

Research Article

Restrictive use of interpretation of language actions in legal construction

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ABSTRACT

The purpose of this study is to understand the essence of language action in legal construction as a means of communication that should rely on language grammar in interpreting the meaning of sentences. Such a method is an attempt to avoid the different interpretations of the multiple interpretations of the meaning of language. The simplification of legal language must be linked to the content of the rules, where there are two arguments regarding "intentions and extensions", before carrying out legal interpretation, then interpretation is generally understood as a process, action, series of interpreting and explaining the meaning of something that is less clear or opinion, view of the context in which it is interpreted. This study uses a normative juridical method that explains the interpretation of manuscripts, legal principles and principles, legal rules, theories and legal doctrines that apply as a tool to understand the meaning of legal language communication and to understand the substance of a statutory regulation. The research approach uses a conceptual approach to examine and examine the subject matter. The consequences of blurred inter-connections result in a disparity in the factual application of the law which is correlated with a "policy during decision-making" in a formulaic policy which is a "policy" context. Based on these aspects, especially in language action, it is essentially an "effort in realizing clarity of meaning in laws and regulations so that they are in accordance with current and future implementation and conditions.

Keywords: interpretation; intention; extension; language; law; theory;

1. INTRODUCTION

Our positive legal system is an open system, it does not mean that there are no differences in level between the legal rules that are expressed in the 'action of language'. The most fundamental legal principles rest on the principles of judgment that form the basis of every legal system. Without the rule of law, society will be chaotic and violate each other's rights. So, if you pay attention, regulations that are positive in the form of statutory norms are explicitly the language used by a country, namely "legal language". The essence of language contained in the rules has a very close relationship with the consequences and legal certainty which has a compelling character to be obeyed and implemented in people's lives, if someone violates it, of course the violator gets punished. In the variety of legal language which is also a scientific language, it must pay attention to the structure and rules of the applicable standard Indonesian language.

One of the characteristics of the variety of Indonesian language, especially the legal language used as a communication tool in the legal field, especially for legal professionals. Therefore, legal language does not prioritize language style, but emphasizes more on the certainty of the meaning of the language used (Shanty, 2016) Legal language requires a conceptual formulation in a form that is simple, straightforward and easy to understand, but has a firm meaning in one sense, it means that the legal language does not contain multiple interpretations which can lead to unclear intentions and lead to legal certainty.

Restrictive legal language is generally adopted from a culture in certain circumstances in accordance with the characteristics of the community. If the rule of law, for example, contains more intentions from legal materials, then it can result in the content/substance of the rule of law getting more characteristics, and with that, the area of application of the rule of law becomes narrower. When referring to changes in the content of the (old) legal rules, of course, in addition to the old legal rules, a new legal rule has been formed, so that when judges interpret articles/paragraphs in deciding a case, it will be appropriate and will not cause changes to the contents of the rules of law. -invitation in the new law. In turn, the emphasis on interpretation of course has implications for the aspect of changing the rules related to a change in the substance of the legal rules themselves, while the legal rules remain unchanged (JJ.H. Bruggink, 2015)

As Scholten in Peter Mahmud Marzuki (Marzuki, 2020), legal construction is a classification. The trick is to look for certain meanings that have been inventoried beforehand. Furthermore, these meanings are divided into several groups according to the content contained in that sense, then refers to a higher power of abstraction. The important value of

language in law enforcement can be seen at least for two reasons as follows: 1) law or legal norms cannot possibly exist (live) without an effort to articulate or describe it using language, and 2) language is the main tool that used to document the law. So, it can be interpreted that from these two reasons, an interpretation of the will of the meaning of the language contained can be carried out.

Another factor that causes differences in the interpretation of legal language is the lack of appreciation of the study of legal language and the low attention given to legal education providers and/or legal practitioners to legal language. In general, law enforcers and legal experts tend to see language as a tool, not as an object of study (Bachari, 2017) Likewise, legal practitioners, who often argue, show their abilities through excellent mastery of language users. However, most of them never think seriously about the implications of language.

Legal language is not another language, but a special language in the sense of general (Indonesian) language as well, which is specifically used in the legal field. This shows that the legal language must not abandon grammatical grammar, etymology (science of word origin), semantics (science of word meaning) and syntax (science of grammar) of the Indonesian general language (Purbacaraka & Soekanto, 1983) Based on the results of the language and law symposium held in Medan, on November 25-27 1974, it was decided and has formulated that the Indonesian legal language is the Indonesian language used in the legal field, considering that its function has its own characteristics (Nurul Qamar, 2017) So that it is so important to learn the legal language in order to be able to capture the meaning, messages contained in the material content of the articles/regulations paragraphs and can be interpreted appropriately in formulating the conception of legal norms.

