

Performative Speech Acts in the Translation of Indonesian Legal Documents into English

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Abstract

The aim of this research is to find out speech acts used in legal documents. To discuss the problems of this research, two theories are applied, namely, the translation theory of Newmark completed by the concept of pragmatic (for what purpose, to whom, when and where the legal documents are used), while for speech acts typology, Searle's theory is applied. The data used for this research were taken from 6 (six) legal documents in the form of employment contract, conciliation agreement, lease agreement, sales agreement, lease of resident and business place and lease of villa agreement. Based on the results of the analysis, it was found that from the five specific types of speech acts put forward by Searle and Cruse, only 4 (four) speech acts were found, namely, (1) representative, (2) directive, (3) comisive, and (4) declarative speech acts. While expressive speech act was not found in this research.

Keywords: speech acts, legal documents, representative, directive, commisive, declarative, expressive

1. Introduction

1.1 Introduce the Problem

Speech act theory was firstly put forward by Austin (1962) who stated that uttering a particular sentence can be seen as doing an action (*act*), in addition to actually saying the sentence. Cao (2007) also stated that words were not just used to convey something, but also to do something. This speech act theory emerged as a reaction to "*descriptive fallacy*", i.e. the view that declarative sentences are always used to describe facts or '*state of affairs*', which must be correctly or incorrectly done. In fact, according to Austin (1962), many declarative sentences do not describe, report, or state anything, therefore, it cannot be stated as right or wrong. The utterance of a sentence is part of an action. For instance, "*You are found guilty of committing a narcotic offence of abusing narcotics ... therefore, you are sentenced to 1 year imprisonment deducted by your period of detention and of Rp. 50 million fine subsidiary 3 (three) months in jail*". This sentence was pronounced by a judge in a court when handing down a sentence to the defendant. From the sentence above the judge did the act of imposing sanction to the defendant and required the defendant to pay for a penalty and if he was unable to pay for the fine, then he had to replace it with a confinement sentence for 3 months.

Austin (1962) classified declarative speech acts into two, namely, **constative** and **performative speech acts**. Constative speech act is a speech act indicating something which can be tested for its truth by using knowledge about the world. While performative speech act, according to Austin, is a speech that is used to do something. Performative speech acts do not only convey information but through what is socially spoken raises important actions (Fiorito, 2006).

Searle (1979), Austin (1962) and Allen (1986) pragmatically distinguish at least three types of actions that can be realized by a speaker, namely *locutionary*, *illocutionary* and *perlocutionary act*.

Austin (1962) stated that if a speaker intends to say something directly, without the need of the speaker to carry out the contents of his speech, the intention is called locutionary speech acts. It is said as the act of saying something. Locutionary act contains literal meaning. For instance, "*Perjanjian ini ditandatangani pada hari ini tanggal – This agreement is executed on this day, dated ...*" This expression should be construed literally based on the meaning of the sentence (sentence meaning) without being interpreted as other. In other words, locutionary act is a speech act indicating something based on what is said or sentence meaning. Further, Malmkjer (2006) said

that any time a speaker performs locutionary act, he also performs illocutionary acts, such as, *stating, promising, reminding* and so forth. If a speaker intends to express something directly, by using a distinctive power, which makes the speaker act in accordance with what he said, the intention is called illocutionary speech acts. In other words, illocutionary act is an act of performing something by saying or uttering something (performative) as opposed to the act of declaring something (constative). Meanwhile, if a speaker intends to cause a certain response or effect to the hearer, the intention is called perlocutionary speech act. If the locutionary and illocutionary acts emphasize on the role of the speaker's actions, then perlocutionary acts actually emphasizes on the response of the speech partner (hearer). The last intend, according to Austin, is closely related to the function of language to influence human thoughts and feelings. Nevertheless, the three speech acts constitute a coherent unity in the whole process of language disclosure so that they should reflect the principle of the existence of one word and action or deed.

Bach and Harnish (1979), on the other hand, followed a more complicated model than the model of Austin (1962) and Searle (1979) in which according to them the speech act in communication consists of 4 components: (1) *Speech utterance acts (Utterance Acts)*, where a speaker utters an expression in a language to a hearer in the context of an utterance, (2) *Locutionary acts*, namely a speaker utters something to a hearer in a utterance context in such a way, (3) *Illocutionary acts*, that is a speaker performs something in the context of the utterance, (4) *Perlocutionary acts*, where a speaker influences a hearer in a certain way.

