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THE PRINCIPLE OF FREEDOM OF CONTRACT IN THE USE OF LANGUAGE IN INTERNATIONAL BUSINESS AGREEMENTS

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Abstract

This study aims to analyze the principle of freedom of contract in international business agreements, focusing on the language to be used in the agreement and applicable laws and regulations. The principle of freedom of contract is one of the basic principles in contract law that allows the parties to make agreements that suit their needs and interests. In international business agreements, the language used can play an important role in determining the meaning and interpretation of the agreement. Differences in language and culture can cause misunderstandings and difficulties in interpreting the agreements made. Therefore, this study will analyze how the use of Indonesian in international business contracts is reviewed from the principle of freedom of contract, as well as how legal reforms related to the use of language in international business contracts are more adaptive. This study uses a normative analysis method with a juridical approach. The results of this study indicate that the principle of freedom of contract in international business agreements allows parties to determine the language used in the agreement, one of which is Indonesian. However, the parties must consider the advantages and disadvantages of using the language and ensure that the use of the language is in accordance with the principle of freedom of contract and applicable laws and regulations. Therefore, it is important to consider the role of language in international business agreements and its implications for global business practices. This study is expected to contribute to the understanding of the principle of freedom of contract in international business agreements and the role of language in agreements. The results of this study can also be used as a reference for legal and business practitioners in making effective and efficient international business agreements.

Keywords: Principles, Agreements, Business, International, Language

INTRODUCTION

In the era of globalization, legal relations in the field of civil (private) law are increasingly developing, particularly those related to the world of trade. The legal subjects in these trade-related legal relations are no longer limited by a single national territory but can cross national borders (transnational). In such patterns of legal relations, interactions are no longer limited to direct face-to-face encounters but can also occur virtually using information technology. This development of information technology has transformed the world into a borderless entity, leading to rapid changes in culture, economy, and society, as well as law enforcement patterns (Ratnaningsih, 2025).

International business refers to commercial activities involving multiple countries, carried out by individuals or companies of different nationalities, based on specific projections, and aimed at profit. International business agreements have become a crucial element in global trade. In drafting international business agreements, all parties involved have the right to determine the content and terms of the agreement, including the language to be used. In line with Mochtar Kusumaatmadja's opinion, international private law is a set of legal principles that govern civil relations involving cross-border elements, namely interactions between legal subjects under different national civil law systems. For example, in national civil law, there is the concept of an agreement regulated in the Indonesian Civil Code (KUHPerdata) which discusses agreements, assets, and others. However, when national civil law is applied in an international context, for example in an international business agreement between an Indonesian company and a foreign company, international private law will play a significant role in regulating the relationship. An international business agreement is a formal agreement between two or more parties, whether companies or countries, that contains foreign elements such as differences in nationality, language, or location. It serves as a binding legal basis for all parties involved.

In the context of international business law, legal theories that discuss the applicable law in transnational legal relations include the theory of lex loci contractus (the law of the place where the contract was made) and the theory of lex fori (the law of the place where the dispute is raised). According to Dutch legal expert J.H.C. Morris, lex loci contractus is a legal principle that states that the applicable law in a contract is the law of the place where the contract was made. Meanwhile, lex fori is a legal principle that states that the applicable law in a dispute is the law of the place where the dispute is raised. These theories help understand how law applies in transnational legal relations and how to resolve disputes that arise. If a dispute arises in an international business agreement, several institutions can facilitate dispute resolution, such as the International Court of Arbitration under the auspices of the International Chamber of Commerce, or the International Centre for Settlement of Investment Disputes (ICSID) under the auspices of the World Bank. These institutions provide effective and efficient dispute resolution mechanisms for the parties involved in international business agreements.

