



ALSA INDONESIA LEGAL ENGLISH 101

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STRATEGIC LEGAL SOLUTIONS



ALSA INDONESIA LEGAL ENGLISH 101

Academic Activities and Training

Content Writer:

Ratu Tasya Adawiyah

Chief Officer of Academic Research & Publication

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I. Introduction to Legal English

a. What is Legal English? And is it important to the Legal Society in Indonesia?

Language has a vital role in law, as in a manner that law would not exist without language.¹ As a means to comprehend legal English, it is essential to be aware of the language in which legal texts are built upon and apprehended the methods to construct legal documents. Legal Language or Legal English (“legalese”) means a language used by the persons connected to the legal profession, such as lawyers, judges, legislative drafters, and other legal professionals following their professional capacities.² With a great deal of distinction from basic English and legalese, like words in basic English would mean different as used in legalese,³ in which legalese would consist of words or legal terminologies that only have meanings in legal-related language.

There are two types of legal English: spoken or written media legalese and legal texts. The spoken language varies, from the cross-examination of a witness by an attorney, over procedural instructions delivered by judges, to lawyers' interpersonal communication. Legal texts, on the other hand, consist

¹ Danet, B., ‘Handbook of Discourse Analysis’, (London: Academia Press, 1985. Volume 1), Page 273.

² Lex Research Hub, Definition of Legal Language, (<https://lexresearchhub.com/q-a-define-legal-language-b-nature-and-scope-of-legal-language-c-importance-of-language-in-law/> accessed on 4 July 2020)

³ Prof. Sheila Hyatt, ‘Legal Language’, (University of Denver), (<https://www.law.du.edu/index.php/law-school-learning-aids/legal-language> accessed on 4 July 2020)

of case law, law reports, and prescriptive legal texts.⁴ With those considerations, it can be asserted that legalese is “formulated as a special language”,⁵ where phrases and sentences are often grammatically complicated and need further understanding.

Law students in Indonesia who opted to be prospective lawyers have high demands to understand legal English as the demand for contracts from foreign clients would increase in the upcoming years along with the increase of foreign investment in Indonesia, which will lead to more disputes against different parties. In line with the rationale, the usage of English would be frequently used in more legal documents in Indonesia. Therefore, prospective legal practitioners are expected to develop linguistic precision in terms of the usage of English as it would affect the clauses of the contract or mislead the sentence deliverance in legal writings.

Although under the Law No. 24 of 2009 Concerning the National Flag, Language, Emblem & Anthem (“Language Law”) memorandum of understanding (“MoU”) or agreement that involves a state institution, a government institution, a private entity or an Indonesian citizen must use the Indonesian language.⁶ However, in the condition, if there is an involvement of outside parties in an MoU or agreement, the usage of English would be permitted. Consequently, legalese usage is relevant as practitioners are expected to assist foreign clients in Indonesia.

b. Plain English vs. Legal English

With the complex nature of legalese, there has been a movement to shift the usage of legalese to plain English as they are easy to understand and

⁴ Ina, Veretina-Chiriac., ‘Characteristic and Features of Legal English Vocabulary’, (Scientific Journal of the State University of Moldova, 2012).

⁵ Šarčević, Susan., ‘New Approach to Legal Translation’, (The Hague Kluwer Law International, 2000.)

⁶ Law No. 24 of 2009 Concerning the National Flag, Language, Emblem & Anthem, Art. 31

straightforward. The dynamic aspects of legalese include archaic,⁷ unfamiliar expressions, or an uncommon word where it is frequently incorrectly paraphrased a large percentage of the time⁸ and are deemed unnecessary. The choice of words has a vital role that aims to carry out legal writing in plain English, and archaic words are often avoided.⁹ Plain English is now considered favorable as it encourages and advises legal drafters or practitioners to shorten and simplify their sentences.¹⁰

Common phrases used in Legalese and Plain English:

