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Violation of the Obligation to Use Indonesian Language in International Business Contracts Involving Foreign Legal Entities as Parties under Indonesian Law

Sonyendah Retnaningsih[1]*, Muhammad Rizqi Alfarizi Ramadhan[2], Supaphorn Akkapin[3]

The Faculty of Law, University of Indonesia[1], Doctor of Philosophy Program (PhD in Law) Faculti Undang-Undang, Universiti of Malaya, Malaysia[2], Rajamangala University of Technology Krungthep, Thailand

*Corresponding author: ade.retno.1993@gmail.com

Abstract

The Indonesian language is the official national language, required for use in all official state documents in Indonesia, as stated in Law No. 24 of 2009 on the National Flag, Language, Emblem, and Anthem. Article 31, paragraph (1) mandates the use of Indonesian in memorandums of understanding (MoUs) or agreements between state organizations, Indonesian government agencies, and private entities. When a foreign party is involved, Article 31, paragraph (2) requires the agreement to be in both Indonesian and the foreign language or English. Presidential Regulation No. 63 of 2019 also emphasizes the use of Indonesian in agreements, allowing foreign languages only as translations to ensure mutual understanding. However, the Supreme Court Circular Letter No. 3 of 2023 complicates this by stating that Indonesian private institutions or individuals cannot cancel agreements made in a foreign language without an Indonesian translation, unless bad faith is proven. This creates inconsistency with the regulations. This research examines two main issues: first, the synchronization of regulations regarding the use of Indonesian in agreements with foreign parties, and second, the legal consequences of agreements that do not use Indonesian. The research uses doctrinal and descriptive methods, with qualitative analysis of secondary data, concluding that agreements not in Indonesian are legally void and may be annulled by the courts.

Keywords: Indonesian Language, Agreement, Presidential Regulation, SEMA.

Introduction

Indonesian language is the official national language that shall be used in every official state document throughout the territory of the Republic of Indonesia as regulated in Law Number 24 of 2009 on the National Flag, Language, Emblem and Anthem (hereinafter referred to as Law 24/2009). Indonesian is a means of uniting the nation as proclaimed in the Youth Pledge on October 28, 1928. Indonesian is the identity and manifestation of the nation's existence, rooted

in cultural diversity and the shared struggle of the nation to realize the ideals of the nation and the Unitary State of the Republic of Indonesia.[1]

In Article 31 paragraph (1), it is stated that Indonesian language shall be used in memorandums of understanding or agreements between state organizations, Republic of Indonesia government agencies, private Indonesian organizations, or private Indonesian individuals. In the event that the memorandum of understanding or agreement involves a foreign party as one of the parties, the agreement shall also be written in the national language of the foreign party and/or in English as stipulated in Article 31 paragraph (2).

The provision regarding the obligation to use the Indonesian language in agreements/contracts is a rule or legal principle that must be adhered to and fulfilled by all Indonesian citizens and foreigners residing in the territory of the Republic of Indonesia. However, in reality, many contracts and agreements in Indonesia are made solely in a foreign language without a translation into Indonesian, particularly when they involve foreign nationals, despite the fact that the parties expressly state in these contracts and agreements that they intend to be governed by Indonesian law.[2]

The obligation to use Indonesian in every business contract made in Indonesia has sparked controversy in practice regarding the uncertainty of the validity of agreements/contracts made in foreign languages. Considering that in Law 24/2009, there is not a single article that regulates sanctions if a business contract made with a foreign party only uses English or another foreign language, without providing a translation in Indonesian. This creates a legal loophole regarding the violation of the provisions in Article 31 paragraph (1) of Law 24/2009.

To address this issue, the Ministry of Law and Human Rights (hereinafter referred to as Kemenkumham) subsequently issued a letter numbered M.HH.UM.01.01-35 regarding the request for clarification on the implications and implementation of Law 24/2009, which states that private commercial agreements in English without accompanying translations in Indonesian do not violate the obligations as stipulated in the law. The reason that agreements/contracts made in English/other foreign languages, without accompanying translations in Indonesian, remain valid or not legally void or voidable, is because the implementation of Article 31 of Law 24/2009 is still awaiting the issuance of a Presidential Regulation, as emphasized in Article 40 of Law 24/2009, which states that the use of Indonesian as regulated in Articles 26 to 39 will be further regulated in a Presidential Regulation.

According to the principle of freedom of contract, the parties to an agreement or contract are essentially free to choose the wording of the agreement or contract they agree to until a presidential regulation is issued, as required by Law 24/2009. After the issuance of the letter from the Ministry of Law and Human Rights, in practice, the preparation of commercial private

[1] Considering Section of Law Number 24 of 2009 concerning the Flag, Language, and National Emblem, as well as the National Anthem, State Gazette of the Republic of Indonesia Year 2009 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 5035.