Then a question arises "*how can legal documents use speech acts theory?*" Legal documents are closely related to speech acts for various reasons, but the most important thing is that speech act theory helps to clarify how the law uses a language. Laws, regulations, decrees, etc. are not conveyed to the readers in the same way as agreements, contracts, power of attorney. It can be concluded that legal language is full of speech acts.

1.2 Importance of the Problem

Based on the description in the introduction above, it is clear many problem can be explored. But in this study, the problems are focused on the legal documents as the data source. It is intended to answer the curiosity that legal documents do not only contain "state of affairs" but they contain speech acts. The problems proposed in this study are:

- 1) What performative acts are found in the Source Text (ST) and the Target Text (TT) of this study?
- 2) How are the speech acts in ST conveyed in TT?

1.3 Relevance Scholarships

The study compares two languages of the bilingual data sources, namely Indonesian as the source language (SL) and English as the target language (TL). Therefore, it is important to mention a little about the concept of translation to make it easier to compare and determine whether the results of the translation in the TT are equivalent to the ST.

Nida and Taber (1969:12) define concept of translation as follows: "Translation consists of reproducing in the receptor language the closest natural equivalence of the source language message, first in terms of meaning and secondly in terms of style." It implies that a translator should strive to reproduce the natural and closest meaning of ST message in the TT, first in relation to the message and then the style. In this case, the most important thing is that the message in ST is delivered to TT flexibly. This definition seems to put more emphasis on the natural equivalent in the scope of meaning and style but is not concerned with grammar.

The following concept is put forward by Catford (1965:20) describing that: "Translation is the replacement of textual material in one language (SL) by equivalent textual material in another language (TL)" The definition put forward by Catford seems simpler and difficult to get a clear view on what needs to be replaced in the process of replacement. However from the phrase "equivalent textual material" can be understood that what to be replaced is the information. Thus, in this case, a translator must be able to substitute or replace ST information with the equivalent information in the TT.

On the other hand, Newmark (1988: 5) defines the translation as follows: "Translation is rendering the meaning of a text into another language in the way that the author intended the text." This definition seems simpler, but contains a broad scope because there is a concept that was completely forgotten by the authors of the previous definition, namely, the author intended the text. This concept implies that the intention of the original text author (ST) is the main element to be considered by a translator when one reads ST. When reading ST, a translator is automatically becoming a reader of ST, therefore one should understand the essence and intentions of the original text author (ST). Thus, it can be concluded that the translator is a bridge connecting the inner cords between the original author and the recipient of the target language (TL). Even, the more unique point is that the word rendering

has synonymous meaning as translating. In addition, Newmark tends to focus on meaning in his concept of translation so it is common if he considers that the method which can be said to produce translation is the method of semantic translation, idiomatic translation, and communicative translation. As the three methods represent the translation of meaning as the focus of his translation concept.

From the three concepts above, it seems that the concept put forward by Newmark is more appropriate to be applied in this study but it still needs to be supported by pragmatic elements (for what, to whom, when and where the legal documents are used).

To explore speech acts in legal documents, Searle's (1976) theory is applied. Searle in Cao (2007: 14-15) classified performative speech acts into 5 (five): (1) representative speech acts (assertive), (2) directive speech acts, (3) expressive speech acts, (4) commissive speech acts, (5) declarative speech acts.

Representative speech act is a speech act binding the speaker to the truth of what he says, this type of speech act is also called assertive speech act. Speech acts falling into this type of speech act include speeches acts of stating, demanding, acknowledging, reporting, showing, mentioning, giving, witnessing, speculating and so forth.

The directive speech act is also called the imposing speech act, namely the speech act carried out by the speaker with the intention that the interlocutor performs the actions mentioned in the utterance. Speech acts include in this type of speech act include speech acts of forcing, inviting, asking, asking, asking, asking, urging, pleading, suggesting, commanding, giving cue or challenging.

