

## THE USE OF INDONESIAN FORMAL LANGUAGE IN THE PROCESS OF LEGISLATIVE DRAFTING IN ACCORDANCE WITH LAW NUMBER 12 OF 2011

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### Abstract

The character of civil law law that gave birth to the form of written law perceived that the law relies on the text of the written text, so it is possible to misinterpret the interpretation or multiple interpretations of articles or regulations because of wrong in understanding the language. This will impact on law enforcement less than the maximum. The use of standard language is one solution to avoid multiple interpretations in understanding the essence of language in the realm of law. This type of research is qualitative research. The data source is the document of Law Number 12 of 2011 on the Establishment of Legislation. The analysis is conducted on the use of standard Indonesian language in the document to meet its accordance with the rules of the standard language. In addition to the document, the analysis was also conducted on the results of the interview and the questionnaire.

### Keywords

standard language, legislation, legislative drafting.

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## Introduction

In the 1945 Constitution of the Republic of Indonesia regards that the state of Indonesia is a state of law (Article 1, paragraph 3). The principle of a state of law has indicated a firm stance that Indonesia in operating the power system must be based on an actualized legal system through the establishment of legislation.

In *civil law* systems, the term “*code*” (legislation) is a set of clauses and general legal principles that are authoritative, comprehensive, and systematic, contained in the book or passage that is logically organized in accordance with the relevant laws. Therefore, the *civil law* rules considered legally major, whereas other sources of law are subordinate and often on certain legal issues, *civil law* regulations to be the only source of law. In *the common law system*, although the common use of the term “*code*” for the rule of law, but the meaning of the rule of law was not included in the draft comprehensively. The regulation is sometimes only limited, both the scope of its arrangement and its enactment area (Asikin 2013: 81).

Hadikusuma (2006: 3) says that the legal language that we use is still old-fashioned and less perfect semantic word and composition of the sentence, and thereis also still terms that are not fixed and less clear as well. This is because the scholars of the past did not get special law language lessons and did not pay attention to and study the terms and rules of the Indonesian language.

Indonesian legal language is not straightforward and flexible even in circles so that if not read carefully and many times, the meaning can be different from the meaning of the law in question. Repetition with long sentences needs to be updated immediately. If the sentence culture is long-term it will hurt the law enforcer itself (Harini 2014: 25).

In its tradition, Indonesia has a legal character characterized by aspects of written regulations. This written rule then influences the application of its law that is motivated by its characteristic aspects which refer to written rules. On the practical side, the character of this written rule influences the actualization of law enforcement. In addition, the *civil law* code that birthed a written legal form then perceived that the law depends on the script written text, so it is possible there was an error of interpretation or multiple interpretations of a provision or legislation because it misunderstood the language. This will impact on law enforcement less than the maximum. The use of standard language is one solution to avoid multiple interpretations in understanding the essence of language in the realm of law.

Some cases indicate that the misinterpretation of language in the legislation is the cause of law enforcement less than the maximum, as an example of the following provisions.

“...and / or in article 310 paragraph 3 of Law Number 22 of 2009 on Traffic and Road Transport, which reads' every person who drives a Motor Vehicle who due to his negligence resulted in a Traffic Accident with a seriously injured person as referred to in Article 229 paragraph (4) shall be liable to a maximum imprisonment of 5 (five) years and / or a maximum fine of Rp10,000,000.00 (ten million rupiah)” (Hukumonline.com 2016).

The provisions are multiple/ambiguous. This ambiguity is happening because the sentence is not effective, i.e. not using the standard language, which is less precise in word selection. The ineffectiveness contained in the words *and/or*. A word is an option, but sometimes in the choice occurs or tends to the nuances of interest. This is the cause of uncertainty in law enforcement in Indonesia. In other cases, there are also some misinterpretations or multiple interpretations of the language, so there needs to be a language evaluation in the law.

