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The Use of Indonesian in International Contracts: Sadd Dzariah's Perspective

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Abstract. *Based on Law 24/2009, international contracts made in Indonesia must use Indonesian. What about contracts made with foreign parties without using Indonesian, are they null and void or have binding force? This research is normative research using the statutory regulations approach, the judge's decision approach, and the Sadd Dzariah approach. The research results show that there are differences in decisions made by judges regarding the obligation to use Indonesian in international contracts, causing this obligation to be biased. In Sadd Dzariah's approach, the use of Indonesian in contracts made with foreign parties is mandatory, in line with the regulation in Law 24/2009. This aims to avoid bad faith which could result in default or unlawful actions.*

Keywords: *International Contract; Judge's Decision; Sadd Dzariah*

Abstrak. *Berdasar pada UU 24/2009, kontrak internasional yang dibuat di Indonesia wajib menggunakan bahasa Indonesia. Bagaimana dengan kontrak yang dilakukan dengan pihak asing tanpa menggunakan bahasa Indonesia, apakah batal demi hukum atau mempunyai kekuatan mengikat. Penelitian ini merupakan penelitian normatif dengan menggunakan pendekatan peraturan perundang-undangan, pendekatan putusan hakim, dan pendekatan Sadd Dzariah. Hasil penelitian menunjukan bahwa terdapat perbedaan putusan yang dilakukan oleh hakim terhadap kewajiban penggunaan bahasa Indonesia dalam kontrak internasional, sehingga menyebabkan kewajiban tersebut menjadi bias. Dalam pendekatan Sadd Dzariah, penggunaan bahasa Indonesia terhadap kontrak yang dibuat dengan pihak asing adalah wajib, selaras dengan yang telah diatur dalam UU 24/2009. Hal ini bertujuan untuk menghindari adanya itikad buruk yang dapat mengakibatkan wanprestasi atau tindakan melawan hukum.*

Kata kunci: *Kontrak Internasional; Putusan Kakim; Sadd Dzariah*

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Introduction

The development of economic activity patterns makes people need each other. This then encourages the development of business transactions to be more global. Contracts in an international business transaction are an important part. The existence of business relationships between domestic business actors and foreign business actors who are bound by an international agreement in the form of international commercial contracts have different rules in each country. These differences can hinder the implementation of international business transactions that require speed and legal certainty (Adolf, 2008).

In modern contract doctrine, a contract's implementation emphasizes the values of justice. Modern contract law tends to eliminate formal requirements for the sake of creating justice (Suharmoko, 2021). According to the Common Law legal system, there are 5 (five) conditions for the validity of a contract, namely: (1) offer, (2) acceptance, (3) capacity, (4) consideration, and (5) legality of the contract objective. In the Civil Law legal system, if there has been an understanding and has been agreed upon by the parties, the MoU, which is a pre-contractual document, has the power to be implemented and has binding force (HS & Patrik, 1994). The parties are considered to have understood and agreed to the clauses in the contract.

Clauses in contracts agreed upon by the parties in their implementation often still have differences in interpretation, especially contracts in the form of international commercial contracts where clauses are made in English as an international language. In the Civil Code, Article 1342 reads, "if the words in a contract are clear, then it is no longer allowed to deviate from it by way of interpretation".According to Article 1342, interpretation is not necessary if the contract drawn up is clear, does not have a double meaning, and can be understood by the parties. This article hints at the existence of a clear contract. However, in its implementation, many international contracts are made without Indonesian translation. Meanwhile, international commercial contracts made in Indonesia, in addition to using English, must use Indonesian.

In Article 31 of Law Number 24 of 2009 concerning the National Flag, Language, State Emblem and National Anthem, it is stated that "(1) Indonesian must be used in memorandums of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions or individual Indonesian citizens; (2) The memorandum of understanding or agreement as intended in paragraph (1) involving the foreign party is also written in the national language of the foreign party and/or English". International contracts made without Indonesian translation can potentially cause problems in contractual relationships

in the future. The problem raised in this study focuses on the obligation to use Indonesian translation in an international commercial contract if an international contract does not make the Indonesian translation, whether it can be cancelled or still has binding legal force. The obligation to use Indonesian in international contracts is then studied from the perspective of Islamic law, which in this case is Sad Dzariah. How does Sad Dzariah's perspective respond to the phenomenon?