Expressive speech act can also be called evaluative speech acts. It is a speech acts intended by the speaker in order that his utterance is interpreted as an evaluation of somethings mentioned in the speech. Speech acts include in this expressive type of speech acts are praising, thanking, criticizing, complaining, blaming, congratulating, and flattering.

Commissive speech act is a speech act binding the speaker to carry out what is stated in the speech. This type of speech act include promising, swearing, threatening, expressing ability, and vowing.

Declarative speech act is a speech act intended by the speaker to create new things such as status or circumstances and so forth. Speech acts include in this type of speech act are speech acts of authorizing, deciding, canceling, prohibiting, permitting, granting, appointing, classifying, forgiving and forgiving.

2. Method

The method applied in the study of this performative speech act is descriptive method. The application of this descriptive method is intended to describe the typology of performative speech acts found in the corpus of data. The technique applied in data collection is note taking technique, by writing down sentences containing performative speech acts found in the corpus of data. Then the collected data are classified according to the typology of speech acts and analyzed by comparing ST and TT data.

There are 6 (six) legal documents used as corpus of data in this study. The six documents are in the form of employment contract, conciliation agreement, lease agreement, sale agreement, lease of place of residence and business, and lease agreement of villa. All of these documents are personal legal documents (according to the classification proposed by Cao (2007) classifying legal documents into: (1) domestic and international law documents, (2) personal legal documents, (3) legal documents for law students, (4) legal case documents). The documents were collected from law offices, Foreign Investment (PMA) companies and international schools in Bali. The data procurement process is carried out by submitting an application letter to the agency asking and simultaneously requesting legal documents drawn up in two languages (Indonesian and English). Since it concerns the confidentiality of documents, the institution referred to is not mentioned in this study.

3. Results

Speech act is actually one of the phenomena in a wider problem, known as pragmatics. Pragmatics itself is commonly defined as "the study of relationship between symbols and their interpretation". What is meant by the symbol here is the unit of speech, whether in the form of one sentence or more, carrying a certain meaning, which in pragmatics is determined on the results of the interpretation of the listener. In other words, in pragmatic language is never considered independently of the uses it is put to.

As previously stated by Allen (1986), the speaking is actually an activity with a social dimension. As commonly in other social activities, speaking activities can take place well only if the participants are all actively involved in the speaking process. If one party or several parties are not actively involved in it, it is assured that the speaking activities will not run well and smoothly.

In real speech, the speaker and speech partner can communicate smoothly if they both have some kind of similar background knowledge about something being spoken. Between the speaker and the speech partner there is a kind of unwritten conversation contract where what is being said is mutually understood. Grice (1991) stated that a speech act can imply a proposition that is not part of the speech. The implied proposition can be referred to as the conversational implicature. Similar as Grice, Fiorito (2006) proposed that speakers and speech partners should have socially known each other and/or legally have a role in order that the performative acts can take place. Moreover, in the legal documents having a normative function that are intended to guide community attitudes and behavior as well as to regulate the relationships between the parties involved (Cao, 2007: 13). Therefore, the community or parties to the legal documents must really have to understand the contents of the legal documents. In this case, lawyers in practice have been known the relevant of speech acts and the performative verbs (Trosborg, 1997).

Generally, speech acts are considered as examples of verbal face-to-face communication, however speech acts are also found in written legal documents. For instance, offering letter is a type of commissive speech acts; certificates, diplomas, deeds are declarative speech acts; brochure is a representative speech act; the order form contains directive speech acts, and so forth.

Speech acts in legal documents are surely very different from ordinary speech acts, since legal documents have legal power to create, change, terminate the rights or obligations of individuals or institutions. This kind of text, according to Austin, is called "written performative".

The followings are described speech acts found in 6 legal documents based on the classification proposed by Searle (1979).

3.1 Representative Speech Acts

Representative speech act is a speech act that bind the speaker to the truth of something being said. Representative speech act is a speech act that bind the speaker to something or state the truth of the proposition being spoken (Cruse, 2000; Cao, 2007). Type of speech acts include in this type of utterance are stating, demanding, acknowledging, reporting, showing, mentioning, testifying, and speculating. Table 1 shows the examples of representative (assertive) speech acts.

Table 1. Representative Speech Acts

Source Text (ST)	Target Text (TT)
(1) Perjanjian ini berlaku untuk jangka waktu 6 (enam) bulan terhitung ... (D1)	This employment agreement shall be valid for (6) six months commencing ... (D1)
(2) Bahwa Pihak Pertama memiliki anak yang sebelumnya telah menempuh pendidikan ... (D2)	Whereas, the First Party has a child who previously has been educated ... (D2)
(3) Tanah Milik: Tanah Milik yang terletak di XXX, seperti dinyatakan di dalam Sertifikat No. XXX ... (D5)	Property: The Land and Building located at XXX as described on the attached Land Certificate No. XXX (D5)
(4) Perjanjian Sewa-Menyewa ini dibuat di Bali 14 Agustus 2014 ... (D6)	This Lease Agreement is made in Bali on August 14 th 2014 ... (D6)

All the examples (1) - (4) above in the ST are performative speech acts of representative speech acts of *stating*. In example (1), the agreement states clearly the truth that the agreement is effective for 6 months, neither more nor less. And in TT, the agreement remains in the form of representative speech act of *stating* without any shift of speech act. Seen from the equivalence at the speech level, ST and TT are equivalent. Likewise example (2) - (4), both in ST and TT indicating speech acts of *stating*. In example (2), it is stated that the First Party owns a child who previously study in the Second Party. The ST in example (3) is easily recognized that it contains the speech act of stating as the verb of the sentence is "*dinyatakan*" (stated or stipulated), but the TT does not contain the verb, but the translator tended to use "*described*". Nevertheless, the speech act also implies "*stating*" that the Land located in XXX is stipulated in the Certificate No. XXX. Example (4) states the location where the agreement is executed. Based on the 4 examples above, we can conclude that there is no significant shift in term of meaning of speech acts which may affect the meaning of the message conveyed from ST to TT.

3.2 Directive Speech Acts

Directive speech act is a speech act carried out by the speaker with an intention that the speech partner (hearer) performs the actions indicated in the speech. Speech acts included in the directive speech acts are: *forcing, inviting, asking, ordering, collecting, insisting, pleading, suggesting, ruling, commanding, challenging*, and so forth. Table 2 shows the examples of directive speech acts.

Table 2. Directive Speech Acts

Source Text (ST)	Target Text (TT)
(5) Setiap perubahan atas Perjanjian Sewa-Menyewa ini harus dilaksanakan ... (D6)	Any amendment to this agreement shall be made in (D6)
(6) BTH hanya boleh menjual barang-barang yang dibeli menurut perjanjian ini ... (D4)	BTH must only sell the products purchased under this agreement ... (D4)
(7) Pihak Kedua wajib memberitahukan Pihak Pertama secara tertulis ... (D5)	The Second Party shall notify the First Party in writing ... (D5)

Like in the representative speech acts, in the example of directive speech acts in Table 1, we did not find any performative verb showing directive, except in the ST of example (7). But, again, the meaning conveyed implies directive speech acts. Example (5) of ST is a performative speech act indicating *ordering* because the parties to this agreement order any parties that if they intend to make amendment to the agreement, it is ordered to submit it in writing. However, the speech act in the TT has shifted from directive speech act of *ordering* to directive speech act of *obligation* (requiring) as seen from the sentence elements using modal "*shall*". Nevertheless, such shift did not cause a significant change in the meaning of message.

It is different from Example (6) of ST. Seen from the translation in the TT, it appears clearly that in the ST the speech act is indicating *permission* however in TT it is in the form *forcing*. There is a deviation of maxim of quality in the TT. As Grice (1991: 28) stated that: "*I expect your contributions to be genuine and not spurious. If I need sugar as an ingredient in the cake you are assisting me to make, I do not expect you to hand me salt; if I need a spoon, I do not expect a trick spoon made of rubber*"

Similar to the example (7) in ST, of which directive speech act take the form of speech act of *obligation*, however, the translation in TT is in the form of speech act of *asking*. But, seen from the meaning contained, the difference is very slight and insignificant. In speech act of *obligation* (ST), the word "*oblige*" contains the meaning of "*both requested and not requested*" it remains to be provided while the word *ask* gives an impression to be given after being asked. It can be said that there is a deviation of maxim of quality in the example (7) from ST to TT.

3.3 Commissive Speech Acts

Commissive speech act is a speech act binding the speaker to perform what is mentioned in his utterance. The speech acts which include in the commissive speech act are *promising, swearing, threatening, refusing and willingness*. Table 3 shows the examples of commissive speech acts.

Table 3. Commissive Speech Acts

Source Text (ST)	Target Text (TT)
(8) ... Pemilik Tanah dan Penyewa sepakat untuk melangsungkan perjanjian ... (D3)	... the Landlord and the Tenants agree to enter into this new agreement ... (D3)
(9) ... Pemilik menjamin Penyewa bahwa dia adalah (D6)	... the Lessor guarantees the Lessee that he/she is (D6)
(10) Setiap kegagalan pembayaran akan dikenakan penalti (D6)	Any failure in payment will be subject to a penalty. (D6)
(11) Kedua belah pihak sepakat untuk menyelesaikan sengketa ... (D5)	Both parties agree to resolve any disputes ... (D5)

Both example (8) and (11) in ST and TT contain commissive speech acts in the form of *agreement or willingness*. Although, there is no performative verb indicating the acts, but the sentence in the text indicates the speech acts implicitly. In example (8) and (11) the parties, the Landlord and the Tenants are bound to execute the agreement. In example (9), both ST and TT contain speech act of commissive in the form of *guaranteeing or giving guarantees*.

Here, the commissive speech act is shown the performative verb “*menjamin – guarantee*”. The owner or lessor is bound to give guarantee to the lessee. Example (10) of ST is a commissive speech act indicating *sanctions or threats*. Any late payments will be subject to penalties and the translation in the TT also has the same form of threat, but it seems more polite by using the expression “*will be subject to...*”. We can conclude there is no change or shift in the form of speech acts from ST to TT.

3.4 Declarative Speech Acts

Declaration speech act is a speech act that connects the speech acts and the fact or reality. It is intended by the speaker to create new things (status, circumstances, etc.). Speech acts indicating *naming, authorizing, deciding, canceling, prohibiting, permitting, granting, appointing, classifying, forgiving* include in the declarative speech acts. Table 4 shows the examples of declarative speech acts.

Table 4. Declarative Speech Acts

Source Text (ST)	Target Text (TT)
(12) Bahwa selama jangka waktu sewa-menyewa, Pemilik tanah akan mengizinkan Penyewa untuk memakai bangunan ... (D3)	Whereas, during the lease period, the Landlord shall allow the Tenant to use building ... (D3)
(13) ... Perjanjian Sewa-Menyewa ini tidak akan menjadi batal oleh karena meninggalnya Pemilik atau Penyewa ... (D6)	... This Lease Agreement shall not be made void by Lessor’s or Lessee’s death ... (D6)
(14) Kontrak sewa-menyewa ini dapat dialihkan dan atau ... (D5)	The Lease Contract may be assigned and or ... (D5)
(15) ... Tidak menerima hadiah atau uang atau pemberian khusus lainnya dari ... (D1)	... Not accept gifts or money or other special favours from ... (D1)

In example (12) and (14), both ST and TT contain declarative speech acts in the form of *allowing or permitting*. In example (12) the land owner allows the lessee to use the building and in example (14) the contract is allowed to be subleased. And the translation in the TT for the two data above is very equivalent both in terms of meaning and speech acts. Example (13) ST and TT contain declarative speech acts *canceling or cancellation*. The agreement will not be canceled because of the death of the Owner or Lessee. It means that the agreement will remain valid even if one of the parties passes away. It is different from example (13), (14), example (15) shows declarative speech act of *prohibition*.

4. Conclusion

From the results of the discussion above, it can be concluded that there are 4 (four) types of speech acts found in data of personal legal documents of the five types of speech acts put forward by Searle (1979) and Cruse (2000). The 4 (four) speech acts found, are (1) representative speech acts in the form of speech acts of *stating*, (2) directive speech acts in the form of speech acts of *ordering, forcing and obligation*, (3) commissive speech acts in the form of speech acts of *agreement and sanctions or threats*, (4) declarative speech acts in the form of speech acts of *allowing, canceling and prohibition*. However, no expressive speech act is found in the data source.

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