves*".

(15) Subsequently, the Meeting decided, in connection with the above decision, to approve the amendment of the entire Company's Articles of Association in accordance with Law Number 1 of nineteen ninety-five (Law Number 1/1995) concerning (Law Number 8/1995) concerning the Capital Market, based on the concept approved by the Board of Directors. (Book VII, pp. 9-10)

(15) The meeting then decided, in relation to the aforementioned decision, to approve the amendment of the entire Articles of Association of the Company in accordance with Law Number 1 of the year one thousand nine hundred ninety-five (Law Number 1/1995) concerning... (Law Number 8/1995) concerning the Capital Market, as per the concept approved by the Board of Directors. (Book VII, pp. 9-10)

The use of the conjunction *in relation to* in statement (37) is incorrect and obscures the meaning of the statement. It would be better to restructure it as follows: "Furthermore, with regard to the aforementioned decision, the meeting participants approved...."

(16) In this Agreement, the capitalized words below shall be interpreted as follows (these definitions apply to both the singular and plural forms of the respective terms), unless the context explicitly requires a different meaning: (Book VIII, p. 5)

Statement (39) is somewhat unclear. Does it refer to the use of singular and plural forms, or does it mean that the terms require an explicit definition?

(17) During the standard working hours applicable throughout the Exercise Period, each Warrant Holder may exercise the Warrants they hold into Exercise Shares at the central office of the Warrant Administration Manager by paying the Exercise Price in accordance with the terms and conditions set forth in this deed, while taking into account the laws and regulations regarding share ownership by foreign investors. ---- (Book IX, p. 40)

The use of foreign terms in a contract should be avoided unless there is no suitable equivalent in the local language. Such terms should be italicized.

EFFICIENT AND COMMUNICATIVE LANGUAGE FORMAT FOR NOTARIAL CONTRACTS

The language format of contracts in Indonesia includes: the contract title, preamble, parties to the contract, official explanation/background of the contract, the body of the contract, and the closing. Generally, all contracts already meet this format. Below is an example of a notarial contract:

TITLE:

TRANSFER AND ASSIGNMENT OF SHARE RIGHTS

No.:

PREAMBLE:

- On this day, date.....
- Appearing before me, HERLINA SUYATI BACHTIAR, a Notary with a Law degree in Jakarta, in the presence of witnesses whose names will be mentioned at the end of this deed:

PARTIES TO THE CONTRACT:

1. Mr..... residing at ID No.....

Hereinafter referred to as: THE FIRST PARTY.

2. Mr....., residing at ID No.....

Hereinafter referred to as: THE SECOND PARTY.

- The appearing parties, acting as described above, first declare:
- That the First Party intends to transfer and assign to the Second Party:
shares owned by the First Party in the Limited Liability Company PT XYZ, domiciled in Jakarta, amounting to shares.

- That the Second Party, as the buyer of the First Party's shares, has obtained approval from the General Meeting of Shareholders as evidenced by the Meeting Minutes dated today, date..... year two thousand, No. executed before me, the Notary, in accordance with the provisions of the Company's Articles of Association;

- In connection with the above, the parties have agreed to enter into an agreement with the following terms and conditions:

BODY OF THE CONTRACT:

Article 1

1. The First Party hereby transfers and assigns to the Second Party...

2. The transfer and acceptance are declared by both parties to have occurred and been accepted for the amount of Rp.....

The said amount has been received by the First Party from the Second Party prior to the signing of this deed, and...

3. etc.

Article 2

The First Party hereby guarantees the Second Party that:

a. The shares are genuinely owned by the First Party, who has full rights and authority to transfer and assign them.

b. The shares are not involved in any dispute, free from liens, and not subject to any encumbrances, nor have they been pledged as security for any debt or transferred... Therefore, the First Party hereby declares the revocation/invalidity of any prior power of attorney.

c. etc.

Article 3

1. The First Party hereby authorizes the Second Party and, either jointly or severally, with the right of substitution, to:

a. Notify the Company's Board of Directors of this transfer and assignment.

b. Re-register the shares in the name of the Second Party.

c. etc.

2. The Second Party hereby declares acceptance of these authorities, which are an essential part of...

Article 4

The costs of this deed and any costs related to the execution of this transfer and assignment shall be borne and paid by THE SECOND PARTY.

Article 5

Regarding this deed and its execution, the parties have chosen a permanent and unchanging legal domicile at the Clerk's Office of the District Court of Jakarta in Jakarta.

The appearing parties are known to me, the Notary.

CLOSING:

THUS, THIS DEED IS EXECUTED.

Drafted as a minute and executed in Jakarta on the day and date as stated at the beginning of this deed, in the presence of and both employees of the Notary's Office residing in Pacet, whom I, the Notary, know as witnesses.

Immediately after this deed was read by me, the Notary, to the appearing parties and witnesses, this deed was signed by the appearing parties, witnesses, and me, the Notary.

Executed with

3.2. Discussion

The research findings indicate that notarial contract language has maintained a rigid grammatical structure since ancient times, which can lead to confusion and misinterpretation among the general public. This rigidity often obscures the meaning of sentences in contracts, potentially causing inaccurate or mistaken understanding among lay readers (Matulewska, 2018). This is particularly relevant given the critical legal role of notarial contracts in establishing the rights and obligations of the involved parties. Therefore, unclear language can undermine the legal quality of the document and complicate the interpretation process for the parties involved.

The diction used in notarial contracts is generally effective in conveying the intent and purpose of the contract. However, the use of foreign terms that are not always understandable to the general public or the parties involved, especially those unfamiliar with legal or foreign terminology, can increase the difficulty of understanding the contract and the likelihood of misinterpretation (Kozlova & Davydova, 2023). To improve clarity and understanding, it is essential to standardize the use of Indonesian terms, particularly by replacing foreign terms with their Indonesian equivalents, unless no suitable equivalent exists.

Regarding contract format, notarial contracts generally meet all the requirements for a legally valid contract. Notarial contracts typically consist of several key sections, including the contract title, preamble, identification of the parties, explanation of the background or reasons for the contract, the body of the contract, and the closing. This format generally includes all necessary elements to ensure the legal validity of the contract. However, the evolution of legal language reflects historical transformations in contract drafting practices, which have adapted over time to align with evolving social norms and legal practices (Matulewska, 2018).

Some argue that the rigidity of language in notarial contracts, while potentially difficult to understand, serves to ensure precision and legal certainty. The complex language structure aims to protect the parties involved by clearly outlining their rights and obligations in great detail. Therefore, simplifying the language in notarial contracts may reduce the precision and legal protection provided by the contract (Pinto, 2017). On the other hand, the difficulty in understanding overly complex language may necessitate a new approach that balances legal precision with better public comprehension (Gudkova, 2022).

Simplifying contract language can minimize misunderstandings and potential harm caused by incomprehensible contracts. The public will feel more protected and assured of legal certainty. By using simpler, more understandable language that adheres to proper Indonesian language rules, a more transparent and efficient legal climate can be created, ultimately improving the quality of the legal system in Indonesia. This research also impacts the curriculum in legal and linguistic education, particularly in teaching proper contract drafting in accordance with Indonesian language rules.

4. Conclusion

Regarding notarial contracts, it can be concluded that the grammatical structure of notarial contract language has remained rigid and unchanged from the past to the present. However, upon closer examination from a linguistic perspective, many sentences are not properly structured. This can lead to misinterpretations and cause significant confusion for the general public. The diction in notarial contract language is generally adequate, but there is still frequent use of foreign terms that are sometimes not understood. Therefore, it is necessary to consistently use standardized Indonesian terms, except for foreign terms that do not yet have equivalents in Indonesian. The format of notarial contracts generally meets the requirements for a valid contract, including: the contract title, preamble, parties to the contract, official explanation/background of the contract, the body of the contract, and the closing.

Given the continued use of rigid and often confusing language, it is recommended to simplify the sentence structure in notarial contracts. This simplification can improve understanding for the general public without diminishing the legal strength of the contract. The use of clear and monosemantic diction is crucial. Therefore, it is advisable to use more standardized Indonesian terms and avoid foreign terms that do not have clear equivalents in Indonesian. This will help reduce the potential for misinterpretation. Legal practitioners, especially notaries, should receive training on understanding and applying proper Indonesian language rules in contract drafting. This is important to avoid falling into the habit of using language that is difficult to understand.

With technological advancements, it is recommended to develop software or applications that can facilitate the creation of contracts with formats and diction that align more closely with standardized Indonesian language rules.

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