[2]Ni Made Ayu Pasek Dwilaksmi, "Akibat Hukum Pelanggaran Kewajiban Menggunakan Bahasa Indonesia Dalam perjanjian/kontrakDengan Pihak Asing, " *Acta Comitas Jurnal Hukum Kenotariatan,* Vol. 05 No. 01 (April 2020), pg. 89.

agreements/contracts involving foreign parties and Indonesian parties is carried out using two languages, namely Indonesian and generally using English, while waiting for the issuance of the presidential regulation as the implementing regulation.

Presidential Decree Number 63 of 2019 on the Use of Indonesian (henceforth referred to as Presidential Decree 63/2019) was released on September 30, 2019. Article 26 of Presidential Decree 63/2019, which is divided into four articles, regulates the requirement to utilize Indonesian in contracts and agreements. Article 31 of Law 24/2009 is reaffirmed in the first and second clauses' content and wording. Meanwhile, paragraph (3) states that :….” "Foreign languages are used as equivalents or translations of Indonesian to align understanding or perception of memorandums of understanding or agreements/contracts with foreign parties." If at a later date there is a difference in interpretation of the equivalent or translation between Indonesian and a foreign language or English, it is regulated that “…..The language used is the language agreed upon in the memorandum of understanding or agreement/contract.” As a result, the parties are free to choose the wording that will be used in the contract, and this decision is legally enforceable. Therefore, the parties must clearly specify the language used in the contract, which must be in both Indonesian and a foreign language.[3]

Based on the Circular of the Supreme Court of the Republic of Indonesia Number 3 of 2023 (hereinafter referred to as SEMA 3/2023), it is stated that:[4]

> “Indonesian private institutions and/or Indonesian individuals who enter into agreements/contracts with foreign parties in a foreign language which are not accompanied by an Indonesian translation, cannot be used as a reason to cancel the agreement, unless it can be proven that the absence of an Indonesian translation is due to bad intentions by one of the parties.”

There is no way to disregard or depart from the provisions pertaining to the requirement to use Indonesian in contracts or agreements involving foreign nationals that are governed by other laws and regulations. Law 24/2019 and Presidential Regulation Number 63/2019, which serve as its implementing rules, contain these provisions. In addition, Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions also expressly states that electronic contracts addressed to Indonesian residents must be made in Indonesian. Next, in accordance with Law Number 2003 concerning Employment, contracts and work agreements must be written in Indonesian; if they are written in two (two) languages, Indonesian is the applicable language.

The provisions in SEMA 3/2023, of course, cannot simply be implemented by setting aside previously existing regulations. Moreover, SEMA in the hierarchy of legislation is not included in the legislation as regulated in Article 5 of Law Number 12 of 2011 in conjunction with Law Number 13 of 2022 concerning the Formation of Legislation. Therefore, the validity of SEMA as a guideline for judges in considering and issuing a decision, related to the validity

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[3]Priskilla P. Penasthika, “Akhirnya Terbit Juga! Perpres Tentang Penggunaan Bahasa Indonesia,” *Hukum Online*, https://www.hukumonline.com>berita>kolom ,pg 4, written on October 15, 2019.

[4]Kepaniteraan Mahkamah Agung Republik Indonesia, “Kompilasi Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Republik Indonesia,” http://kepaniteraan.mahkamahagung.go.id, 2024

and enforceability of agreements/contracts made and signed, without using Indonesian, while involving foreign citizens as one of the parties, certainly needs to be studied in more depth and linked to laws and regulations that have been in effect previously.

The primary concerns that will be examined in this study are, first and foremost, how well-synchronized are the rules and regulations pertaining to the requirement that all contracts with foreign nationals be in Indonesian? Second, what are the legal consequences of an agreement/contract involving foreign nationals as parties, but the agreement/contract is not in Indonesian?

The doctrinal research method is the approach taken in this study. The most popular approach in legal research methodology is the doctrinal research method. Doctrine, which is a synthesis of laws, values, norms, and principles, is the subject of the doctrinal research approach. Finding the legal sources to be examined is the first step in this research process. Next, the sources are interpreted and analyzed. The statutory regulatory approach and the case approach are the methodologies employed in this study.[5] Legal study always involves the examination of laws and judicial rulings.