Legalese	Plain English
Aforesaid	Previous
Prior to	Before
Subsequent to	After
Adequate number of	Sufficient; Enough
As to whether or not	Whether
Until such time as	Until
In lieu of	Instead of
Commence	Start; Begin
Transpire	Occur; Happen

Example of typical legalese text:

All of the Parties agree that payment in full of the Settlement Amount will be deemed compliance with all the obligations on the part of the Company to the Employee under the prevailing laws and regulations about the employment agreement and termination of employment. Therefore the Employee confirms that the Company has no further obligations or responsibilities of any kind

⁷ Archaic words are words that were once widely used, but are no longer part of the English language. Many archaic words were used during the Middle Ages.

⁸ Robert P. Charrow and Veda R. Charrow., 'Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions', (Columbia Law Review, vol. 79, 1979), Page. 1324

⁹ Hiltunen R., 'Chapters on Legal English', Helsinki, 1999.

¹⁰ Ina, Veretina-Chiriac., *Loc .Cit.*

whatsoever to the Employee. As the full payment has been made as stated heretofore, the Employee confirms that she has no further claims, financial or otherwise against the Company on any account whatsoever arising out of the employment agreement or this Agreement.

Plain English Sentence:

The Parties agree that the Company will be considered to have fulfilled all of its obligations to the Employee under the law once the Company paid the Settlement Amount in full. Once the full payment is made, the Employee confirms that:

- i. the Company has no further obligations to the Employee; and
- ii. the Employee will have no further claims against the Company from the employment agreement or this Agreement.

II. Legal Writing

a. Structure

Issue

Determine the issue of the legal texts, set one issue to be discussed. Writers are expected to describe the legal facts or legal issues that occur. In this section, the writers are also encouraged to express the urgency of the existing problems.

Regulation

In this case, the writers assert the rule of law that are relevant to the issues and arguments that are presented, both in the form of regulations and/or policies. The rules explain which laws or court decisions apply to the issues and arguments. In general, regulations are stated as general principles and not conclusions for certain cases or arguments. There may be more than one relevant rule of law to the issue. To further improve this section, it is recommended to include basic norms (*grundnorm*) and legal principles relevant to the topic of the material written as intended by Hans Kelsen in Stufenbau's

Theory. If the author can include legal norms ranging from basic norms, general norms (laws and regulations), to individual norms (behavior) as referred to in the Stufenbau Theory, it will certainly make the writing more productive and will facilitate the writers in analyzing the following sections.

Argument

In this section, the writers elaborate on the legal analysis made by describing the existing gaps of the legal problems with applicable and relevant regulations to the legal issues raised in the legal text. It needs to be asserted whether the legal problems that occur are a form of deviation from the existing regulations or even the legal problem occur because of the legal vacuum that results from the absence of the governing legal regulation which resulted in the occurring legal problems. Therefore, writers are expected to apply rules to the facts of the problem or the questions attached to the legal issue, and writers must use facts or data to explain how rules lead to conclusions.

Conclusion

In this section, the author answers the legal issues comprehensively in short and concise sentences based on the description in the argument.

b. Dos and Don'ts in Legal Writings

- 1) Must be well-structured
- 2) Bombard with your legal basis!
- 3) 5 - 6 sentences maximum for 1 paragraph
- 4) Avoid using casual words
- 5) Proofread before submitting the final product
- 6) No plagiarism
- 7) Use signposting
- 8) Do not copy-paste the whole sentence, paraphrase!
- 9) Decide to use deductive or inductive reasoning
- 10) Be clear and precise

11) Explain Acronyms beforehand

12) Simplify archaic phrases

c. Most commonly used words or phrases

Legalese	Plain English
As to	About, of, by, for, in
Bring an action against	Sue
Herein	In this...
A number of	Several
In the event that	If
Inasmuch as	Since
Not less than	At least
Is able to	Can
Notwithstanding	Although
For the reason that	Because
During such time as	While
During the course of	During