As for law enforcement, it is felt that it is still not optimal because there is no firmness in the rules made, whether people who violate the law should automatically be subject to criminal sanctions, fines/administration. We can see this in the phrase "and/or" which provides another option in giving sanctions to legal subjects who are proven to have committed acts against the law or for those who break the rules. Of course, not all regulations include the phrase "and/or" seen from the use of these words at the time of formulating the norms in the laws and regulations that will be enacted. The interpretation authentication provided by the legal drafter is binding on the public whether it is appropriate when it is applied in a certain system, at least that will be used as a guide for judges in interpreting the problems at hand. Therefore, judges are given the freedom to carry out interpretations (Soeroso, 2018) that are legalized in laws and regulations.

2. RESEARCH METHOD

The point of view of legal science is divided into three layers of components, namely legal dogmatics, legal theory (in a narrow sense) and legal philosophy. These three layers ultimately provide support for the practice of law, each of which has its own unique character and also has its own unique method (Arliman S, 2018) The method used in this research is the normative juridical method by interpreting manuscripts in legal language, regarding legal principles and principles, legal rules, theories and legal doctrines from legal experts or as a tool to measure the predictability of the meaning of the contents of articles/paragraphs in laws and regulations. . As an analytical tool, this research uses several approaches to normative research that are used to support arguments, namely: conceptual approach: to understand and analyze principles, principles, doctrines, theories and legal philosophy from the development of legal science and debates about dichotomy and the dualism of interpretation of the object of study being studied at this time (Nurhayati *et al.*, 2021) The results of the analysis are then presented in a systematic way that explains a situation, so that relevant conclusions can be drawn in understanding legal language actions.

3. RESULTS AND DISCUSSION

3.1 Contents of Rules (norminhoud)

Understanding (begrip) as the meaning of the smallest language, words or terms, which can be compared with the contents of the rule of law as the meaning of a broader unit of language in the rule of law. Also as a kind of distinction, such as between intention (content, understanding, begripsinhoud) and extension (scope, understanding, begripsomvang) with regard to the content of legal rules. With regard to an act which states that the act is in accordance with moral rules (morele wetten). While the legality of an act states that the act is in accordance with the rule of law (Respationo & Hamzah, 2013) The content of the rule (norminhoud) is the whole of the (elements) that embody the rule. While the scope of the rule is the area of application (toepassingsgebied) of the relevant rule. From the rule of law it must then be linked to the content of the rule. In this case, there are two arguments relating to the relationship between "intention and extension" that apply, the first argument "the content of the rule determines the area of application" and the second proposition "the content of the rule is inversely proportional to the area of application" (JJ.H. Bruggink, 2015) This shows that the area of application of a rule of law has a range that varies as far as the content of the rule changes according to the conditions of the times, it can also be illustrated by an offense that is qualified in criminal law. If the less the content of the rule of law contains characteristics, then the area of application will be larger, on the contrary, if the content of the rule of law contains characteristics, the area of application will be smaller.

3.2 Characteristics of Extensive Interpretation

Interpretation has a special characteristic, namely expanding the meaning of the formulation in the conception of laws and regulations while taking into account the original intent or the mandate of the articles/paragraphs of laws and regulations (Christianto, 2010) When used in dealing with a legal case, extensive interpretation must pay attention to the grammatical limits of the legal provisions, so that there will be no violations and obscuring legal certainty. The interpretation referred to

here is not an interpretation in general but an interpretation that specifically aims to understand the context of the legal language itself with legal interpretation. Interpretation is generally better understood as a "process, action, way of interpreting as an attempt to explain the meaning of something that is not clear" or "impressions, views, opinions, an interpretation in certain circumstances. This understanding of legal interpretation becomes a very important and crucial basis for judges in situations of considering a case that is submitted to them. Because not all methods of interpretation can be referred to as legal interpretation, it is said that an interpretation method can be recognized as legal interpretation if it is carried out in "juridical activities". The juridical activity in question is a series of careful thinking activities to find the accuracy of the legal conception that applies to a case that is happening. So the role of interpretation plays an important role in Ronald Dworkin's legal theory.

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1) *Creative Interpretation*

According to him, creative interpretation is only found in the case of conversational interpretation. By looking at the habits of certain people in their daily interactions. Creative interpretation is not just capturing meaning in conversation but constructing or compiling meaning. Creative interpretation in the constructive view is the interaction between intent and purpose.

2) *Artistic Interpretation*

That is, finding the author's intention is not an easy matter, because one must try to understand the meaning through the meaning of the expression of mental awareness. Intentions are always more complex and problematic. Intentions are always more complex and problematic.

3) *Social Interpretation*

That is, the interpretation of social practice is not intended to find out what people are doing, but rather are various factors, both economic and psychological factors from an action that focuses on observing the focus of an environment that is close to what they are doing.

