



การประชุมวิชาการนำเสนอผลงานวิจัยระดับชาติของนักศึกษาด้านมนุษยศาสตร์และสังคมศาสตร์ ครั้งที่ 2

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Analysis of sentence structure of legal writing in contract

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Abstract

This research aims to study the language structure of the commercial contract that can be a guide writing in contract and translated correctly. The researcher used the ANTCOCONC program to find the number frequency of the words used from the number of times that 50 words list have found in the business contract. The findings found that the frequency of the word list found that the article "The" had the highest frequency of words. In the 1889 article from 1946, the word "A" had more than 351 words from 1946. The words "Will" and "Shall" It is used in legal writing consistently to "will" to express contractual obligations in the template agreement used to describe the status. In addition, the passive voice in the sentence is often used in cases where the real action is more important than the actors. In the person or object experienced with the action, not the person or object acting on the preface "by". However, a comma of the writing of the law makes the meaning of the sentence clear by grouping and separating words, phrases and sentences. In addition, "that" for a limited connection, and often without a comma, it is used rather than "which" in legal writing. The research found that the writing was structured differently and used only in contracting and legal language. It is also very complicated to explaining the meaning.

Keywords : contract, legal, writing

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บทคัดย่อ

งานศึกษาวิจัยครั้งนี้มีจุดประสงค์เพื่อศึกษาโครงสร้างภาษาของเอกสารสัญญาซึ่งสามารถสามารถนำข้อมูลไปเป็นแนวทางในการเขียนเอกสารสัญญาและแปลความในสัญญาได้อย่างถูกต้อง โดยผู้วิจัยได้ใช้โปรแกรม ANTCONC ในการหาความถี่ของคำศัพท์ 50 คำที่ใช้บ่อยที่สุดในสัญญาทางธุรกิจ และได้วิเคราะห์โครงสร้างประโยคภาษาเขียนในกฎหมายจากรายการคำศัพท์ที่มีการใช้บ่อยที่สุด 10 อันดับแรกที่พบในสัญญา ผลการวิจัยพบว่าความถี่ของรายการคำที่ใช้มากที่สุดคือ “The” เป็นคำนำหน้านามที่มีการใช้คำมากถึง 2,432 จากคำศัพท์ทั้งหมด 2,489 คำ และมากกว่าคำนำหน้านามอย่าง “A” ที่มีการใช้คำศัพท์เพียง 351 จากคำศัพท์ 2,489 คำ และในส่วนของคำกริยาช่วย “Will” และ “Shall” ในการเขียนสัญญานั้น จะใช้ “Shall” เสมอในการเขียนกฎหมาย มากกว่า “Will” ที่จะใช้เพื่อแสดงภาระผูกพันตามสัญญาในข้อตกลงที่ใช้ในการอธิบายสถานะ ในประโยคที่ใช้เพื่อแสดงความสนใจในบุคคลหรือวัตถุที่มีประสบการณ์การกระทำมากกว่าบุคคลหรือวัตถุ จะใช้ passive voice ในประโยคพร้อมกับ “by” ในประโยคเสมอ นอกจากนี้ในอนุประโยคที่พบในเอกสารสัญญาจะใช้ “That” มากกว่า “Which” ในการเชื่อมประโยคที่จำกัดขอบเขตของความหมาย โดยจะไม่มีเครื่องหมายการเติมเครื่องหมายจุลภาคใดๆในประโยค อย่างไรก็ตามในการใช้เครื่องหมายจุลภาค ในการเขียนเอกสารทางกฎหมายช่วยให้ความหมายของประโยคมีความชัดเจนมากขึ้นในการจัดหมวดหมู่และแบ่งแยกคำ วลี และอนุประโยค ผลการวิจัยพบว่าการเขียนเอกสารทางกฎหมายมีโครงสร้างต่าง ๆ ที่หลากหลาย และใช้คำเฉพาะในการทำเอกสารสัญญาและการใช้ภาษาแบบวรรณกรรมเพียงเล็กน้อยเท่านั้น แต่ก็ทำให้มีประสิทธิภาพได้ ด้วยเหตุนี้จึงทำให้การใช้ภาษาในกฎหมายมีความซับซ้อน

คำสำคัญ : สัญญา, กฎหมาย, คำศัพท์



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Introduction

In the business normally is full of agreements between businesses and individuals. A written contract is important in making a business agreement between two parties, to ensure that two parties understand the precise details of the business agreements and also reduce the risk if the parties will do not follow as agreed in the contract that can be used as evidence in the trial court.

A written contract must be make clear and limit ambiguity to avoid litigation risk in the future. (Osmond Vitez, 2018) The use of vocabulary and linguistic forms is a key element in legal language when used in legal writing and drafting of written content in legal documents and contract. However Legal language, whether it is spoken or written, that is still complex and it also full of conditional qualities with exceptions and additional conditions. A legal language has its own specific words that may be problems in interpretation which can be produce large changes in meaning for non-legal reader. Legal language is still complex collection of linguistic habits that have developed over many centuries (John o 'Shea, 2015); nevertheless the problem is not just comprehension about words but it also complicated structures therefore accurate writing of important legal documents is essential to avoid misunderstandings of the agreements and the filing of court case later.

In this research the researcher studies related to grammar in legal writing and explore the sentence structures of legal writing that structures are used in legal documents of legal with special reference to their grammar and structure. Even though this research is not comprehensive coverage of all aspects of grammar in legal contract, but researcher attempt to collect and provide guidance on various issues of the structure that may make difficult to understand the legal language.

Method

The researcher collected the data by herself using the Antconc program in the classification to analyze sentence structures in a legal contract. The writer has gathered documents from the sample of commercial contracts, which collects data from related companies and contract forms used in the company

Antconc is a freeware concordance program for Windows, Macintosh OS X, and Linux that to discover and reveal model language that software includes a concordance tool that shows search results in a (keyword in context) format. Moreover, this tool counts all the words in the corpus and presents them in an ordered list.



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Result

The result when Antconc program identified the most frequency of the words used from the number of times that 50 words list have found in the business contract.

Rank	Fred	Word
1	2432	the
2	1076	or
3	850	shall
4	751	and
5	532	any
6	472	by
7	352	will
8	351	a
9	319	by
10	311	that
11	273	for
12	268	is
13	260	borrower
14	259	which
15	244	in
16	234	as
17	196	to
18	196	or
19	190	on
20	182	agreement
21	180	lender
22	172	at
23	157	all
24	155	date
25	151	with
26	148	not
27	136	contract
28	136	other
29	128	agrees
30	127	this



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Rank	Fred	Word
31	124	such
32	123	client
33	122	amount
34	117	its
35	95	may
36	95	s
37	95	x
38	92	event
39	89	day
40	88	from
41	86	interest
42	85	time
43	84	business
44	82	following
45	77	company
46	77	name
47	75	period
48	74	an
49	71	loan
50	70	property

As the result of in the table above, it showed that the most 50 words used in the business contract. The writer has decided to analyze sentence structures of legal writing from top 10 words list that found in the contract.

1. Article: 'A' and 'The'

As the result of the table 1, 'The' has the most words frequency of the 50 words list with 2432 from 2489 on the word frequencies that used in business contracts.



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Concordance Hits 2432	
Hit	KWIC
1	the Borrowers (taken as a whole); (b) the ability of any Borrower to perform and
2	perform and comply with its Obligation or the ability to avoid any Default; or (c)
3	_____], agrees to provide the above client with the construction services ou
4	act email: [_____], agrees to provide the above client with regular website maintenance
5	/or cause to provide the insurance within the above-mentioned specified periods of time, and
6	mmate names) (roommate names) (roommate names) The above persons agree to be co-tenants
7	.9. 4.10. 5.11. 6.12. In addition to the above poses, the photographer will capture add
8	.9. 4.10. 5.11. 6.12. In addition to the above poses, the photographer will capture add
9	as set forth below. In addition to the above, the Employee agrees to perform other
10	be construed as a determination made in the absolute discretion of the person making the
11	debts to the Lender, the Lender have the absolute right to promptly deduct money from
12	; the Borrower agrees that the Lender have the absolute right to enter the whole amount
13	ecial dress or appearance requirements outside of the accepted norm will be discussed in advance

Figure 1.1: Example of the result when Antconc program identified the Word ‘The’ in sentences.

Concordance Hits 351	
Hit	KWIC
1	is made at [], on [] by and between: (A) [_____, a company incorporated under the laws of
2	appears, any reference in this Agreement to: (a) An \x93agreed form\x94 means, in
3	policy as referred to in Sub-clauses (a) and (b) (as the case may be)
4	, in respect of the insurance under Clause (a); and (2) within [5] days from the date on
5	the reserves of the [Group/Borrower] including: (a) any amount credited to [each member of
6	made or deemed to have been made. 14.1.4(a) Any Financial Indebtedness of any member of
7	as agreed by the Borrower and Lender. (a) [] (b) [] 7.2 The Borrower agrees to further
8	bsite. 4.The service provider agrees to create a backup disk of the website before making
9	date. 9.2Should the Repayment Date falls on a bank holiday, such payments shall then be
10	credit or any other instrument issued by a bank or financial or other institution; (k) [
11	ny or corporation. (37) \x93Transferee\x94 means a bank or other institution to which a
12	member of the Group; (c)relates to a banker\x92s right of set-off
13	may cause it to be sued in a bankruptcy case, or the Borrower files an

Figure 1.2: Example of the result when Antconc program identified the Word ‘A’ in the sentence.

According to figure 1.1, Article ‘the’ in legal writing has introduced more specific into the contract. Conversely, according to Figure 1.2 ‘a’ is the indefinite article, not specify the noun to which refer that clause automatically has a degree of ambiguity in it.

As an example in figure 1.2: On a bank holiday (Indefinite reference which not specifying what holiday you are referring to

To compare with:



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As an example in figure 1.1: To provide the above client with regular website immanence (Definite reference: The reader knows what client you are referring to)

2. Modal verbs 'Will' and 'Shall'

As the result of the table 1, the frequency of shall use in the business contract from top 3 which is 850 frequencies, 'will' has 352 frequencies in top 7.

Concordance Hits 16	
Hit	KWIC
1	prior written consent of the Committee and shall at all times preserve the confidential natur
2	he parties hereto agree that facsimile signatures shall be as effective as if originals.
3	, compensation and provisions for payment thereof shall be as set forth in the budget
4	provided by Consultant.. A final results report shall be due at the conclusion of the
5	report at such time. The results report shall be in such form and setting forth
6	at the conclusion of the project and shall be submitted to the Committee in a
7	endment, change or modification of this Agreement shall be valid unless in writing signed by
8	the term of this Agreement, the Contractor shall bill and the Committee shall reimburse her
9	the term of this agreement, the Contractor shall devote as much of her productive time,
10	actor\x92s compensation hereunder. The Contractor shall have no claim against the Committee hereunde
11	enever requested by the Committee, the Contractor shall immediately deliver to the Committee all suc
12	enforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect
13	for the Committee. 10. Assignment. The Contractor shall not assign any of her rights under

Figure 2.1: Example of the result when Antconc program identified the Word "Shall" in sentences.

Concordance Hits 3	
Hit	KWIC
1	enefits of any kind. 9. Insurance. The Contractor will carry liability insurance (including malpract
2	control. The Contractor further agrees that she will not disclose her retention as an independent
3	for any purpose. The Contractor is and will remain an independent contractor in her relat

Figure 2.2: Example of the result when Antconc program identified the Word "will" in sentences.

According to figure 2.2, "Will" in legal terms it is usually confirm or support something that has been to do it. While "Shall" has meaning in legal contract that has been obliged to does it like "must"

As an example in figure 2.1: The contractor shall immediately deliver to the committee. (Means the contractor must deliver to the committee immediately).

To compare with:



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As an example in figure 2.2: The contractor will carry liability insurance. (Means the contractor want to do it (to carry liability insurance).

3. Subordinate clause: That and Which

Concordance Hits 4	
Hit	KWIC
1	expenses as set forth in Schedule A which are incurred in connection with the performa
2	and agreed to by the Committee, and which collectively are hereby incorporated by refe
3	be as set forth in the budget which is attached as Schedule A, which may
4	budget which is attached as Schedule A, which may be amended in writing from time

Figure 3.1: Example of the result when Antconc program identified the pronoun "which" in sentences

Concordance Hits 6	
Hit	KWIC
1	first written above. The parties hereto agree that facsimile signatures shall be as effective as
2	er. 4. Written Reports. The Committee may request that project plans, progress reports and a final
3	Conflicts of Interest; The Contractor represents that she is free to enter into this
4	insurance, if warranted) relative to any service that she performs for the Committee. 10. Assignmen
5	under her control. The Contractor further agrees that she will not disclose her retention as
6	free to enter into this Agreement and that this engagement does not violate the terms

Figure 3.2: Example of the result when Antconc program identified the pronoun "that" in sentences

According to figure 3.2 showed that concordance Antcorc program has identified words by highlights them with different colors, using the relative pronouns “that” in place of personal pronouns or nouns acting as a noun that can be either subject or object in a sentence used for all restrictive connections to make the sentence is obvious.

While “which” is used only when the information following is added and not essential (non-restrictive) to the main idea of a sentence but it does not define that subject.

As an example, in figure 3.2: The Contractor represents that she is free to enter into this. (From example “that” identifies more information of the contractor, so use that with no commas)

To compare with:



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As an example, in figure 3.1: The committee, which collectively are here by incorporated. (From example “which” refers to a thing and is nonrestrictive because it is not needed to know which the committee is being referred to, so use with commas).

4. Passive voice

Concordance Hits 8	
Hit	KWIC
1	and a final results report be provided by Consultant.. A final results report shall be
2	e, and which collectively are hereby incorporated by reference. 3. Expenses. During the term of this
3	rendered by the Contractor and agreed to by the Committee, and which collectively are hereby
4	information and data as is reasonably requested by the Committee. 5. Confidentiality. Upon the exp
5	mination of this Agreement, or whenever requested by the Committee, the Contractor shall immediately
6	subsequent estimates for services to be rendered by the Contractor and agreed to by the
7	shall be valid unless in writing signed by the parties hereto. 12. Entire Understanding. T
8	may terminate this Agreement at any time by 10 working days\92 written notice to the

Figure 4: Example of the result when Antconc program identified passive voice by using "by" in sentences

According to figure above, Antconc showed the frequency of ‘by’ used in sentence that have top 9 from top 50 of words list.

As an example figure 4: ‘This agreement at any time by 10 working day’ (Subject + Verb to be + V3 + by) used to emphasizing what was done but making it more difficult to understand because when you do not know who did the action.

5. Commas

Concordance Hits 47	
Hit	KWIC
1	all not render the Contractor an employee, partner, agent of, or joint venturer with the
2	entire understanding and agreement of the parties, and any and all prior agreements, understandings
3	or hereby accepts such engagement. 2. Duties, Term, and Compensation. The Contractor\92s duties,
4	s, records, documents, specifications, information, and other items in her possession or
5	, and any and all prior agreements, understandings, and representations are hereby terminated and ca
6	ontractor to perform the services set forth herein, and the Contractor hereby accepts such engagemen
7	the Contractor and agreed to by the Committee, and which collectively are hereby incorporated b
8	as of the XX day of October, 200X, between _____(\93the Committee\94) and _
9	ittee. 11. Modification or Amendment. No amendment, change or modification of this Agreement shall
10	. The Contractor\92s duties, term of engagement, compensation and provisions for payment thereof
11	deliver to the Committee all such files, records, documents, specifications, information, and othe



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Figure 5: Example of the result when Antconc program identified commas used in sentences.

According to figure above, in legal writing comma used often between compound sentences joined by a conjunction 'and' is being used to coordinate two independent clauses,

As example from figure 5: Duties, Term, and Compensation (Use commas to separate three words).

Discussion and Conclusion

The study revealed that sentences legal writing often is longer than in other common language, and also have more embedding's, making them more complex. However, this research is not comprehensive coverage of all aspects of grammar in the contract, but merely to provide guidance on various issues that may because difficulty.

The findings in this study revealed the followings:

1. Article: 'A' and 'The'

'A' in a contractual sentence, There may be one meaning but equally likely that sentence automatically has level of ambiguity in it. Conversely, in general English is often used "A" be a necessity to identify any member in particular.

Moreover, "The" in legal sentence used before nouns to specific subject which referring to and it is not used with a noun which refers to something in ordinary terms. However, 'the' in the sentence has introduced more specific into the contract. Therefore in legal writing often use article 'the' more than 'a' to reduce unhelpful ambiguity and unnecessary risk it as much as possible.

2. Modal verb: will and shall

Modal verb "Will" in legal terms it is usually confirms or supports something that has been to do it, whereas "Shall" only has one meaning that has been obliged to do it like "must" to show arguments or controlled patterns.

In my opinions "Shall" in legal writing to ensure something that restricts of action more efficient than "Will" often used for the non-finite the future.

3. Subordinate clause: That and Which

Most of legal context used the relative pronouns it functions like an adjective to gives more information about noun and begins with "that" or "which", while In the clause is restrictive used 'That' before noun for defines the noun of the noun and it also can be either subject or object in a sentence to reduce ambiguous in the sentence.



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ณ คณะมนุษยศาสตร์และสังคมศาสตร์ มหาวิทยาลัยราชภัฏสวนสุนันทา

On the other hand ‘Which’ use in the clause is nonrestrictive to separate sentence into two sentences; it helps identify the noun for more information about a noun that has been identified.

4. Passive voice

In legal writing often use of excessive passives voice in context to express interest in a person or object that has experienced action, rather than a person or object, which performs a preposition. "By" The passive form of the verb is signaled by a form of “to be”. In general, passive sentences are indispensable in legal writing when obscure the subject and also useful when don’t know who performed a particular action.

Generally, in legal writing prefer active sentences to passive sentences because it is clarity and conciseness. However passive sentences are essential in legal writing when seeks to obscure the subject of a sentence.

5. Commas

Legal writers often use commas to avoid grammatical confusion when a sentence has three or more items, put a comma before the conjunction of items are listed in order and put “and” before the last word. commas in sentence used between compound sentences joined by a conjunction ‘and’ is being used to coordinate two independent clauses at the end of each item listed, including the item listed before ‘and’ that make the meaning of sentences clear by grouping and separating between clause dependent clause and independent clause or phase. It is used to emphasize the object or subject of the sentence and comma between mid-sentence to set up phrases and phrases that are not use commas to set off parts of the sentence are essential to the meaning. However, commas are often a misunderstood grammatical because placement a comma in the wrong position may be able to change the meaning of a sentence.

In my opinions, in legal writing consists of various structures and uses specific terms in the contract because it has the most specific meaning possible. In such cases, legal writers or legal translator are not necessarily know good grammar but you must be aware of the use of grammar and punctuation in the various languages because it can be confused the meaning in sentence.

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Law and Language

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