Literature Review

Use of Indonesian in International Contracts

According to Boer Mauna, international agreements are juridical instruments that contain the will and consent of states and other subjects of international law to achieve common goals. Acts between the parties that make an international agreement are governed by international law that gives rise to binding legal consequences for the parties to an agreement, but are not binding on the country (Malanczuk, 1998).

A contract basically starts from a difference in perception of interests between the parties. In practice, the formulation of the contractual relationship begins with a negotiation process between the parties whose goal is to equalize perceptions or understandings. After that, the parties will make a Memorandum of Understanding (MoU) which contains the wishes of each party as well as agreed upon a grace period for reaching an agreement to hold the contract. The MoU has no legal consequences because it is still in the pre-contractual stage.

In general, there are 3 (three) stages in the process of forming and implementing a contract, namely the pre-contract stage, the stage of making a contract, and the stage of contract implementation. In the process of making a contract, the parties have the right to freedom to determine what provisions will be stated in the contract. Article 1320 of the Civil Code, which contains general conditions for the validity of an agreement in Indonesia, is not regulated regarding the process before the contract or the pre-contractual stage.

The Indonesian legal system adheres to the continental European legal system (Civil Law) where the legal conditions of a contract are different from the Common Law legal system. There are 4 (four) conditions for the validity of a contract in Indonesia, namely: (1) agreement of the parties, (2) proficiency, (3) certain objects, and (4) the existence of a halal cause. Contracts that do not meet the subjective conditions (first and second conditions), then the contract can be canceled. If the objective conditions (third and fourth conditions) are not met, then the contract is null and void.

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An international contract is theoretically a contract that contains foreign elements in it. Based on Article 31 of Law Number 24 of 2009 concerning the Flag, Language National Emblem, and National Anthem, an agreement or contract made in Indonesia must use Indonesian as the language of the agreement. Article 1313 of the Civil Code states that a contract is an act by which one or more people bind themselves to one or more people. Apart from that, the principles inherent in a contract are the principles of freedom of contract and good faith.

The basis of freedom of contract basically provides freedom in the formation of contracts for those who form them. According to Salim HS and Purwahid Patrick in his book entitled the principles of the law of engagement, freedom of contract contains four meanings: first, the freedom to make or not make a contract; second, the freedom to decide with whom to contract; third, the freedom to determine the form of the contract; and fourth, the freedom to determine the content of the contract (HS & Patrik, 1994).

Apart from the principle of freedom of contract, there is the principle of good faith which is also stated in Article 1338 paragraph (3) of the Civil Code, namely that agreements must be executed in good faith. According to Subekti, the intention stated in this article is that an agreement must be implemented by the parties by paying attention to the values of certainty (order) and justice. Good faith has an important role in maintaining these two legal objectives.

Methods

The type of legal research used in this research is normative legal research. Normative legal research is a type of research that focuses on reviewing literature or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials include statutory regulations and judge's decisions. Secondary legal materials include legal literature, books, journals and other scientific works that discuss or analyze primary legal materials. Meanwhile, tertiary legal materials are sources that provide guidance or help find primary and secondary legal materials, such as legal dictionaries and encyclopedias. In this research, the primary legal materials used include various statutory regulations and judge's decisions. This legal material is then analyzed using the Sad Dzariah perspective, a method in Islamic law that aims to prevent damage or danger before it occurs. In other words, this analysis seeks to understand and apply principles that prevent actions that could be detrimental or harmful. Data collection in this research was carried out using the documentation method. The documentation method is

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a method of searching for data regarding a matter or variable in the form of notes, transcripts, books, statutory regulations, and court decisions.

Results and Discussion

The Principle of Freedom of Contract and the Principle of Good Faith in International Contracts in Indonesia

An International commercial contract is a contract drawn up by parties from two or more countries with different jurisdictions. In making international commercial contracts, the principle of freedom of contract is applied. The basis for the application of the principle of freedom of contract is to provide freedom to the parties who will make a contract or agreement. The parties can freely make a contract, with whom the contract is made, what is contained in the content of the contract, and all matters related to the contract Freedom of contract is limited by the provisions in the terms of the validity of the agreement contained in Article 1320 of the Civil Code, namely: (1) agree for those who bind themselves; (2) the ability to make an alliance; (3) a specific thing; and (4) a cause that is halal. If the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code have been met, then based on Article 1338 of the Civil Code, the agreement has the same legal force as the force of a Law.