4) *Constructive Interpretation*

First, the pre-interpretation stage in which the rules and constraints are used to provide a tentative content of the introduced practice. Second, the interpreted stage, namely the interpreter justifies the existence of the main elements of practice. However, the most important thing for the interpreter is to be able to see himself as a practical interpreter, and find something new.

5) *Literal Interpretation*

Different opinions are debated for adherents of current legislation theorists. Literal interpretation has the aim that words in laws and regulations are given when we call them meanings that are not in accordance with the context. This method of interpretation requires that there are no context dependencies and hidden qualifications made to the common language.

6) *Conversational Interpretation*

This interpretation is not meant to explain someone's voice. This interpretation marks meaning in explaining the motives and intentions of the speaker's perceived meaning, and concludes as a statement of the speaker's intention in saying what he did.

3.3 Types of Interpretation and Methods of Interpretation

Many of the legal scholars who divide the method of interpretation into five kinds of interpretation methods, and three kinds of construction methods. There are also nine theories of interpretation put forward by Arief Sidahrta, including:

Table 1. Interpretation and Methods of Interpretation

Interpretation	Interpretation Method
1. Letterlijk or Literal Interpretation	Interpretation that emphasizes the meaning or meaning of written words.
2. Grammatical Interpretation or Language Interpretation	An interpretation that emphasizes a contextual meaning in which it contains the stated legal rules.
3. Historical Interpretation	Historical interpretation which includes two meanings, namely (i) historical interpretation of the formulation of legislation, and (ii) interpretation of legal history. Explanation: The first interpretation focuses on the historical background of the formulation of the manuscript/manuscript, namely how the process of debate that occurred when the manuscript was about to be formulated. Can be seen in (minutes of meetings, personal

	notes of meeting participants, scientific writings, etc.). The second interpretation is looking for meanings that are linked to the past social context (this refers to past expert opinions and past norms that are still relevant for reference).
4. Sociological Interpretation	The social context is when a text is formulated, it can be used as a concern for interpreting the text under discussion. Events that occur often affect legislators when they want to formulate legal texts.
5. Socio-historical Interpretation	In contrast to sociological interpretation, socio-historical interpretation which focuses on the historical context of society that influences the formulation of legal texts.
6. Philosophical Interpretation	Interpretation with a focus on philosophical aspects.
7. Teleological Interpretation	This interpretation is focused on deciphering or formulating legal rules according to their objectives and jurisdiction.
8. Holistic Interpretation	This interpretation relates a legal text to the context of the whole soul of the text.
9. Systematic Holistic Interpretation	In this case, for example, the regulatory election of the United States Constitution related to the election of the National Assembly, Assembly Position, First Session of the National Assembly, Debut Election, Presidential Election, Open and Closed National Assembly Sessions. Besides seeing the development and practice (Asshiddiqie, 2019).

In addition to the nine theories of interpretation mentioned above, a method of interpreting the laws and regulations as Utrecht's opinion can be stated in table 1.

Table 1. Method of interpreting statutory regulations

1. Interpretation according to the meaning of the word or term (obedient interpretation)	The judge is obliged to look up the meaning of the word in the legislation by opening a dictionary or asking for information from a linguist. Even if it is not enough, the judge must study the word in its wording or its relation to other regulations. This way of interpretation, according to Utrecht, was the first to be taken or the initial attempt to interpret.
2. Historical interpretation	In general, what is important for judges is to know the intent of the author of the legal text at the time it is stipulated. Law is dynamic in that the development of law follows the development of society. Therefore, historical interpretation is essentially only a guideline. However, historical interpretation does not only examine the treatise as the story of the formulation of the manuscript, but also examines the history of social, political, economic, and other social events when the formulation of the manuscript is discussed.
3. Systematic interpretation	Systematic interpretation is an interpretation according to the existing system in the formulation of the law itself (systematische interpretatie). Such interpretation is carried out with due regard to other provisions in the relevant legal text. Systematic interpretation can also occur if one legal text and another legal text, both of which regulate the same thing, are linked and compared with each other.
4. Sociological interpretation	According to Utrecht, every interpretation of the law must end with a sociological interpretation so that the judge's decision is made seriously in accordance with the existing conditions in society. Sociological interpretation is a guarantee of the seriousness of the judge in making decisions, because his decisions can realize the law in a real atmosphere in society.
5. Authentic or official interpretation	This authentic interpretation is in accordance with the interpretation stated by the legislator in the law itself. If you want to know what is meant in an article, the first step is to look at the explanation of that article. Therefore, the explanation of the law is always published separately, namely in the Supplement to the State Gazette, while the text of the law is published in the State Gazette.
6. Anticipatory interpretation	According to Visser't, this method of interpretation is carried out by referring to bills that have been prepared for discussion or are being discussed in parliament. In this way, the judge is actually looking to the future (forward looking). In other words, the judge may be of the opinion that his interpretation of the legal norms is based on a study from the point of view of the new law.
7. Evolutionary-dynamic interpretation	This interpretation is carried out because there is a change in people's views and social situations. The meaning given to a norm is disruptive to developments after the enactment of certain laws. One of the important features of this interpretation is the neglect of the intent of the legislators. So the objective or actual or subjective of a norm does not play a role at all anymore.

Apart from all the methods or theories of interpretation above, one thing that needs serious attention is that law, both written and unwritten, is a concept derived from words that were formerly spoken by one, two, or more people. which is then compiled in sentences that are arranged in such a way in the form of an article/paragraph formulation and set forth in laws and regulations or other written regulations (Khalid, 2014)

3.4 Distributing Law

Basically the disparity in distributing the law where formulative policy is a "policy" context, for example: in criminal law which has the terminology of policy (English) and politiek (Dutch). The terminology can be interpreted as general principles that function to direct the government (including law enforcement) to manage, regulate or resolve the affairs of laws and regulations and distribute laws/regulations with a (general) purpose that leads to efforts to realize community welfare. The basic principle can be said that "criminal law policy" is a space separator with the term "criminal law politics". Strictly speaking, the term "criminal law politics", is also called penal policy, criminal law or strafrechtpolitiek (Mulyadi, 2006) Based on these dimensions, criminal law policy is essentially an "effort in realizing the distribution of law through

laws and regulations in order to create conformity with the situation at a certain time and looking at the future. Due to the limitations of the penal, it is in the prevention of crime (criminal politics) and non-penal policies (including using administrative sanctions, civil sanctions and so on). The two policies are carried out through an integrated approach between crime prevention efforts with penal and non-penal means.

Correlation in law enforcement is coupled with the problem of interpretation that is built, so it can be broadly divided into (i) literal and (b) functional interpretations. The first only uses the sentences of the regulations as a guide, it does not go outside the *litera legis*. While the second can be called a free interpretation that does not bind itself completely to the sentences and words of the rules, but tries to understand the true meaning of a regulation by using other sources that are considered to provide more satisfactory clarity. If we look at the actual ideal situation, when the interpretation is not needed or the role is very small, it can be achieved if the legislation is stated in a clear sense. Regarding the ideal size of clarity according to Montesquieu as follows:

- a. The style of speech should be concise and simple. It is meant that the expression using grandiose and rhetorical expressions is simply redundant and misleading. The terms chosen should as far as possible be absolute and non-relative, so as to leave little possibility for individual differences of opinion.
- b. Regulations should limit themselves to things that are real and actual by avoiding things that are metaphorical and hypothetical.
- c. The rules should not be too high, because they are intended for people of moderate intelligence; the rules are not an exercise in the use of logic, but just simple reasoning that ordinary people can do.
- d. Let not the subject matter be confused with exceptions, limitations or modifications, except in cases where it is absolutely necessary.
- e. Regulations must not contain arguments; it is dangerous to give detailed reasons for a rule, because doing so will only open the door to disagreements.

Reflecting on the practice of the courts in England we can gain valuable knowledge about how the legislation is interpreted. First, the duty of the court is to disclose and base its actions on the real intent of the legislature, namely: *its mens or sentitia legis*. The philosophy contained is that the essence of the law lies in its spirit, while the words are only used to express the intent contained therein. There is a kind of general guideline, namely that the court should accept the *litera legis* (word of a regulation) as the only and decisive evidence for the *sentetia legis* (described completely, practically and clearly). Interpretation by the agency should start from the assumption that the legislator has stated what he meant and stated his intention as stated. The first principle of interpretation, therefore, is *ia scriptum est*. Judges should begin by believing and not suspecting that the *sentetia legis* is not fully and clearly explained (Rahardjo, 2014).

4. CONCLUSION

The role of language, especially legal language, which has a high abstraction wrapped in norms that everyone should be aware of that there are legal consequences that continue to lurk in every language action, behavior. If it is not based on an understanding of the legal language act, then in terms of the interpretation that is to be built, it will not find a pattern that is in accordance with the circumstances and the legal jurisdiction, of course, in restricting the use of interpretation of language actions in legal construction, it must also be based on the provisions stipulated in the law. already available. The relationship with the correlation of law distribution/law enforcement must also look at the context of the problem in the problem of legal interpretation, this is to avoid mistakes in the application of law in reality. Therefore, this legal sentiment towards legal interpretation is really a very crucial basis for judges in handling a case that is submitted to them.

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AUTHOR'S CONTRIBUTIONS

The author has full contribution and is responsible for writing this study from the initial stages of writing to the completion of this study.

CONFLICT OF INTEREST

It is declared that there is no any conflict of interests on this study.

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