III. Contract Drafting

a. Structure

Opening Section

- Title/ Type of Contract
- Identity of the parties
- Recital / Background of Agreement

Main Section

- Rights and Obligations of the parties
- Implementation of the Rights and obligations
- Term of the contract
- Choice of law and choice of forum

Closing

- Signatory

b. Crucial contract clauses

1) Governing Language

The stipulation on the use of the English language and/or Foreign Language, as well as the ability to choose the governing language, applies only when an outside party is involved in the agreement.¹¹

Sample clause:

“This agreement must be executed in the Indonesian language and the English Language. In the event of any inconsistency between the Indonesian language version and the English language version, to the extent permitted by the prevailing law, the English language version must prevail.”

2) Dispute Settlement Clause

In the case when the domicile abroad, according to Sujatmiko,¹² under Article 118 paragraph 3 of HIR that determines Plaintiff can file a lawsuit in the District Court (court of the first instance) with jurisdiction over, among other things, **a place agreed to by the parties under an agreement.**

¹¹Baker Mckenzie Lawfirm, ‘Implementing Regulation on the Use of Indonesian Language Necessitates a New Approach for Commercial Agreements’, (<https://www.bakermckenzie.com/en/insight/publications/2019/10/implementing-regulations-indonesian-language> Accessed on 29 July 2020)

¹² Diana Kusumasari., ‘Prosedur Pendaftaran Gugatan Jika Tergugat Berkedudukan di Luar Negeri’, (<https://www.hukumonline.com/klinik/detail/ulasan/lt4f91061b34af4/tergugat-di-luar-negeri/> accessed on 30 July 2020)

Sample Clause:

“The parties agree that any dispute related to the agreement which cannot be settled amicably by the Parties will be brought to and will be settled in the Central Jakarta District Court.”

However, if the parties to the contract decided to settle the dispute in an arbitrary body under the Law No. 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution (“Arbitration Law”),¹³ the district court **shall have no jurisdiction to try disputes between parties bound by an arbitration agreement.**

Sample Clause:

1. *“All disputes arising from this contract shall be binding and be finally settled under the administrative and procedural rules of Arbitration of the Badan Arbitrase Nasional Indonesia (BANI) which was established based on KADIN Indonesia Decree No: SKEP/152/DPH/1977 dated 30 November 1977, with 3 (three) arbitrators under the prevailing BANI Rules & Procedure at the time this agreement signed.”*
2. *“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.”*

3) Governing Law Clause

Determine clearly which law governs the Agreement, in some cases, Indonesian law is mandatory.

¹³ Law No. 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution, Art. 3

“This agreement, its construction and enforcement and the interpretation of its terms shall be subject to and governed by Indonesian Law.”

No choice of law: confusion over the law to interpret the obligations of the parties and terms of the agreement.

“This agreement, its construction and enforcement and the interpretation of its terms shall be subject to and governed by the laws which apply in International Business.”

c. Most common used words

Legalese	Plain English
Amendment	<i>Perubahan</i>
Accessory Agreement	<i>Perjanjian turunan</i>
Undertaking	<i>Janji</i>
Transferor	<i>Pihak yang melakukan pemindahan</i>
Transferee	<i>Pihak yang menerima pemindahan</i>
Counterpart	<i>Salinan</i>
Confidentiality Undertaking	<i>Janji untuk menjaga rahasia</i>
Dispute Settlement	<i>Penyelesaian Sengketa</i>
Indemnity	<i>Ganti Rugi</i>
Force Majeure	<i>Keadaan Kahar</i>
Annex / Appendix / Attachment	<i>Lampiran</i>
Assignments of Rights and Obligations	<i>Pengalihan hak dan kewajiban</i>
Representation and Warranties	<i>Pernyataan dan jaminan</i>
Execution	<i>Penandatanganan</i>

ALSA,
Always be One!

Jl. Sosio Yustisia No. 1, Bulaksumur,
Kab. Sleman, D.I. Yogyakarta
55281 – Indonesia