The principle of freedom of contract is one of the fundamental principles applied in contract law, which allows parties to draft agreements according to their interests and needs. In the context of international business agreements, the principle of freedom of contract plays a crucial role in supporting global trade, which can increase economic efficiency. However, freedom of contract can also pose several challenges due to differences in the language used in existing agreements. The principle of freedom of contract gives parties the right to regulate the content of the agreement and choose the provisions to be included in the business contract according to their wishes and interests. The language used in international business agreements significantly influences the understanding and interpretation of the agreement. However, differences in language and culture can cause challenges in understanding and implementing agreements. The use of language in international business agreements can also give rise to misunderstandings or ambiguities due to cultural differences, thus complicating their interpretation.

In Indonesia, regulations regarding international business agreements are stipulated in Article 31 of Law No. 24 of 2009 concerning the National Flag, Language, and Emblem, as well as the National Anthem. In Article 31 paragraph (1), it is stated that "Indonesian must be used in all memoranda of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens." However, it is important to note that this article does not specifically regulate international business contracts involving more than one country, so that interpretation and adjustments to the article are needed so that international business contracts can be implemented properly and efficiently. In the context of international business agreements, a normative analysis of the principle of freedom of contract and the language used is very important. This analysis will help to understand how language functions in international business agreements and its impact on business practices throughout the world.

RESEARCH METHODS

This research applies a normative legal research approach. According to Soerjono Soekanto, a normative legal approach is a study conducted by examining various legal materials related to the research topic (Soekanto, 2014). On the other hand, Peter Mahmud Marzuki explains that normative legal research is a study conducted by analyzing law as a system of norms applicable in society (Marzuki, 2017).

In this research, the author applies legal analysis and conceptual analysis methods to examine issues related to the application of Indonesian in international business contracts. The legal analysis is conducted to explore regulations related to international business contracts, while the conceptual analysis is intended to examine relevant legal ideas, such as the principles of freedom of contract and good faith. By implementing a normative legal research method, the author hopes to contribute to the development of legal science and provide a deeper understanding of this research topic.

RESULT AND DISCUSSION

How the Use of Indonesian in International Business Contracts is Viewed from the Principle of Freedom of Contract

Freedom of contract is a fundamental principle in contract law that grants individuals the liberty to enter into agreements with other parties according to their respective wills and interests. In the context of contract law, freedom of contract allows parties to determine the content and terms of an agreement, provided that it does not contradict the law, morality, and public order. However, the freedom of contract also needs to be understood and applied in legal practice. Therefore, this research aims to analyze the application of the principle of freedom of contract in agreements and its implications for legal certainty and the interests of the parties.

The principle of freedom of contract is stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code (KUHPerdata), which states that "All agreements lawfully made shall have the force of law for those who make them." This means that everyone is free to enter into agreements with specific content, as long as it does not contravene the law, morality, and public order (Fransiska, 2022).

Within the principle of freedom of contract, several important aspects exist, including:

1. Freedom to enter into agreements: Every individual has the freedom to enter into agreements with other parties.
2. Limitations of freedom: This freedom is not absolute but has certain limitations stipulated by laws and regulations.
3. Validity requirements of an agreement: An agreement must meet the validity requirements as regulated in Article 1320 of the Indonesian Civil Code, namely the consent of the parties, the capacity of the parties, a specific subject matter, and a lawful cause.

Thus, the principle of freedom of contract grants individuals the liberty to enter into agreements with the desired terms, provided that the agreement is valid and does not contradict the law and morality.

The principle of freedom to enter into contracts as stated in Article 1338 Paragraph 3 of the Civil Code concerning the implementation of agreements in good faith, states that: "every agreement must be carried out in good faith." This indicates that agreements need to be made and implemented without the intention of burdening either party. The principle of good faith in an agreement implies that each party must behave honestly and openly, and provide complete and accurate information that can influence the decision of the other party in determining whether they will agree to the agreement or not.