When conducting doctrinal research, secondary data - which comprises primary, secondary, and tertiary legal materials - is utilized. Anything that can be used or required to analyze applicable legislation is considered a legal substance.[6] The typology used in this research is descriptive, namely it accurately describes a particular individual, symptom or group to determine the frequency of a symptom.[7] The secondary data obtained is then analyzed qualitatively to see the depth of the data. Thus, the data analysis presented is a qualitative analysis.[8]

Analytical descriptions, specifically data analysis employing qualitative analysis of secondary data, are used to present the data analysis results. The description covers the structure and content of positive law, which is an action done to ascertain the meaning or content of legal laws that serve as references for resolving the legal issues under investigation.[9]

Synchronization of Regulations Regarding the Obligation to Use Indonesian in International Business Contracts Involving Foreign Subjects as One of the Parties

A written agreement or contract made by the parties is called a contract. An agreement between the parties regarding a right and obligation is always included in contracts or agreements. Every party has an obligation to carry out a goal specified in the contract. An agreement or contract made by parties with an economic or commercial focus is called a business contract. A business contract contains an item that has a monetary worth. In order to demonstrate

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[5] *Ibid,* pg. 29.
[6] Amiruddin, H. Zainal Asikin, *Metode Penelitian Hukum,* (Jakarta: Rajawali Pers, 2010), pg. 119.
[7] *Ibid.,* hlm. 4.
[8] Zainuddin Ali, *Metode Penelitian Hukum,* Cet. 3, (Jakarta: Sinar Grafika, 2011), pg. 107.
[9] *Ibid.*

the existence of a legal relationship between the parties, a business contract must be made in writing. The international business contract that distinguishes the two is the presence or absence of an international element, this international element can be the parties or the substance.[10]

In 2009, Law No. 24 of 2009 on the National Flag, Language, Emblem and Anthem (hereinafter referred to as Law 24/2009) was issued, which, in accordance with Law 24/2009's Article 31 paragraph (1), mandates the use of Indonesian in contracts and agreements involving state institutions, government agencies, private Indonesian institutions, or private Indonesian persons. Article 31 paragraph (2) of Law 24/2009 mandates that agreements and contracts involving Indonesian and international parties shall be written in either English or the parties' respective national languages.

It is unclear from Law 24/2009 what constitutes a legally binding agreement or contract executed in both Indonesian and a foreign language. Furthermore, if the agreement or contract's need to utilize Indonesian is not met, the law does not govern penalties or legal repercussions. The law only mandates the issuance of a Presidential Regulation as an implementing regulation of the provisions on the use of Indonesian.

Responding to the provisions of Article 31 of Law 24/2009, at the end of 2009 the Indonesian Minister of Law and Human Rights (Menkumham) issued a letter Number M.HH.UM.01.01-35 of 2009 which explains the obligation to use Indonesian in private commercial agreements/contracts. The Menkumham letter in principle explains 3 (three) things, as follows :

1) The implementation of the provisions of Article 31 of Law 24/2009 is pending the issuance of the Presidential Regulation as its implementing provisions;
2) The provisions of Law 24/2009 are not retroactive (applicable non-retroactively) meaning that commercial private agreements/contracts that existed before the issuance of Law 24/2009 that were made only in English are still declared valid, and are not void by law or cannot be canceled;
3) Based on the principle of freedom of contract, until the issuance of a presidential regulation mandated in Law 24/2009, the parties in making an agreement/contract are free to determine the language used in the agreement/contract they agree to.

In practice, after the issuance of this letter from the Minister of Law and Human Rights, in the preparation of commercial private agreements/contracts involving foreign parties and Indonesian parties, it is done using bilingual language, namely in Indonesian, and generally also in English. Such practice is carried out while waiting for the issuance of the Presidential Regulation as the implementing regulation of Article 31 of Law 24/2009.

In the implementation of electronic transactions, it is not uncommon to find contracts agreed upon by the parties made in electronic form. In response to the birth of these electronic contracts, based on Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP 82/2012) it is stated that electronic contracts addressed to Indonesian residents must be made in Indonesian.

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[10] Hikmahanto Juwana, *Buku Ajar tentang Hukum Kontrak* , (Jakarta : FHUI, 2002), pg. 25.

Regarding the agreement/work contract as regulated in Law Number 13 of 2003 concerning Manpower, the agreement/work contract must be written in Indonesian. If the agreement/work contract is written in 2 (two) languages, namely Indonesian and a foreign language, then the agreement/work contract that is declared valid is the agreement/work contract made in Indonesian.

As required by Law 24/2009's Article 40, Presidential Regulation Number 63 of 2019 regarding the Use of the Indonesian Language (Perpres 63/2019) was ultimately released on September 30, 2019. Article 26, which has four paragraphs, governs the requirement to utilize Indonesian in agreements and contracts. The provisions of Article 31 of Law 24/2009 are reiterated in the first and second clauses of Article 26.

The provisions for the use of foreign languages in agreements/contracts involving foreign parties are regulated in Article 26 paragraph (3) of Presidential Regulation 63/2019 which states that "... the foreign language is used as an equivalent or translation of Indonesian to ensure a uniform understanding of the memorandum of understanding or agreement/contract with foreign parties. In the event of a difference in interpretation of the equivalent or translation between Indonesian and the foreign language, Article 26 paragraph (4) of Law 63/2019 states that "... the language used is the language agreed upon in the memorandum of understanding or agreement".