The agreement of the parties in Article 1320 is interpreted as an absolute element of the formation of a contract. The formation of the agreement was marked by an offer which was then followed by the acceptance of the offer. According to Nieuwenhuis, an agreement is defined as the parties involved in the contract declaring their will to each other to close an agreement (Nieuwenhuis, 1985).

The principle of freedom of contract basically provides freedom in the formation of contracts for its constituents. Article 1338 of the Civil Code contains the meaning of 4 (four) kinds of freedom, namely: (1) freedom for the parties to make or not make an agreement; (2) the freedom to determine with whom the parties will enter into an agreement; (3) freedom for the parties to determine whether or not the agreement is in a certain form; and (4) freedom for the parties to determine the content, validity, and terms of the agreement. The principle of freedom of contract occupies a central position in contract law. This principle gives free choice to the parties who will enter into a contract (Wibowo, 2023).

An international contract is theoretically a contract in which there are foreign elements in it. The indicators of foreign elements include (a) different nationalities; (b) the parties have their legal domicile in different countries; (c) the law chosen is a foreign law, including the rules and principles of international contracts; (d)

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the settlement of contract disputes is carried out abroad; (e) the performance of such contracts abroad; (f) the contract was signed abroad; (g) the object of the contract abroad; (h) the language used in the contract is a foreign language; and (i) the use of foreign currency in the contract (Adolf, 2008).

The enactment of the principle of freedom of contract is very useful in the preparation of international contracts. The parties can freely enter into a contract. In the UNIDROIT principle, Article 1 number 1 emphasizes that "The parties are free to enter into a contract and determine its content", which means that every entrepreneur has the right to decide freely with whom they will offer their products, goods and services to other parties in need (Adolf, 2008). However, the meaning of freedom in the principle of freedom of contract does not mean that it can be interpreted freely to enter into any contract. In international commercial contracts, there are other restrictions on the principle of freedom of contract, which include: (1) the freedom must not be contrary to the law, public order, decency and decency; (2) the status in an international contract in which there is a foreign element in it, meaning that the contract even though it is international is still limited by national law; (3) binding agreements even though they are not written (Zamroni, 2016).

In its development, many national and international contracts in the scope of business are made using standard contracts. The use of standard agreements makes the principle of freedom of contract impossible to realize. Freedoms that cannot be realized include: (Syahmin, 2010) (a) the freedom of the parties in determining the form of the agreement because the standard agreement is always in writing; (2) the freedom of the parties to determine the content of the agreement, because the content of the agreement has been determined in advance by one of the parties; and (c) the freedom of the parties to determine the manner in which the agreement is made as it has been determined by one party.

The principle of freedom of contract is not the only principle used as the basis of a contract. There is a fundamental principle that must exist in a contract, namely the principle of good faith. This principle originated from Roman law which was later adopted into the civil law legal system (Khairandy, 2016). Furthermore, in the development of the principle of good faith, it is also used in state contract law which adheres to the common law legal system (Histock, 27421 B.C.E.). The principle of good faith is contained in Article 1338 paragraph (3) of the Civil Code, namely: "... The agreement must be implemented in good faith" (Subekti, 2014). According to Subekti, the intention contained in the article is that an agreement must be implemented by the parties by paying attention to the value of certainty (order) and justice (Subekti, 2005). Good faith has an important role in safeguarding the two legal purposes.

Contracts or agreements are mentioned in the Qur'an as *al-'aqdu* (agreement) and *al-ahdu* (promise) (Puneri, 2021). This is the same as the principle of freedom of contract which was explained previously. Islamic law recognizes freedom of contract as a legal principle in contracts, where everyone can make any type of contract as long as it does not conflict with Sharia principles. Islamic law adheres strictly to Sharia principles in its application in everyday life, including in making agreements and contracts in business. These principles include the principles of justice, consent, legal certainty, avoiding elements of usury, transparency, morals, and ethics, as well as the public interest (*maṣlahah*). Basically, the court system in Indonesia in deciding a contract dispute refers to the principles in contracts, such as the principle of freedom of contract, which is based on good faith.