The principle of freedom of contract, as stated in Article 1338 Paragraph 3 of the Indonesian Civil Code regarding the execution of agreements in good faith, stipulates that: "An agreement must be executed in good faith." This means that an agreement must be made and executed without the intention of harming any party. The principle of good faith can also be interpreted as each party in a to-be-agreed agreement having the obligation to provide complete information that could influence the other party's decision in agreeing or disagreeing with the agreement (Wijaya & Dananjaya, 2018). This is reinforced by Article 1339, which states that agreements that do not meet the principles of good faith and fairness can be canceled and have no legal force. Thus, these two articles ensure that agreements are conducted in a fair manner that respects the interests of all parties involved.

Every legal provision formulated by lawmakers originates from legal principles that serve as its foundation, so the ideal purpose of establishing such legal rules can be understood by referring to the underlying legal principles. One of the legal principles adhered to in contract law is the "principle of freedom of contract." The principle of freedom of contract grants individuals the liberty to enter into agreements with the desired terms, provided that the agreement is valid, in good faith, and does not contradict public order and morality, as an embodiment of human rights and personal freedom (Harianto, 2016). This can be linked to Article 1320 (Burgerlijk Wetboek), hereinafter abbreviated as BW. The BW refers to the legal codification inherited from the Dutch colonial era that regulates legal relations between individuals, such as rights and obligations in engagements, property rights, and others. The BW was translated into Indonesian and became known as the Indonesian Civil Code (KUHPerdata). Article 1320 of the BW regulates the validity requirements of an agreement, and this article also states that there are four conditions that must be met for an agreement to be considered valid, namely:

1. Consent between the parties
2. The capacity of the parties to enter into an agreement
3. A specific subject matter of the agreement
4. A lawful cause (not contrary to law, morality, and public order)

The principle of freedom of contract expressed in this sentence aligns with the basic idea of freedom to draft agreements as stipulated in Article 1320 of the Civil Code. This principle grants individuals the right to draft agreements with the terms they desire, as long as the agreement meets the legal requirements stipulated in Article 1320 of the Civil Code. Therefore, the principle of freedom of contract can be understood as the right to enter into valid agreements that do not violate the law, social norms, and public order, as stipulated in Article 1320 of the Civil Code.

The use of Indonesian in international business contracts, when viewed from the perspective of the principle of freedom of contract, demonstrates the limitations imposed by Law No. 24 of 2009. Article 31 of Law No. 24 of 2009 concerning the National Flag, Language, and Emblem, as well as the National Anthem, states that Indonesian must be used in contracts or memoranda of understanding involving state institutions, government agencies, private

entities, or individual Indonesian citizens (hereinafter referred to as Law No. 24 of 2009). In addition, Presidential Regulation Number 63 of 2019 concerning the Use of Indonesian (hereinafter referred to as Presidential Regulation No. 63/2019) stipulates that "The national language of the foreign party and/or English may be used as an equivalent or translation of Indonesian to harmonize the understanding of memorandums of understanding or contracts involving foreign parties," in accordance with Article 26 paragraph (2) which expresses a similar thing in order to ensure understanding and clarity in international contracts. This regulation provides an opportunity to use English as an equivalent or translation of Indonesian in memorandums of understanding or contracts involving foreign parties. However, the provision that requires memorandums of understanding to be written in two languages, including Indonesian, which can be a legal reason to cancel a contract if it does not include text in Indonesian, can be considered contrary to the principle of freedom of contract. This principle gives the parties the freedom to determine the content and form of the contract, including the language chosen, so that the regulation can limit the freedom of the parties (Ratnaningsih, 2025).

The use of Indonesian in international business contracts has several drawbacks, which are considered to limit the freedom of contract of the parties in international business agreements, including:

1. Limitations: The use of Indonesian in international business contracts can create difficulties if not all parties involved understand the language.
2. Difficulties in interpretation: The use of an international language can lead to difficulties in contract interpretation if the parties do not have the same understanding of the language.
3. Use of international languages: In international business contracts, an international language is often used as the standard language, so the use of Indonesian may not align with international business practices.

Overall, the use of Indonesian in international business contracts can be questioned from the perspective of the principle of freedom of contract if one of the parties does not understand Indonesian well. The principle of freedom of contract does grant parties the freedom to determine the content and form of the agreement, but this principle also requires that the parties have the same understanding of the content of the agreement. If one party does not understand Indonesian well, it can be said that that party does not have the same understanding of the content of the agreement. This can lead to misunderstandings and disputes in the future. Therefore, in international business contracts, it is important to consider the language used and ensure that all parties have the same understanding of the content of the agreement. If necessary, translation or interpretation can be done to ensure that all parties understand the content of the agreement well.

How Can Legal Reforms Regarding Language Use in International Business Contracts Be Made More Adaptive?

Prior to legal reforms, clear regulations regarding the use of foreign languages in international business contracts in Indonesia were minimal. Previously, international contracts tended to be drafted in foreign languages, particularly English, without any provisions mandating the use of Indonesian; this resulted in uncertainty regarding the legal consequences of using a foreign language, increasing the potential for disputes over interpretation. Following the reforms, a stricter obligation to use Indonesian in contracts involving Indonesian parties has been established, although there are some exceptions and potential disputes over interpretation. Indonesian is required in international business contracts involving Indonesian states, government institutions, private organizations, or Indonesian citizens in memoranda or agreements, to en-

sure the correct and official use of the language in business processes. In today's era of globalization, legal reforms related to the use of Indonesian in international contracts are vital, given the increasing number of transactions between countries. Legal changes related to the use of Indonesian in international business activities are steps to improve and strengthen the Indonesian legal system to make it more effective and aligned with the needs of the international business landscape that utilizes Indonesian.

This reform is designed to improve the quality and function of the Indonesian legal system in regulating the use of Indonesian in international affairs, thereby providing clearer protection and legal certainty for business actors conducting transactions in Indonesian. In this context, legal reform represents a step towards modernizing and improving a country's legal system to make it more efficient, fair, and in line with societal demands. The reform aims to improve the quality and effectiveness of the legal system, providing better legal protection and guarantees for citizens. However, the use of Indonesian in international business contracts can be problematic if not properly regulated, as it can trigger misunderstandings and conflicts between the parties involved. Indonesian citizens face challenges in drafting international contracts because they are required to use Indonesian in agreements involving state institutions, government agencies, or Indonesian individuals. If the agreement involves foreign parties, English is permitted as an alternative or translation to ensure understanding. Agreements must be written in two languages, including Indonesian, and violating this rule can result in the agreement being invalidated. The benefits of legal reforms related to the use of language in international business contracts can be felt by the public in several ways, including:

1. Increasing legal certainty: With clear and flexible provisions regarding the use of language in international business contracts, the public can have greater legal certainty in conducting international business transactions.
2. Increasing business efficiency: By enabling more flexible language use, legal reforms can improve the efficiency of international business in Indonesia, thereby increasing economic growth and creating jobs.
3. Increasing competitiveness: With more adaptive and flexible legal provisions, Indonesia can increase its competitiveness in international business, thereby attracting more investment and increasing exports.
4. Increasing ease of doing business: With simpler and more flexible legal provisions, the public can more easily conduct international business, thereby increasing the ease of doing business.

The author argues that the use of Indonesian in international business contracts is less adaptive for several reasons. First, Indonesian is not commonly used as an international language, which can lead to communication difficulties and misunderstandings for foreign parties who do not understand Indonesian. Moreover, international business contracts often involve parties from various countries with different languages and cultures. In such situations, the use of Indonesian can be a barrier to communication and contract negotiation, and English is more commonly used as the international language in international business contracts. Therefore, the use of Indonesian can make international business contracts less flexible and less competitive with other international business contracts that use English.

The use of Indonesian in international business contracts can be considered less adaptive when associated with several countries due to complex and diverse reasons. Here is a more detailed explanation of this:

1. Language Limitations
   Indonesian is the national language of Indonesia, spoken by approximately 270 million people in Indonesia. However, Indonesian is not commonly used as an international language, which can lead to communication difficulties and misunderstandings for foreign parties who do not understand Indonesian. In international business contracts, the language used must be understood by all parties involved, so the use of Indonesian can be a barrier if there is no clear agreement on the language to be used.

2. Principle of Freedom of Contract
   Under the principle of freedom of contract, the parties have the freedom to determine the language used in the contract. However, if Indonesian is used as the contract language, foreign parties who do not understand Indonesian may feel disadvantaged. They may not be able to understand the contents of the contract properly, which can lead to misunderstandings and disputes.
3. Involvement of Foreign Parties
   International business contracts often involve foreign parties from various countries. If Indonesian is used as the contract language, translation into other languages is necessary to ensure that all parties understand the contents of the contract. However, the translation process can lead to errors and misunderstandings, which can affect the validity of the contract.
4. Legal Certainty
   The use of Indonesian in international business contracts can create legal uncertainty if there is no clear agreement on the language used in the contract. In international business contracts, legal certainty is crucial to ensure that all parties understand their rights and obligations. If Indonesian is used as the contract language, there needs to be a clear agreement on the language used to ensure legal certainty.
   1. Cost and Time: The use of Indonesian in international business contracts can also lead to higher costs and more time for translation and contract negotiation. In international business contracts, time and cost are very important to ensure that the contract can be completed effectively and efficiently.

In this context, the use of English as an international language can be a more adaptive and effective choice in international business contracts. English is more commonly used and understood by many parties worldwide, facilitating communication and contract negotiations. Furthermore, English is also more commonly used in international business contracts, increasing legal certainty and reducing the risk of disputes. This is also reflected in several international conventions that do not explicitly specify a specific language, yet in practice, English is often used as the primary language, such as in the aviation and international air transport industries. Explicit means that information or statements are conveyed directly and clearly, without ambiguity or misunderstanding. In the context of international conventions, the absence of explicit provisions on a specific language does not mean that English is not used, but rather that its use has become the de facto standard in certain industries.

The use of English in the aviation and international air transport industry is very common for several reasons. First, English is used as the primary language of communication between pilots, cabin crew, and air traffic controllers worldwide. Second, important documents such as airline tickets, passenger manifests, and accident reports are also often written in English. Third, English is used in communication between airlines, airports, and international aviation organizations such as ICAO (International Civil Aviation Organization). Thus, the use of English in the aviation industry and international air transport helps ensure safety, efficiency, and effective coordination in flight operations. However, it is important to remember that international languages are not limited to English alone, as other languages such as French, Spanish, Arabic, and Mandarin are also used in various international contexts, depending on region, culture, and communication needs (Zulfikar, 2023).

Overall, the use of Indonesian in international business contracts can be considered less adaptable if not accompanied by careful consideration and necessary adjustments to increase the adaptability and flexibility of the contract. Therefore, a more in-depth understanding and analysis of language use in international business contracts is required to ensure that contracts can be concluded effectively and efficiently.

All parties involved in an international business contract have a good command of Indonesian, so the use of Indonesian is acceptable. However, if one party does not have a good command of Indonesian, adjustments must be made, such as using another language more commonly used in international business contracts, such as English, translating the contract into a language understood by all parties, and including a clause specifying the language used in the contract and any language-related dispute resolution procedures. The prerequisite for using a foreign language other than English in an agreement is that all parties involved must understand and agree to the language used, and must perform an accurate and legal translation, if necessary, to ensure clarity and legal certainty in the contract. The requirements for using a foreign language other than English in international agreements can vary depending on the context and the parties involved. Here are some things to consider:

a. Agreement between the parties: All parties involved in the agreement must agree on the language used.
b. Clarity and certainty: The language used must be clear and free from misunderstanding.
c. Accurate translation: If the agreement is written in more than one language, it is necessary to ensure that the translation is accurate and does not lead to differences in interpretation.
d. Use of official language: Some international organizations or international treaties may have designated official languages.
e. Cultural and legal context: It is necessary to consider the cultural and legal context of the parties involved to ensure that the language used does not give rise to misunderstandings or conflicts.