Examples of multiple interpretations of language occur in Law Number 11 of 2008 on Information and electronic transactions in Article 27 paragraph (3). “Every person intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents containing contempt and/or defamation.”

The provision explicitly indicates that there are things that can be misinterpreted if the position and information is a form of communication between the two parties stating that there is truth to the information submitted.

Based on the phenomenon, that is often languagemistakes or multiple interpretations, so law enforcement has not reached the maximum level, researchers interested in conducting research with the title "The Use of Standard Indonesian in the Process of Legislative Drafting Number 12 of 2011 on the Formation of Legislation.

The focus of the issues under consideration is “how is the standard Indonesian language to avoid multiple interpretations in the legislative process in accordance with Law Number 12 of 2011 on the Establishment of Legislation?” And “are there any constraints in the process of applying the standard Indonesian language to avoid multiple interpretations in the legislation-making process?”

## Research Methods

This research method covers the type of research, place and time, data source, data collection method, the method of data analysis, and exposure of research result. This type of research is a qualitative research method used is descriptive without testing the hypothesis (*descriptive research non-hypothesis*). Qualitative analysis is conducted to explain all the formulation and objectives of the research that has been established, namely the use of standard Indonesian language in the process of legislative drafting in accordance with Law Number 12 of 2011 on the Establishment of Legislation.

This research was conducted in three places, while the data source used to examine the use of standard Indonesian language to avoid multiple interpretations is the document of Law Number 12 of 2011 on the Establishment of Legislation. The analysis is done on the use of language in the law whether it is in accordance with the rules of the standard language or not. The data analyzed is the use of language in the law.

Data analysis was done by descriptive analysis method to Indonesian language usage used in the process of making Law Number 12 of 2011 concerning Formation of Legislation. The analysis is done on the document of the law. Descriptive analysis will be conducted on languages that generate multiple interpretations of language in the document with indicators that include (a) phonetic ambiguity, (b) lexical ambiguity, (c) and grammatical ambiguity. The analysis was also conducted on the results of questionnaires and interviews with the lawmakers to find out whether the lawmakers were paying attention to the standard language to avoid misinterpretations / multiple interpretations.

## Results and Discussion

In the document of Law No. 12 of 2011 on the Establishment of Legislation Regulations found several language errors that resulted in multiple interpretations. Such errors include the following.

### Language Conflict in Legislative Rules in accordance with Act Number 12 Year 2011 on the Establishment of Regulations Legislation

Here are some language constraints found that cover lexical and grammatical arguments.

#### 1. Incompatibility

The ambiguity that causes multitafsir according to Kempson (in Djajasudarma 2009: 52) there are three, namely (a) phonetic threats, (b) grammatical intentions, and (c)

lexical indictments. Phonetic idolism occurs due to the addition of phonemes and unclear pauses when a word is spoken. Grammatical constraints occur at the morphological and syntax levels. The morpheme ambiguity will disappear by itself if placed in the correct sentence. Wordlessness occurs because the lack of words is so illogical. The phrase incompetence occurs because of intonation and incomplete words. The clauses of the clause occurred because of the absence of pauses. Inconsistency of sentences that includes equity, amphibians, accents, composition, and deviations occur because of lack of words and no breaks in the sentence. Lexical arguments in the form of polysemy, homonym, and homographs occur due to the contextual ambiguity of the sentence. The underlying limitation of meaning occurs because of the overly molded reference. The use of inappropriate prepositions occurs because of inappropriate use of pauses. Language style inequality occurs due to lack of sentence completeness, inequality diction, and use of pauses. The style of language that usually generates ambiguity is metaphor, association, and metonymy.

#### a. Grammatical Abuse

What is grammatical is that the sentence fulfills the structure of a clear sentence, at least having a subject element and a predicate. Chaer (2009: 233) explains that the acceptance of a sentence is determined by grammatical, lexical, and reasoning factors. However, there is an unacceptable sentence because it does not conform to its rules. The sentences include sentences that are grammatically grammatical or lexical.

Grammatical constraints occur at the morphological and syntax levels. The morpheme ambiguity will disappear by itself if placed in the correct sentence. Wordlessness occurs because the lack of words is so illogical. The phrase incompetence occurs because of intonation and incomplete words. The clauses of the clause occurred because of the absence of pauses. Inconsistency of sentences that includes equity, amphibians, accents, composition, and deviations occur because of lack of words and no breaks in the sentence.

Below are some examples of grammatical errors in Law Number 12 Year 2011 on the Establishment of Legislation.

#### (1) Word/Dictation Selection Mistakes

Research findings in Chapter I on General Provisions, Article 1, point 4.

- (a) The Government Regulation in Lieu of Law is the Law and Regulations prescribed by the President *in the event of a force imposed*.

The meaning of *force* in the Great Dictionary of Bahasa Indonesia (2016: 1002) is to *treat, to force, to force*, while the significance of the (2016: 441) is *a critical state, a crisis, a crisis*. So, there must be clear criteria in terms of what the President can apply the rule. As described Djafar (in Simamora 2017) that the absence of statutory provisions detailing the restrictions of the forcing conditions has forced Perppu to be a "wild ball" which can be played by a President who is in power for the sake of his power. At least to accommodate the interests of the ruler within a short time before the discussion at the DPR level. Therefore, Perppu can be used as the most powerful weapon to smooth the interests of the ruler. Since there is no compulsion, the President translates the word in multitasking.

The following example, namely in Chapter III, Article 8, paragraph (1). In this chapter there is a lack of language, word wastage, and also the inaccuracy of word choice.

- (b) Legislation as referred to in paragraph (1) is acknowledged to exist and has binding legal force *as long as it is ordered* by a higher Legal Regulation or is established on the basis of authority.

In that sentence the use of phrases *as long as ordered* is less precise. The whole word in KKBI (2016: 825) (1) means to *the extent, by length, (2) corresponds to*, whereas the word is *commanded* from a commanded verb meaning to *be mastered*. The right choice of word/ diction and for saving to replace the phrase *as long as it is ordered* is *appropriate*. That is, that the Laws and Regulations are not contrary to the laws or the Regional Regulations. In addition, the invalidity of the sentence is contained in the phrase *as long as it is instructed by the Laws and Regulations*. Legislation can not govern, who can rule is that make the law.

Thus, the correction of sentence (2) is as follows.

- (b<sub>1</sub>) Legislation as referred to in paragraph (1) is *recognized* and has binding legal force in *accordance with* the higher Legal Regulations or established under the authority.

Other findings that do not meet the standard Indonesian rules for not fulfilling the logic are as follows.

- (c) The content of the Presidential Regulation contains material *ordered* by the Meteri Act to enforce a Government Regulation or material to exercise the exercise of governmental power.

The meaning of the word is *ordered* in accordance with KBBI (2016: 859) is from a commanded verb that is meaningfully *mastered*. The exact word/diction option to replace the word is *ordered* accordingly. Thus, the correction of the sentence (c) is as follows.

- (c<sub>1</sub>) The content of the Presidential Regulation contains material *in accordance with* the law, namely the metric to enforce a Government Regulation or material to exercise the administration of governmental power.

## (2) Word Use Error *must, and/or*

The findings of other interpretations are Article 310 paragraph 3 of Law Number 22 Year 2009 on Road Traffic and Transportation (UULLAJ) as follows.

- (d) "Any person driving a Motor Vehicle who due to his negligence resulted in a Traffic Accident with a seriously injured person as referred to in Article 229 paragraph (4) shall be liable to a maximum imprisonment of 5 (five) years *and/or* a maximum fine of Rp10,000,000 , 00 (ten million rupiah). "

In KBBI (2016: 209) it is explained that the meaning *and* is *the linguistic unit link (equivalent words, phrases, clauses, and sentences, including the same type and has no distinct function). Meaning or meaning is the link to mark the choice in between several things (optional)* (KBBI 2016: 98). Thus, the meaning of the word *and/or* is as follows.