The application of the principle of good faith in the contract system in Indonesia aims to provide limitations for the principle of freedom of contract. In contract law, good faith has three functions, namely: (1) the function of interpreting contracts in good faith; (2) adding function; and (3) the function of limiting and negating for judges. So in this case, the judge's intervention can be used as a benchmark for legal certainty on the principle of good faith in an agreement. Legal certainty for the principle of good faith is interpreted as the certainty of good faith in every agreement (Humaira, 2014). In fact, the parties in making a contract must be based on good faith. The enactment of the principle of good faith in a contract can provide protection for both parties who make the contract until the contract is completed. Because a contract made without good faith will have an impact on the disadvantage of one of the parties in the contract.

Legal Certainty for Various Orientations of Judges' Decisions

Legal certainty can be interpreted as a situation where the law is certain because there is concrete force for the law concerned (Sulistyawan, 2019). Legal certainty is a fundamental principle that must be maintained in every legal process, including in building trust among the parties involved in a business contract (Martinelli, I., Reinhart, F., Natalie, C., & Milianty, 2023). The same applies to resolving contract disputes, including international contracts. Legal certainty in the context of international contracts is closely related to the use of language in agreements, as regulated in various laws and regulations in Indonesia.

In the Presidential Regulation (Perpres) of the Republic of Indonesia No. 63 of 2019, it is emphasized that Indonesian is the official language that must be used in every official communication throughout the territory of the Unitary State of the Republic of Indonesia (NKRI). As a fundamental instrument, Indonesian not

only functions in daily communication, but also plays an important role in giving meaning to laws and legal decisions. The use of Indonesian in a legal context not only strengthens national identity (Achmad, 2016) but also plays an important role in giving meaning to a law or a legal decision.

In the context of agreements, especially those involving foreign parties, the use of the Indonesian language has been expressly regulated in the Norm of Article 31 paragraph (1) of Law No. 24 of 2009 concerning the Flag, Language, State Emblem, and National Anthem. In addition, Article 4 paragraphs (1) and (2) of Presidential Regulation No. 63 of 2019 concerning the Use of Indonesian requires the use of Indonesian in every agreement involving Indonesian private institutions or individual Indonesian citizens. These Terms are binding, as explained by Nugroho (Nugroho, 2023), and aims to ensure that all parties involved clearly understand the content of the agreement.

In addition, Article 1320 of the Civil Code is the main instrument in examining the validity of agreements. Meanwhile, article 1338, paragraph (1) of the Civil Code, guarantees the freedom of the parties to make a contract, as long as the contract is made legally. However, this article also emphasizes that contracts must be executed in good faith, as stipulated in Article 1338 paragraph (3). This good faith is the foundation for the performance of the contract, and non-compliance with this principle can result in the agreement being unenforceable (Fasya, 2024).

However, in the midst of the necessity of using Indonesian, questions arise about the clash with the principle of freedom of contract, the sanctity of agreements, and the validity of agreements (Fasya, 2024) and even clashes with the principle of legal justice. This is especially true in the context of contracts involving foreign parties who prefer to use a foreign language they understand. Article 31 of Law No. 24 of 2009, Article 26 paragraphs (1) and (2) of Presidential Regulation No. 63 of 2019, and Supreme Court Circular Letter (SEMA) Number 3 of 2023 affirm the necessity of using Indonesian, but there are exceptions in the absence of translation into Indonesian, especially if it can be proven that the absence of translation is due to the bad faith of one party. The existence of bad faith is basically the absence of good faith from each party who makes a contract.

When reflecting on the term good faith, as stated in Article 1338 paragraph (3) of the Civil Code, all agreements or agreements must be based on good intentions or objectives. In Dutch, it is interpreted as *tegoeder trouw*, while in English, it is interpreted as in *Goodfaith*(Manery, 2018). The requirement of good faith in all treaties is a fundamental feature of covenant law (Turagan, 2019). Good faith in principle applies not only in the implementation of agreements, but also in forming

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agreements/contracts (Kevin Noble Effendi, Michael Kalep Simarmata, Priscilla Trinita Patricius, 2023). In addition, it focuses on implementing an agreement after the agreement has been made legally. Therefore, when referring to the provisions of Article 1368 of the Civil Code, the implementation of the content of an agreement is determined by proficiency and appropriateness. However, suppose there is a party who does not comply with the conditions in Article 1338 paragraph (3) of the Civil Code or does not carry out the agreement in good faith, fairness, and propriety. In that case, the agreement cannot be implemented (Fasya, 2024).

Thus, bad faith causation, as defined, is a deliberate dishonest act intending to not fulfil a legal obligation or agreement. Even if viewed from the consequences, the existence of bad faith will result in 1) invalid contracts, and 2) failed negotiations and no contracts at all (Hartono, 2021). In this context, bad faith can refer to fraud or dishonesty in an agreement and can be the basis for annulment of the agreement if it can be proven Fasya. Meanwhile, the cancellation process is through a legal process where the party who files a claim in bad faith is obliged to prove it (Winarni, 2015).

However, implementing these rules in the field is not always consistent because there is a multi-orientation of judges' decisions when looking at this problem. Some cases suggest that the use of language, or its absence, maybe a reason for the cancellation of the agreement, while others argue otherwise. As for the example, *first*, the case of Nine AM Ltd against PT Bangun Karya Pratama Lestari (BKPL) is one of the important examples that shows the implications of the provisions of Law No. 24 of 2009 concerning the obligation to use Indonesian in contracts. In this case, the loan agreement between the two parties is only made in English without translation into Indonesian. The West Jakarta District Court ruled that the contract was null and void on the grounds that it did not comply with Article 31 of Law No. 24/2009, which explicitly states that Indonesian must be used in agreements involving Indonesian entities. This decision confirms that this provision is not only administrative but also affects the legal validity of an agreement.

This decision emphasizes the importance of using Indonesian as legal protection for the parties involved in the contract. The Court considered using Indonesian in contracts to ensure clarity and mutual understanding of the agreed rights and obligations. In addition, the use of Indonesian is also linked to the principle of overriding mandatory rules, where these rules are considered part of the public interest that cannot be ignored. By basing decisions on this imperative obligation, the courts seek to maintain the integrity of national law, although this approach raises questions about its impact on flexibility in international legal relations.

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However, this decision also caused criticism, especially regarding its overly formalistic implementation. Some parties argue that failure to comply with the terms of use of the Indonesian language should not necessarily lead to the cancellation of the contract, especially if the parties substantively understand the agreement's content. This approach that prioritizes formality is considered to ignore the principle of substantive justice and the potential harm suffered by the party complying with the content of the contract. In this context, the dissenting opinion of Supreme Court Justice Sudrajad Dimyati at the cassation level becomes relevant. He argued that the substance of the contract and the halal cause are more important than the formality of the language because the essence of a contract is a valid agreement between the parties. This opinion reflects the need for a more balanced approach to applying domestic law, especially in dealing with cross-border legal relations.

Second, the case of Ford v. Cheung shows the difference in the court's approach to assessing the importance of using Indonesian in contracts. In this case, the contract on which the dispute is based is made in English without translation into Indonesian. Although Law No. 24 of 2009 mandates the use of Indonesian in contracts involving Indonesian entities, the court ruled that the absence of Indonesian in the agreement does not automatically cause the contract to be null and void but rather serves as a reason for renegotiation or adjustment of the agreement. This approach focuses more on the substance and essence of the agreement, as well as whether the intentions and objectives of the parties have been agreed in good faith.

In its consideration, the court prioritizes the principle of freedom of contract, which gives the parties the freedom to determine the content of the agreement as long as it does not conflict with law or public order. The court considered that the parties in this case had reached a valid agreement and understood each other's obligations, so the absence of a translation in Indonesian was not considered a fatal violation. This approach also reflects the application of the principle of *pacta sunt servanda*, where legally concluded agreements must be respected by the parties without focusing too much on language formalities. In addition, the decision emphasizes the importance of substantive fairness in ensuring that contracts remain enforceable.

However, this flexible approach also has implications that need to be considered. By not strictly requiring the use of Indonesian, courts can open up potential legal uncertainty in other cases involving international contracts. For example, a party who does not understand the English language in the contract may feel disadvantaged, mainly if the content of the contract contains complex

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clauses. This decision underscores the importance of a contextual approach, in which courts must assess the extent to which Indonesian formalities affect the fairness and understanding of the parties. This also raises further questions about whether Law No. 24/2009, in practice, is quite clear in determining sanctions for violations of the obligation to use the Indonesian language.

Third, the case of PT Cahaya Abadi Karya Pratama (CAKP) against Mega Duta Sentosa (MDS) provides a different perspective on the application of the obligation to use Indonesian in international contracts. In this case, the contract in question was written in English without translation in Indonesian. Despite the provisions in Law No. 24 of 2009 and Presidential Regulation No. 63 of 2019, the court considered that the absence of Indonesian in the contract could not automatically cancel the agreement. The court considered that both parties understood the contents of the contract well, and there was no indication of significant misunderstanding, so the agreement remained valid.

The court's approach, in this case, prioritizes the principle of substantive justice compared to procedural formalities. The principles of good faith and fair dealing are the main basis for this decision, where the court considers that as long as the parties act in good faith and there is no imbalance of power, the agreement must still be respected. This is in line with the principles of UNIDROIT, which promotes the application of universal standards in international commercial contracts, focusing on fairness and efficiency in the performance of contracts. This approach also pays attention to the protection of freedom of contract, where the parties have the autonomy to determine the content and form of the agreement according to their needs.

However, this flexibility also poses challenges related to legal certainty. By not requiring translations in Indonesian, courts are opening up room for different interpretations in other cases, which can cause uncertainty for international business actors. In addition, this decision also raises questions about the implementation of mandatory rules contained in Law No. 24/2009. Whether the obligation to use Indonesian in contracts is a fully binding rule or more directive. In the context of globalization, this approach demonstrates the court's efforts to balance domestic and international interests, although further guidance is needed to achieve consistency in applying the rules.

In conclusion, although existing regulations seek to provide legal certainty in settling international contractual disputes, differences in interpretation by judges create their own challenges. This shows the need for more consistent affirmation in applying rules related to the use of Indonesian in international contracts to ensure that legal certainty is achieved in practice.

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The Use of Indonesian in International Contracts from the Perspective of Sadd Dzariah

Sadd al-Dzari'ah is a method developed by scholars of useful fiqh to protect humans from damage. This method is carried out by closing and blocking all means, tools, and wills/roads that will be used for an act (Intan Arafah, 2020). *Sadd al-Dzari'ah* is often mentioned in the books of Malikiyah and Hannabilah, although we also get practical ideas in Fiqh Hanafi and Shafi'i.

Etymologically said, *Sadd al-Dzari'ah* is a combination of two equivalents in the form of a *muḍaf-muḍaf* clash consisting of *Sadd al-Dzari'ah*. The word *Sadd* means the opposite of opening, meanwhile *Dzari'ah* said means, goals, wills, and ways (Zulfikri & Faizah, 2023). In terminology, scholars have various definitions of the *dzari'ah Sadd*; including according to Ibn Qayyim Al-Jauziyyah, the *Dzari'ah Sadd* is a way or an intermediary that can be in the form of something that is forbidden or permissible but will lead to a prohibited act (*mahzur*) (Dulfikar, 2023). In the work of Al Muwafat, Ash-Syatibi states that *Sadd al-Dzari'ah* is carrying out a work that originally contained benefits leading to damage (*mafsadat*) (Arafah, 2020). Meanwhile, according to Abdul Hamid, *Dzari'ah Sadd* is to establish a law prohibiting a certain act which is basically allowed or prohibited to prevent the occurrence of other prohibited acts (Takhim, 2020). The *Sadd al-Dzari'ah* referred to in the Science of Ushul Fiqh is "A problem that seems to be mumu, but there is (possibility) that it can convey to things that are forbidden (*haram*)" and "Preventing everything (words or deeds) that convey something that is prevented/ forbidden that contains damage or danger" (Wahbah Al Zuhaili, 1999).

From some of the definitions mentioned above, it can be understood that *Sadd al-Dzari'ah* is a way in an effort to explore the law to prevent, prohibit, close the road or *wasilah* that conveys to the destination. What is meant by *Dzari'ah* here is the way to reach the haram or to the halal. So the way/way that conveys to the *haram* is also haram, and the way that conveys to the halal is also halal, and what conveys us to the obligatory law is also obligatory. This is in accordance with the rules:

"The law is that the will that leads to the goal is the same as the law of the goal"

For example Adultery is *haram*, so seeing the aura of a woman that leads to adultery is also haram.

Basically, there is no evidence that clearly and definitively determines, either according to the Nash or ijma' ulama, whether or not it is permissible to use *Sadd al-Dzari'ah,* but there are several Nash that implicitly indicate the legal basis (Arafah, 2020). These evidences consist of the Qur'an (Surah Al-Baqarah: 104, Al-An'am:

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108 and An-Nur: 31), Sunnah, and the rules of Fiqh. There are so many *Sadd al-Dzari'ah* used by the Prophet Muhammad, such as when the Prophet forbade killing Hypocrites, because killing a Hypocrite could cause the Prophet to be accused of killing his companions and others (Djazuli, 2005).

Although almost all scholars and writers of Ushul Fiqh mention *Sadd al-Dzari'ah*, it is very rare to find a special discussion about this matter carried out by fiqh scholars. Some put the discussion in a series of *daliil shari'* that were not agreed upon by the scholars Ibn Hazm who refused to argue with *Sadd al-Dzari'ah* stating: "A group of people forbid some things by means of *ikhtiyath* and because they are worried about becoming a bequest to what is really haram" (Intan Arafah, 2020). The placement of dzari'ah as one of the postulates in determining the law even though its use is disputed, means that because the wasilah is a preliminary act, this is a clue or postulate that the wasilah is as the law stipulated by the sharia in the face of the main act. On that basis, the law is divided into two, the first is the purpose/ *maqāṣid* is the sharia *maqāṣid* in the form of benefit (Adam, 2021), and the second, *wasilah* is the path that leads to the achievement of the goal (Djazuli, 2005)If the result of the act is beneficial, as taught by Sharia, then the will can be done, and vice versa. If the result of the act is harmful, even if the purpose is for good, then the law cannot be done.

Judging from the object or aspect of the consequences it causes, Ibn al-Qayyim classifies *Sadd al-Dzari'ah* into four types. 1. An act that basically definitely causes harm (*mafsadah);* this is, for example, consuming alcoholic beverages, which can result in drunkenness and adultery, which results in unclear origins of offspring. 2. An act that is basically allowed or recommended (mustahab), but is deliberately used as an intermediary for something bad to happen (*mafsadah*). For example, marrying a woman who has been rejected three times, so that the woman can be married (*at-tahlil*). Another example is buying and selling in a certain way that results in the appearance of usury. 3. An act that is basically permissible but not intentional so that it causes a bad thing (*mafsadah*), and in general that bad thing still happens even if it is not intentional. The evil (*mafsadah*) that may occur is greater as a result than the good (*maṣlahah*) achieved. An example is insulting idols worshipped by polytheists. 4. An act that is basically permissible but can sometimes cause harm (*mafsadah*). The good that results from the consequences is greater than the loss. For example, seeing a woman being questioned and criticizing a tyrannical leader (Dulfikar, 2023).

Meanwhile, seen from the aspect of the agreement of the ulama, al-Qarafi, and ash-Syatibi divided *Sadd al-Dzari'ah* into three types, namely: 1. Something that has been agreed will not be prohibited even though it can be a way or means of carrying out a prohibited act. For example, planting grapes, even though there is a possibility

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that they can be used as wine; or living in the same house as a neighbor even though there is a possibility of committing adultery with the neighbor. 2. Something that is agreed to be *haram*, for example, blaspheming idols for those who know or strongly suspect that the polytheists will immediately retaliate by blaspheming Allah. Another example is the prohibition of digging wells in the middle of the road for people who know that the road is public and will be detrimental to the community. 3. Something that is still in question is prohibited or permitted, such as looking at women because it could be a way for adultery to occur; and buying and selling futures because they are worried that there is an element of usury (Takhim, 2020).

Regarding the use of Indonesian as a translation in an international contract, there are rules that are of concern, Law No. 24 of 2009 and Article 26 paragraph (1) of Presidential Decree 63 of 2019 which states that "*Bahasa Indonesia wajib digunakan dalam nota kesepahaman atau perjanjian yang melibatkan lembaga negara, instansi pemerintahan Republik Indonesia, lembaga swasta Indonesia atau perseorangan warga negara Indonesia*". Regulatory, this rule has required the use of Indonesian in agreements. What is meant by a Memorandum of Understanding or Agreement is, as mentioned in paragraph (1), involving a foreign party written also in the national language of the foreign party and/or English. Furthermore, the use of Indonesian in agreements is to equate the understanding of memorandums of understanding or agreements with foreign parties. The agreement cannot be separated from the provisions and the force of the law accompanying it. The conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code, namely the existence of an agreement that binds them, the competence of the parties, the existence of certain objects that are agreed, and a halal cause.

However, it has been found that the use of Indonesian is not recommended by law when making international contracts. Like the case of Nine. AM.Ltd. against PT Bangun Karya Pratama Lestari (BKPL), Ford Case Against Cheung, Pt Citra Abadi Kota Persada (CAKP) Case against MDS Investment Holding Ltd. (MDS) and PT ACR Global Investment (ACR) and several other cases (Setiawati, 2021). After Law No. 24 of 2009 was promulgated, the non-making of a business contract in Indonesian or the Indonesian version is contrary to the law, so it can be said that it is a prohibited contract because it is made for a prohibited reason and does not meet one of the essential conditions of the validity of an agreement.

The provisions regarding the use of the Indonesian language contained in Law No. 24 of 2009 have raised a number of fundamental questions related to freedom of contract, the sacredness of agreements, and the validity of agreements. However, also after Presidential Regulation No. 63 of 2019 issuance, which could

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not provide answers to these questions. Presidential Regulation 63 of 2019 is solely an affirmation of the requirement that a memorandum of understanding or agreement involving a foreign party must be written in the national language of the foreign party and/or English (Willa Wahyuni, 2022).

The use of Indonesian is a good effort to equalize the understanding of the content of the agreement between related parties so that unwanted disputes do not occur in the future. Behind the debate about the impact of the use of the Indonesian language in international contracts is null and void or violates the formalities of the agreement itself. However, the essence of the use of the Indonesian language is very important. *Sadd al-Dzari'ah* views the use of Indonesian as a will/way to facilitate contracts or prevent fraud and provide convenience for the parties.

> *"Rejecting all forms of affirmation takes precedence over benefit"* (Aslati & Afrizal, 2017).

There are at least two strong reasons why the Indonesian language is mandatory in international contracts, including differences in interpretation that can cause disputes in the future and bad intentions by related parties, as in the case of Nine AM.Ltd. against PT Bangun Karya Pratama Lestari (BKPL) (Sugesty et al., 2016). In this case, it was explained that Party Nine filed a lawsuit against violations committed by the BKPL for default/default. However, the BKPL filed a lawsuit to cancel the agreement that did not use Indonesian. The judge granted the lawsuit filed by BPKL with the postulates of violating article 31 of Law No. 24 of 2009; from this picture, it can be seen that there is a bad intention from the relevant parties. Regarding bad i'tikad, it has also been found in a case at the Jakarta District Court No. 575/PDT/2020/PT. DKI. jo. Central Jakarta District Court Decision No. 590/PDT.G/2018/PN.Jkt.Pst related to Unlawful Acts (Listiyani & Hermono, 2021).

Misinterpretation will often cause disputes in the future due to differences in interpretation of the agreement, so the parties need to agree together during the process from the beginning of making the agreement regarding the language that will be used to interpret the difference in intent that may occur in the implementation of the agreement. Then, in making contract agreements, avoid using foreign terms to avoid the emergence of many interpretations. Foreign terms that the parties do not understand are likely to be detrimental to the parties (Willa Wahyuni, 2022). Quoting from the hukumonline.com blog that the level of use of Indonesian must also use sworn linguists. When making an agreement using two languages, one needs to pay attention to the interpretation that the parties will hold.

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Conclusion

The use of Indonesian in international contracts aims to avoid bad consequences/disputes in the future, both due to differences in interpretation and bad faith of the parties. Therefore, there must be Indonesian translation in an international contract in accordance with the principles of Ushul Fiqh and *Sadd al-Dzari'ah* in order to close the way to something that has a lot of harm and provides convenience in contracting. The government needs to pay additional attention to adding sanctions against the use of the Indonesian language because, so far, the legal status of the use of the Indonesian language is still ambiguous on the basis of the absence of sanctions against the ban. So that it can provide legal certainty and a sense of community order. Using Indonesian is important amid global business development, as many parties will make international transactions.

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