Thus, legal reform in international business contracts can be enhanced by ensuring that all parties have a common understanding of the agreement's contents and can execute the contract effectively and efficiently, while reducing the risk of disputes and disagreements that may arise from misunderstandings or differing interpretations of the contract. This can be achieved through the use of clear and specific language, precise definitions, and clauses that are comprehensive and fair to all parties involved.

CONCLUSIONS

In the era of globalization, international contracts are a crucial area of law supporting international trade and business transactions. However, Indonesian citizens entering into international business contracts face limitations in contracting due to the mandatory use of Indonesian for various types of agreements, as stipulated in Article 31 of Law Number 24 of 2009 concerning the National Flag, Language, and Emblem, as well as the National Anthem, and Presidential Regulation Number 63 of 2019 concerning the Use of Indonesian. The use of Indonesian in international contracts is often considered less adaptable because foreign parties who do not understand the language can experience communication barriers. Therefore, the use of languages such as English is often chosen because it is considered more neutral and avoids misunderstandings in international agreements.

To increase the effectiveness of international business agreements and reduce the risk of misunderstanding, legal flexibility regarding the use of language in international business contracts is necessary. The choice of language should be tailored to the needs of the business and the parties involved, while still considering national legal protections. Therefore, legal reform is urgently needed to ensure legal certainty while accommodating the increasingly complex and dynamic needs of international business. Thus, this discussion emphasizes that language arrangements in international business contracts must be carried out wisely and adaptively, so as not to hinder global cooperation while still protecting Indonesia's national legal interests.

REFERENCES

Bagus Ida, W. P. (1997). *Aspek-aspek hukum perdata internasional dalam transaksi bisnis internasional*. Denpasar: Refika Aditama.

Fahri Zulfikar. (2023). 6 bahasa ini dipakai sebagai bahasa internasional, apakah Indonesia masuk? *detikEdu*. https://shorturl.at/CyF3Q

Fransiska, S. M. (2022, Agustus 4). Mengenal asas-asas dalam perjanjian. *Lembaga Bantuan Hukum Pengayoman*. https://lbhpengayoman.unpar.ac.id/mengenal-asas-asas-dalam-perjanjian/

Gede Krisna, W. W., & Nyoman Satyayudha, D. (2018). Penerapan asas itikad baik dalam perjanjian jual beli online. *Jurnal Kertha Semaya*, 6(8), 8.

Harianto, D. (2016). Asas kebebasan berkontrak: Problematika penerapannya dalam kontrak baku antara konsumen dengan pelaku usaha. *Jurnal Hukum Samudra Keadilan*, 2, 148. https://rb.gy/s8o57a

Maarschal, B. (2023, April 16). Perbandingan dasar—penelitian hukum normatif dengan penelitian hukum empiris. *Kompasiana*. https://rb.gy/uqc81y

Marzuki, P. M. (2017). *Penelitian hukum*. Jakarta: Kencana Prenada Media Group.

Pertiwi, C. I. (2018). Implikasi hukum kontrak bisnis internasional yang dibuat dalam bahasa asing. *Notarius*, 11(1), 13. https://doi.org/10.14710/nts.v11i1.23122l

Ratnaningsih. (2025, April). Kontruksi hukum kontrak internasional sebagai instrumen penguatan ekspor produk rambak pisang serta manajemen rantai pasok pisang ogan di Kabupaten Lumajang. *Jurnal Litigasi Universitas Pasundan Bandung*.

Soekanto, S. (2014). *Penelitian hukum normatif: Suatu tinjauan singkat*. Jakarta: Raja Grafindo Persada.

Tim Hukum Online. (2024, April 23). Mengenal apa itu hukum perdata internasional. *Hukum Online*. https://www.hukumonline.com/berita/a/mengenal-apa-itu-hukum-perdata-internasional-lt6627663ca01b6/