Based on Article 44 of Presidential Decree 63/2019, this provision does not apply retroactively. This means that agreements/contracts that have been made in Indonesian and foreign languages refer to the provisions that were created before the issuance of the Presidential Decree. Furthermore, Article 2 of Presidential Decree 63/2019 requires the use of good and correct Indonesian in making an agreement. Presidential Decree 63/2019 mandates the issuance of a Ministerial Regulation that oversees government affairs in the field of Education, to regulate the rules of the Indonesian language.

In 2023, the Supreme Court of the Republic of Indonesia (MARI) issued MARI Circular Letter Number 3 of 2023 (SEMA 3/2023). The plenary meeting of the Civil Chamber of the Supreme Court on November 19-21, 2023 at the Intercontinental Hotel in Bandung has produced the following legal formulation for General Civil Law:

> "Indonesian private institutions and/or Indonesian individuals who enter into agreements/contracts with foreign parties in a foreign language which are not accompanied by an Indonesian translation cannot be used as a reason to cancel the agreement, unless it can be proven that the absence of an Indonesian translation is due to good faith by one of the parties."

The provisions in SEMA 3/2023 have caused inconsistencies with the laws and regulations above it. SEMA is not a law but rather an internal policy regulation.[11] In essence, SEMA is internal in nature and is only aimed at judicial bodies under the Supreme Court, which

[11]Raihan Andhika Santoso, Elan Jaelani, Utang Rosidin, "Kedudukan dan Kekuatan Hukum Surat Edaran Mahkamah Agung dalam Hukum Positif Indonesia," *Deposisi: Jurnal Publikasi Ilmu Hukum,* Vol. 1, No. 4 (2023), pg. 13.

functions to provide guidance and direction to all elements of the judicial administration in carrying out their duties.[12]

SEMA is a circular from the Chief Justice of the Supreme Court to all levels of the judiciary which contains guidelines and the implementation of the judiciary.[13] According to Jimly Asshiddiqie, the form of a circular letter whose material is regulatory in nature should be in the form of a legal product in the form of a regulation.[14] SEMA is categorized as a policy regulation. According to Fitriani Ahlan Sjarif, policy regulations are regulations that are general and abstract, derived from discretion, are not statutory regulations, and regulate the internal affairs of an organization.[15] Therefore, SEMA 3/2023 contains instructions or guidelines given by the Chief Justice of the Supreme Court to all elements of the judicial administration in carrying out their duties, so that SEMA 3/2023 is only internal in nature.

Thus, the provisions in SEMA 3/2023 are not in sync and contradict Article 31 of Law 24/2009 and Article 26 paragraph (1) of Presidential Decree 63/2019 which require the use of Indonesian in agreements/contracts involving state institutions, government agencies, Indonesian private institutions or individual Indonesian citizens. Regarding agreements/contracts involving foreign parties as parties to the agreement/contract, then the agreement/contract is also written in the national language of the parties to the agreement, and/or in English. This means that in an agreement/contract involving a foreign party as a party to the agreement/contract, the agreement/contract is made in 2 (two) languages, namely Indonesian and a foreign language or English. The absence of an agreement/contract made in Indonesian in international contracts involving a foreign party as one of the parties to the agreement can result in the agreement/contract being cancelled because it violates applicable laws and regulations.

In SEMA 3/2023 it is also stated that the absence of a translation of an agreement/contract in Indonesian cannot be used as a reason for canceling the agreement/contract, unless it can be proven that the absence of an Indonesian translation is due to bad faith by one of the parties. This creates difficulties in practice in proving the existence of bad faith in making the agreement/contract. In Article 1138 paragraph (3) of the Civil Code it is stated that an agreement/contract must be carried out in good faith, without further explaining the criteria or limitations or benchmarks of good faith. In several court decisions there is no common understanding of the meaning of good faith, some interpret good faith as honesty, propriety, absence of fraud, error, deception, abuse of circumstances, and also absence of threats or coercion. Judges only apply the concept of good faith based on general standards based on the

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[12] Meirina Fajarwati, "Validitas Surat Edaran Mahkamah Agung (SEMA) Nomor 7 Tahun 2014 tentang Pengajuan Peninjauan Kembali dalam Perkara Pidana Ditinjau Dari Perspektif Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan," *Jurnal Legislasi Indonesia,* Vol. 14 No. 2 (2017), pg. 146.

[13] Henry P. Panggabean, *Fungsi Mahkamah Agung dalam Praktik Sehari-Hari.* (Jakarta: Sinar Harapan, 2001), pg. 144.

[14] Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia,* (Jakarta: Sinar Grafika, 2010), pg. 278.

[15] