Study of "Kenri" in Japanese and "Hak" in Indonesia

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A STUDY OF 'KENRY' IN JAPANESE AND 'HAK' IN INDONESIAN

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ABSTRACT

This research basically aims at exploring the word 'kenry' (in Japanese) and 'hak' (in Indonesian'. This study also attempts to compare the views of the Japanese towards the word 'kenry' and the Indonesian towards the word 'hak'. The research findings indicate that the understanding of the Japanese towards the concept of 'hak' has some constractions in connection with the consideration of relation between the people and society. This indicates that the right and consideration of the human relation is very different thing in Japan. In Indonesia, on the other hand, the statement of right, consideration to the weak, and consideration of the human relation is regarded a factor with is not contradictory to one another.

Key words: kenry, right, Japanese, Indonesia

ABSTRAK

Penelitian ini pada dasarnya bertujuan untuk mengungkapkan kata "kenry" (dalam Bahasa Jepang) dan "hak" (dalam Bahasa Indonesia). Studi ini juga mencoba untuk membandingkan bagaimana tanggapan orang Jepang terhadap kata "kenry" dan orang Indonesia terhadap kata "hak". Hasil temuan di lapangan menunjukkan bahwa di Jepang pemahaman terhadap konsep hak bertentangan dengan pertimbangan terhadap hubungan manusia atau masyarakat. Hal ini menunjukkan bahwa hak dan pertimbangan terhadap hubungan manusia merupakan sesuatu yang sangat berbeda di Jepang. Sebaliknya, di Indonesia, pernyataan hak, pertimbangan terhadap yang lemah dan pertimbangan terhadap hubungan manusia dianggap sebagai suatu factor yang tidak bertentangan dengan satu sama lainnya.

Kata kunci: kenry, hak, Jepang, Indonesia

INTRODUCTION

Many new legal terms were coined when occidental laws were accepted and many

Lecturer, Faculty, of Law, Universitas Sriwijaya. Professor of Law, Ciba University, Japan. existing terms were given new meanings after the acceptance of the laws. A study of how people have given meanings to such terms and conceptualized them will have some significance. This study is based on a survey done in Japan and Indonesia. In the first survey, we compared Japanese responses to the word "kenri" and Indonesian responses to the word "hak".

The data source was the legal consciousness questionnaire survey carried out among Japanese adults across the nation for the other project conducted by Matsumura (the coordinator) (see note 11). The survey was conducted from February to March 2005 using self-administered method. Some questionnaire items were assigned to measure the responses to some sentences including the word "kenri" (Matsumura et al., 2007a,b). The questions used in this survey were obtained through the following procedures.

 By asking students in Matsumura's seminar to make short sentences with the word "kenri", or by some other means. 40 to 50 sentences were then collected.

- 2) Survey forms with questions asking how much they agree (six point-scale: from "Definetely think so" to "Do not think so at all") on the sentences were administered to students (different from those in pont 1 above), and collected. These student surveys were repeated sequentially, with questions altered and replaced until the stable factor structure (factor structure in factor analysis. Factor analysis will be detailed later) was extracted.
- 13 questions determined through the above procedures were selected for the national legal consciousness survey (see note (11)).
- One of the questionnaire items translated into Indonesian was inappropriate and that item was taken out from our analysis.
- 5) The selected questionnaire items are presented in Table 1.

		Component		
		1	2	3
21)	Asserting a right conforms to justice	.625	.085	166
19)	The right to vote is one of the most important rights.	.593	211	.189
(23)	I will participate in a protest act if a government policy is going to discriminate against the freedom of belief	.564	.003	184
18)	I protect my rights by me	.529	.135	.157
15)	To claim a right is not only for oneself but also for those who come later.	.528	.124	.165
12)	I would not hesitate to claim the rights of a consumer when I find out the goods I bought are flawed	.475	021	.007
20)	Those who over-assert their rights are generally considered impudent people	243	.676	024

Table 1. Pattern Matrix

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(17)	A person wealth might be more conscious about his/her rights	.292	.617	089	
(13)	Many more rights should be given to the disadvantaged	.263	.596	.021	
(22)	I do not really understand the word "rights"	396	.518	.133	
(11)	We should avoid any awkward relationships caused by over-assertion of rights.	082	104	.825	
(14)	What is important is that we maintain a cordial discussion	.113	.105	.718	

Method of factor extraction: Principal component analysis Method of rotation: Promax solution

In order to comprehend the abstract structures behind the responses to the 12 questionnaire items, factor analysis (the one method of statistical analysis to reduce a large number of correlated variables into a small number) was performed. Judging from the elgenvalues and their scree plots, thee factor solutions was accepted. The pattern matrix attained after the factor rotation is presented in Table 2. The figures presented as components in the table show how close they correlate to each of the 3 factors. Since promax rotation is an oblique one, the component correlation matrix is also shown in Table 2.

 Table 2. Component Correlation Max

Component	1	2	3
1	1.000	002	.099
2	002	1.000	.232
3	.099	.232	1.000

Method of factor extraction: Principal component analysis Method of rotation: Promax solution

The explanation for the three factors can be seen in the tables. The factors can be named as follows.(4)

The first factor: The sublime character of rights. The second factor: The self-serving and negative character of rights. (Question 13, "Many more rights should be given to the disadvantaged", is however

Lecturer, Faculty, of Law, Universitas Sriwijaya. Professor of Law, Ciba University, Japan. difficult to explain.) The third factor: The significant concern on human relationship rather than the rights. From the point of view of rights, this is disturbance since this factor leads to consideration of community relationship and human relationship.(5)

The second survey was conducted in Indonesia. A sample of 50 Indonesians was

obtained. The subjects were sampled from college students living in Palembang City for an expedient reason. The family backgrounds the subjects varied widely. The same questions as those used in Japanese survey were translated into Indonesian and administered. However, the back translation procedure needed to guarantee the equivalent stimuli in the cross-cultural study was omitted. Also as already stated, one questionnaire item was taken off from the analysis because the translation was inappropriate. The survey was conducted in September 2006. The procedure of analysis was as follows:

1) The factor analysis of the Indonesian data was performed using the same

Table 3. The Eigenvalues

Component	Eigenvalues	Variance ratio	Cumulative ratio
1	2.683	22.359	22.359
2	1.745	14.541	36.900
3	1.577	13.144	50.044
4	1.302	10.854	60.898
5	.976	8.136	69.034
6	.947	7.895	78.929
7	.794	6.616	83.545
8	.611	5.094	88.639
9	.482	4.018	92.657
10	.423	3.523	96.180
11	.281	2.341	96.522
12	.177	1.478	100.000

Method of factor extraction: Principal component analysis Method of rotation: Promax solution

Table 4. Pattern Matrix*

	_	Component				
		1	2	3	4	
(19)	The right to vote is one of the most important rights.	.910	042	046	.189	
(23)	I will participate in a protest act if a government policy is going	.768	226	094	.016	

Lecturer, Faculty, of Law, Universitas Sriwijaya. Professor of Law, Ciba University, Japan. procedure as that used for the Japanese data.

- Judging from the eigenvalues and their scree plots, 4 factor solutions were accepted.
- 3) Promax rotation was also performed. The eigenvalues, the pattern matrix, and component correlation matrix, which present the correlation among factors, are presented in Table 3 and Table 4.

The four factors were named as follows. The first factor: The sublime character of rights. The second factor: The warmth of rights. The third factor: The positive attitude toward asserting rights. The fourth factor: The negative attitude toward asserting rights.

to discriminate against the freedom of belief

(18)	I protect my rights by me	.616	126	.363	008
(15)	To claim a right is not only for oneself but also for those who come later.	.613	.241	.052	076
(12)	I would not hesitate to claim the rights of a consumer when I find out the goods I bought are flawed	134	.759	.102	139
(13)	Many more rights should be given to the disadvantaged	185	.654	.260	.274
(14)	What is important is that we maintain a cordial discussion	.251	.540	238	335
(22)	I do not really understand the word "rights"	.043	.466	399	.393
(17)	A person wealth might be more conscious about his/her rights	059	004	.802	.118
(21)	Asserting a right conforms to justice	.108	.248	.750	120
(11)	We should avoid any awkward relationships caused by over-assertion of rights.	.243	.081	.151	.770
(20)	Those who over-assert their rights are generally considered impudent people	072	158	115	.753

Method of factor extraction: Principal component analysis Method of rotation: Promax solution

THE TERM "RIGHT"

In this article, the term "right", which is familiar but somewhat ambiguous to ordinary people, will be discussed as a typical example of the above stated legal terms.

Needless to say, searching into people's responses toward the term "right" and their conceptualization process is not enough as legal consciousness to study or right consciousness study. (6) Even when there is not a certain word used in one culture, it should not be considered that he culture does not have the idea which is indicated by the word. Suppose a culture does not use the word "right", there may be something equivalent to "right". This article,

Lecturer, Faculty, of Law, Universitas Sriwijaya. Professor of Law, Ciba University, Japan. however, will deal with the meaning of the term "right" and its conceptualization. Therefore the research into the people's responses toward this term should be indispensable. In addition, understanding how people have conceptualized the term "right" will also be significant as a clue to the naïve theory of law (The naïve theory purports а systemized but naïve understanding by a layperson.) Discussions of the naïve theory have become active since 70's, especially in the field of development psychology. When the law in the naïve theory is accepted by many of ordinary social members, it may become an example of living-law).

As premises for the analysis, some sketches of the word "right" in Japan and Europe will follow.(7)

The term "right" (Recht, ius etc.) has been somewhat ambiguous in both Japanese and European languages, tracing its history and seeing academically. The Japanese translation "kenri" is said to have been adopted from the Chinese translation (1864, translated by a missionary priest W. Martin) of "International Public Law" written by Henry Wheaston (Noda, 1979:4). And the first person who used this term in Japan was Shinichirou Tsuda and it is known that Tsuda applied this word from the Chinese translation (Noda 1979:30).(8) in Japan, kanji character which implies "interest' is generally used for "(ken) ri". However, another kanji character which means "reason" was also used for the same word at the beginning of the Meiji period. This indicates the ambiguity of this word between "interest" and "reason" (Noda 1976:6-10, Hozumi 1974:73-74).(9)(10)

The terms corresponding to right in European languages were also ambiguous. Here we note that "ius" in Latin was used as a word indicating justness or appropriateness through the ancient time and the medieval time, and around the 14th century it acquired subjective implication as it has today. Then in the 19th century, the word such as "right" was understood as a legal capability that enables people to claim their interests.

HAK AND KENRI

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In this article, the Indonesian word "hak" (meaning "right" in English) will be discussed along with the Japanese "kenri". The comparison between the conceptions of the Japanese kenri and those of Indonesian hak is considered meaningful(11) since there was some significant difference observed in understanding of right between Japan and Indonesia. Firstly, the Japanese "kenri" was a coined word with the reception of the occidental law in the Meiji period. The term "kenri" itself was seen from old times in China. And when the "International Public Law" was translated into Chinese, "kenri" was used as the translation of 'right' or 'droit'. In Japan, Shinichiro Tsuda, who introduced western jurisprudence to Japan, applied 'kenri' consulting "International Public Law" (Taiseikoku Horon. 1968). On the other hand, the Indonesian "hak" has existed even before the reception of the Dutch law. Secondly, though Japanese law was totally replaced by occidental law in the Meiji period, Indonesian law has had a dual system of its native law and the Dutch law introduced by its colonial power.

Indonesia(12) has a dual legal system. When Indonesia applied the Dutch law from its colonial power, at the same time, it also preserved its native law (adat: that is a kind of customary law which was refereed to when dealing with contracts, land ownership, inheritance and the term 'hak' meaning rights also means truth and justness). The Netherlands divided Indonesia into 19 regions and applied adat to native Indonesians. Furthermore, according to Shimada (2004:383), the Netherlands divided the colonial population by ethnic groups, and applied different legal system to each group. Therefore, each group was under different legal system as to contracts, land ownership, in-heritance, and under different jurisdiction. An example of land ownership is "hak ulayat." "Hak ulayat", a legal term connoting communal rights of an (ethnic) community to land based on that community's adat (custom or tradition), is among the most intriguing concept is Indonesian land law (Parlindungan, 2003). Throughout Indonesia, ethnics groups demanded the return of 'their' "ulayat" lands and recognition of their right to that land. In West Sumatera, for example, the homeland of the Minangkabau, District governments energetically commenced to institutionalize customary "hak ulayat" (Agam, Lima Puluh Koto dan Tanah Datar) include "hak ulayat" among its responsibilities.

The Europeans were subject to the colonial law which was basically pursuant to the Dutch law. On the other hand, the native Indonesians were subject to adat (including Islamic law) of each race. When applying adat, the Netherlands divided this colony into 19 adat regions according to the social survey results conducted there. More specifically, the Netherlands authorized only 19 out of many variations of adat which actually varied into countless number by definitions, and ordered them into effect. Since then, the occidental law and adat have been coexisting and the personal application has been perpetualed.

As mentioned above, the word meaning right Indonesian is hak. Referring to some Indonesian dictionaries such as Echols and Shadily (1963), Taniguchi (1982), Suenaga (1991), Suenaga et al. (1977), we need to note that hak means trueness or justness as well as right. As the dictionaries also say, hak has its origin in Arabic. Further accounts on its origin will be provided below according to Kobayasi (1993).(13) The Islamicization of this area was related to tarigah (Sufi) which traveled with Islamic international commercial network, and it is said to have grown actively since 12th or 13th century (Kobayasi 1993:96-97). As for the inflow of Arabic into this area, besides the route by which Arabic was directly borrowed, there was a possibility of indirect inflow by means of Persian which had already taken in Arabic vocabulary (Kobayashi, 1993:97).

In addition to Indonesian, closely related languages such as Javanese and Malaysian also accepted a lot of Arabic vocabulary. Therefore, loan words from Arabic amount to over 2750, which is over 10%of the Indonesian vocabularv (Kobayasi, 1993:103). Indonesian (Malay) and Javanese legal terms as well as many academic and religious terms have their origins in Arabic (Kobayashi, 1993: 104 ff)see tables 2, 3, and 4 on page104 and the following pages). In addition to hak, hukum (law) (14) and adat (customs) (15) also originated from Arabic.

The following are the notable points put forward in this article.

- Most of the borrowed words from Arabic express universal concepts, with the exception of some vocabulary to explain Islam (Kobayashi, 1993:111).
- Such words were completely taken in by Javanese (or Indonesian)

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society, which is the distinct difference from Japanese kenri that was newly coined after modern age.

 These Arabic words formed the core of the Indonesian vocabulary (Kobayashi, 1993:111).

DISCUSSION

The Indonesian subjects were college students, and thus simply comparing those data with the Japanese data would be inappropriate. A comparison between those revealed the following distinct data of differences. One the significant differences can be seen in Question 14 (What is important is that we maintain a cordial discussion rather than asserting our rights) and Q11 (We should avoid any awkward relationships caused by overassertion of our rights). The Japanese data indicated that these two questions comprise one factor,(16) recognizably different from asserting rights. This factor was interpreted as the consideration for human relationship. On the other hand, the Indonesian data did not comprise such factor, but Q14 was grouped into the second factor along with Q13 (Many more rights should be given to the disadvantaged) and Q12 (I would not hesitate to claim the rights of a consumer when I find out that the goods I bought are flawed). The second factor also included Q22 (I do not really understand the word "rights"). But the factor loading to the second factor was low and also presented some factor loadings to the third factor and the fourth factor. Thus we may count out this question. Analyzing the result, what attracted our attention to the second factor was that asserting rights, consideration to the weak, and consideration to human relationship were extracted as one factor.

Though admitting our data is incomplete, especially Indonesian data have a problem in reliability, the following assumptions will be demonstrated.

In Japan, researchers (as typified by Takeyoshi Kawashima) understand the conception of rights is opposed to the consideration for human relationship or for that community. And our Japanese survey also presented the same tendency. Stated differently, it indicates that rights and consideration for human relationship are something very different in Japan (whether or not they regard assertin rights as positive or as neqative). This is probably because the term "kenri" was a newly coined word in the Meiji period and the term has been recognized somewhat far from our daily basis.

On the other hand, in Indonesia, asserting fights, consideration for the weak, and consideration for the weak, and consideration for human relationship are regarded as one factor without conflicts. What caused this difference? What we have been related so far my lead to interpretation as follows.

Originally the word "hak" was borrowed from Arabic, but it was introduced to Indonesia no later than 12th to 13th century along with Islam. Thus, though initially this word was not used on the daily basis, it later became a daily expression. This word was also used in adat. In our survey, we asked the respondents about a general

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characteristics of rights, or "hak", and some aspects of rights. The important right in adat was an ownership of land, especially of cropland in a community. In comparison with the modem law, the ownership was not perfect and abstractive, but it was just the right to cultivate and utilize, which did not include right to dispose. Therefore this was the community based right. Under such a circumstance, protecting the right (to the land) under adat meant guaranteeing the cultivating right by means of the restriction

Japanese "kenri".(17)

CONCLUSION

In this article, we demonstrated the meaning of Japanese "kenri" and Indonesian "hak". Stated differently, we indicated how an external cognition affects these words.

There, however, remain some issues in need of further research. Since the Indonesian subjects were students, we also performed the analysis on the Japanese data sub-set; the under 30-year-old sample who graduated from university. In this analysis, slightly different factor structure from the original data set was observed (the detailed result is omitted in this article). This difference might indicate that the Japanese on a private trade of land, and this is related to a cooperative aspect in the community. In "hak" other words, in Indonesia is concordant with community, which was brought about by its social structure and its history. If this assumption is admissible, there is no wonder that the word "hak" is associated with "friendly discussion" or "consideration to the weak". Since "hak" has existed in such a human relationship and a community, the implication of "hak" differs from that of

subset data is closer to the Indonesian data. If so, comprehending the whole results, there is a possibility that indicates the "right (claim)" has become an everyday expression for young Japanese who are graduated from university. This, however, cannot be vouched only from our data.

In addition, seen from the viewpoint of comparison, the lack of data from western country is the problem of this discussion. As mentioned above, the word "hak" implies trueness and justness, where it has commonality with European languages. Thus, the collection and analysis of data from western countries will be future issues of our research.

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AS for the linguistic analysis, this article adopted cognitive linguistics, a school of linguistics that understands language as a sign system which assigns meanings to the external world, and as best explained by reference to human cognition in general.Refer to Tsuji (2003:4-14) for a fine and concise explanation of its origin and position in linguistics.

³ Factor positions extracted by initial analysis are just the first step of the procedure. The factor rotation is performed in order to make the interpretation of the factors easier. In our analysis, we used promax rotation, which is a standard method of oblique rotation (the technique that allows factors correlated).

⁴ The method was principal component analysis. Though there

Notes

We would like to express our incere thanks to Prof. Gen Shimada (Professor. Graduate School of International Development, Nagoya University) for the cooperation he offered for this article. On March 26^{th} of 2007. Prof. Shimada published а report entitled 'Formation of Adat Recht and the Dutch law in Indonesia" at Hokkaido Unhrersity. He further provided many insightful comments and suggestions on the original article in Japanese.

may be a view that principal component analysis and factor analysis are different, mathematically, principal component analysis eventuates in the calculation of eigenvalues and eigenvectors of correlation matrix, and it agrees with a principal factor method.

- (4) The interpretation of factors depends on researchers, and thus it cannot be completely objective. However, the purpose of our analysis is the comparison with the Indonesian data, thus factors can be determined, as far as this purport is assured.
- (5) The correlation between factor scores (the amount of each element's factors) and gender/age agreed with interpretation stated above, even though they are omitted from the table.

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- (6) The law consciousness in this article is understood as the attitude toward the law and the legal system. Takeyoshi Kawashima also took the same position (Matsumura, 1196:274).
- (7) The following descriptions consulted basically Noda(1979:1-30), and when Noda cited from Nukada(1943) and Hozumi (1941), they were also further referred to (As to Hozumi(1941), this article referred to its second edition in 1947).
- (8) Nakada (1943:1161-1164) was also referred to, where Noda(1979:30) made a mention. The referred chapter was "39. Rights" in "Wandering on the Legal History". What we learned from this reference are as follows.
- (9) Nakada (1943:1161-1164) pointed out that some different kanji characters of 'kenri' were observed in laws and legal books in the beginning of the Meiji period. On this. Nakada is determined to deny the possibility that "kenri" written in two different characters respectively indicates Jhering (He emphasized the aspect of interest) or Kant and Hegel (They stressed the aspect of intention)

(10) Refer to Noda (1971:21-30) for further implication of the term 'kenri'.

(11) From the aspect of feasibility of this study, there was Matsumura's previous work, a questionnaire survey with subjects of ordinary

adults. This is a survey of Japenese consciousness toward the word 'right' ("Japanese Attitudes Toward the Law and the Legal System" conducted by A01 group of the "Dispute research project : Resolution and Civil Justice in the Legalizing Society" (Coordinator: Masayuki Murayama, Professor. Faculty of Law, Meiji University), supported by "Grants-in-Aid for Scientific Research in Priority Areas of the Ministry of Education, Culture, Sports, Science and Technology").

- (12) In this article, Republic of Indonesia and the same region before its independence are both called Indonesia for descriptive purposes.
- (13) Indonesian was originally a dialect of the Malay language, which was officially defined as the official language with the declaration of Indonesia's independence. Javanese is the most dominant language across its many islands, and closely related to the Malay language. In Kobayashi (1993), Indonesian is also mentioned along with Javanese.
- (14) The word, 'hukum' originally means rule, custom, decision, consideration, norm, procedure, and punishment.
- (15) The Dutch reconstructed Indonesian custom to 'adat Recht'. The Indonesian term 'hukum adat' (adat) is a translation from Dutch to 'adat Recht'. Concerning Indonesian legal theory, what this article focuses on is

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that constraint of rights is justified by the intregative theory. According to this view, a nation and an individual are not to be conflict, but a community and an individual organically tied. This is used as the principle that constrains the right in legal community. We might expect (just because hak lies in the basis of the community along with adat) that relationship of hak the and community sentiment appears in a different way from that in Japan.

- (16) Though this was extracted as the third factor, the order of the extraction (the amount of eigenvalues) is not significant, since it depends on the number of similar questions.
- (17) There may be another possible explanation for that asserting rights, consideration for the weak, and consideration for the human relationship were extracted as one factor. This may be caused by that the term 'hak' meaning rights also means truth and justness. For further explanation, see 7.

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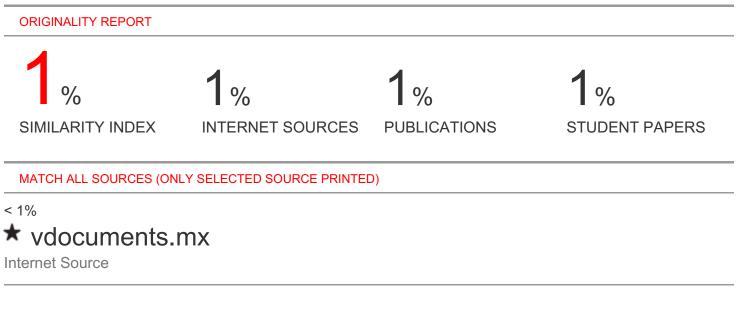
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