- (d<sub>1</sub>) Those who violate the article are punished with a maximum imprisonment of five years *and* a maximum fine of Rp10 million.
- (d<sub>2</sub>) Those who violate the article shall be punished with a maximum imprisonment of five years *or* a maximum fine of Rp10 million.

The meaning of the sentence (d<sub>1</sub>) the use of the connector *and* the thing that must be done, while the sentence (d<sub>2</sub>) the use of the word *or* an option, may or may not be done. In the end, what determines whether the offense is punishable by either one (*prison or fines only*) or both judges' judgment in the proceedings. (Hukumonline.com 2017)

The case indicates that the misinterpretation of language or multiple interpretations in the legislation is the cause of law enforcement is not maximal because there are people who are harmed by the vagueness of the word used.

Another finding, namely in Chapter II, Article 6, number (1) of the law that

(e) The content of legislation should reflect the principle:

- (1) pengayoman;
- (2) humanity;
- (3) nationality;
- (4) kinship;
- (5) kenusantaraan;
- (6) bhineka single ika;
- (7) justice;
- (8) equality of positions in law and government;
- (9) order and legal certainty; and/or
- (10) balance, harmony, and harmony.

The use of words must be in the text the meaning is something that must be implemented. Explained in KBBI (2016: 486) that the meaning of the word should be mandatory, definitely (should not). Thus, the use of the word *and/or* in point (1) of the law is multi-interpretation because the use of the hyphen *and* is something that must exist, while the word *or* is an option. Therefore, there should be the use of appropriate and decisive words to represent ideas in order not to lead to multiple interpretations.

In the elucidation of Article by Article explained that *the principle of balance, harmony and harmony* is that every Content of the Laws and Regulations must reflect balance, harmony and harmony between individual interests, society and the interests of the nation and state. It is clear that in the explanation that *the principle of balance, harmony, and harmony* must reflect *the principle of balance, harmony, and harmony* is mandatory. Therefore, the appropriate word choice is and is not *and/or* that reflects the firmness of meaning, only one meaning, one interpretation.

#### **b. Lexical Coercion**

Lexical coercion in the form of polysemic, homonym, and homograph occur because of the vagueness of the context of the sentence. The ambiguity of meaning restriction occurs because the reference is too broad. The coercion of the use of the preposition



occurs due to improper use of pauses. The imposition of the use of language styles occurs due to lack of completeness of the sentence, the inaccuracy of diction, and the use of pauses. The language style that usually causes coercion is metaphor, association, and metonymy.

The findings of lexical laxical research among others are as follows.

In Chapter III, Article 9, hutuf (1) is found sentence that does not have kesepadan form, which is a sentence that does not reflect the balance between the idea and sentence structure used because it has two predicates, so the sentence is not standard because it is not effective. Here are the findings in the research document.

- (f) In the event that a law is allegedly contrary to the 1945 Constitution of the State of the Republic of Indonesia, its testing shall be conducted by the Constitutional Court.

In the sentence there are two predicates, that is *alleged* and *done*. Sentence (f) is not grammatical because it has no unity and sentence. In order for the sentence is grammatical, it takes another completeness, the word task in front of the alleged verb to eliminate the double predicate. Thus, the correction of sentence (f) is as follows.

- (f<sub>1</sub>) In the case of a law allegedly contradictory to the 1945 Constitution of the State of the Republic of Indonesia, the test shall be conducted by the Constitutional Court.

Thus, the subject of the sentence (f) is *the test*, the predicate is *done*, and the object is by *the Constitutional Court*. The sentence is an effective and standard sentence because it meets the equivalence of the form.

Sentences that do not have an equivalent form are also found in Chapter V, Article 52, point (5), as the following sentence.

- (g) In the event that the Government Regulation in lieu of the Law does not accept the parliamentary agreement in the plenary session, the Government Regulation in lieu of the Law is stipulated to be the Law.

Sentence (g) has two predicates, *is not getting* and *being assigned to*, so as not to have the unity and coherence of the idea. In order for the sentence to be effective it is necessary that the word task *that* . Thus, the acceptable sentence is as follows.

- (g<sub>1</sub>) In the event that the Government Regulation In Lieu of the Law does not receive the House of Representatives in the plenary session, the Government Regulation in Lieu of the Law is stipulated to be the law.

So, the predicate of the sentence is *set to be*. The sentence is acceptable as it qualifies as an effective and standard sentence.

### **Standard Indonesian Position to Avoid Multitafsir in the Process of Making Laws and Regulations in accordance with Law Number 12 Year 2011 on the Establishment of Laws and Regulations**

Standard Indonesian is one of the instruments to support the implementation of state power system in carrying out the philosophical meaning of Article 1 paragraph 1 which states that the state of Indonesia is the Unitary State. The main substance in the unitary state system is the existence of the rules or norms that become the reference of integration between the ideals and the program implemented.

Philosophical meaning that is the discussion in this study. The extent to which the use of standard Indonesian as one of the unifying instruments of language in its actualization to shape and influence the system of legislative establishment in Indonesia is very relevant and important to be studied in depth. This will certainly have implications on the structure structure and state system in running the concept and goals of prosperous countries with the best.

A Dutch legal expert, Prof. Buys considers that the law in the material sense is any government decision (ruler, overheid) which, according to the content (content) of the decree is binding in general. This formulation can also be regarded as objective legal rules. Furthermore, the so-called law in the formal sense is a government decision which can be called a law because of the form, in which it arises or in other words, because of the way it arises (*wijze van pesstandkoming*). The following is a review of the law in a formal sense in practice.

1. In the Netherlands, the power of the legislators is carried out by the King together with the Staten Generaal (Basic Law of the Dutch article 112). Where in the Constitution the word of the Act is always referred to the decision and the King and the Generaal Staten.
2. In Indonesia, the law is stipulated by the President (assisted by the Minister, Government) together with the People's Legislative Assembly (the Constitution of the Republic of Indonesia Article 5 paragraph 1 and Article 20 paragraph 1).

Therefore, the Government's decision established by the President together with the House of Representatives is a law (Sudarsono 2003: 14-15).

Based on such views and comparisons, it can be understood materially that the binding power contained in its substantive legislation becomes a common binding instrument. Therefore, material substance if binding on the public domain, the rules used in the language of the formation of the law, of course, also must be general. This is certainly, in the formulation of legislation, the rules are also general.

General provisions, in Act No. 12 of 2011 on the Establishment of Legislation, it can be concluded that the standard Indonesian language became one of the principles of the formulation of legislation. The principle itself, in this case, is defined in the perspective of Paton as interpreted by Satjipto Rahardjo that the principle of law is a means by which the law is alive, grows and develops in society so that the law is not just a collection of rules alone (Sulaiman, 2017: 25).

On the other hand, in the process of the legislation drafting, the use of standard Indonesian grammatical rules is a mandatory instrument. The establishment referred here is the establishment existing within a particular institution which has authority before the regulation is authorized by the competent authority. As the formulation of legislation in the House of Representatives is done by the Secretariat General, while the decision and the enactment of legislation is valid whether or not done by the Plenary Session of the House of Representatives.

Based on the provisions and analysis, any laws and regulations may be inconsistent with the use of standard Indonesian grammar. However, in substance, the position of the use of standard Indonesian language becomes a compulsory instrument to be applied in accordance with the mandate of the Law of the Republic of Indonesia Number 12 of 2011 on the Establishment of Legislation.

The occurrence of possible inconsistencies in the use of standard Indonesian language in the formation of laws and regulations one of them is due to the factor of the authoritative policy. It is realized that the state has its own autonomy and can take action on its own, especially in times of crisis. The state does not only receives *input* from the environment, but on that basis make authoritative decisions and policies. In addition, institutions also determine the shape and nature of the actor's behavior (Budiardjo, 2014: 98).

However, certainly, the use of standard Indonesian language in the legislation drafting has been applied in the institutions of the formulation drafting. Institutions referred to are among others the Ministry of Law and Human Rights (Kemenkumham), the Ministry of Home Affairs (Kemendagri) and the General Secretariat of the House of Representatives of the Republic of Indonesia (DPR RI).

Based on the results of interviews, both in the Ministry of Justice and Human Rights, the Ministry of Home Affairs and the General Secretariat of the House of Representatives of the Republic of Indonesia, in general, in the legislation drafting the use of standard Indonesian language shall be used in the formulation of legislation. In the Ministry of Home Affairs, based on interviews with Section Chief III Legislation, they even invited linguists in every process of legislation drafting.

The dynamics of the legislation drafting can not only be seen on the normative side. Political power as a key element in forming, highly color the legislation drafting, particularly when linked with the issue of the validity of the legislation establishment. On the other hand, in addition to the question of political power underlying the philosophical understanding of the state, also the extent to which the quality of legislation is directed so as not to contain the term multiple interpretations. It is clear that the use of standard Indonesian in the legislation drafting often does not become the instrument in guaranteeing the basis of good and correct legislation.

Sociological problems also become things that inescapable from the reason of standard Indonesian language is positioned in an abstract space. This is because people lack the same understanding associated with grammar. In addition, people also have different language characteristics that result in the imposition of the use of standard language in the formation of legislation experienced obstacles.

Meanwhile, on the juridical aspect, the lack of firmness is set forth in the process of ratification of legislation in Law Number 12 of 2011 on the Establishment of Legislation. This becomes one of the problems behind the use of standard Indonesian language as an effort to avoid misinterpretation. The use of standard Indonesian language is understood to apply only to the process of formulation, whereas in the process of ratification, the use of standard Indonesian is not the main reference.

These constraints, both from the juridical, philosophical and sociological aspects become part of the problem in an effort to minimize the multiple interpretations of the

use of standard Indonesian in the legislation drafting. The use of standard Indonesian language as a form of avoiding multi-interpretation efforts to be the main instrument of the establishment of legislation in accordance with the principles of justice, certainty, and expediency should be taken seriously.

### Conclusion

Substance, the position of the use of standard Indonesian language becomes a compulsory instrument in the formulation of the formulation of legislation to be implemented in accordance with the mandates of the Law of the Republic of Indonesia Number 12 of 2011 on the Establishment of Laws and Regulations. The one occurrence of possible inconsistencies in the use of standard Indonesian language in the legislation's drafting is due to the factor of authoritative policy. The state has its own autonomy and can take its own actions, especially in times of crisis. He not only receives *input* from the environment but on that basis makes authoritative decisions and policies. In addition, institutions also determine the shape and nature of the actor's behavior. However, of course, the use of standard Indonesian language in the formulation of legislation has been applied in the formulation institutions of the formulation of legislation.

Sociological problem is one thing that does not escape from the reasons of standard Indonesian language is positioned in an abstract space. This is because people lack the same understanding related to diction/word choice. In addition, people also have different language characteristics that result in the imposition of the use of standard language in the use of the formation of legislation experienced obstacles. While in the juridical aspect, the lack of assertiveness set forth in the process of ratification of legislation in Law Number 12 of 2011 on the Establishment of Laws and Regulations became one of the issues behind the use of standard Indonesian language in an effort to avoid misinterpretation. The use of standard Indonesian language is understood to apply only to the process of formulation, whereas in the process of ratification the use of standard Indonesian is not the main reference.

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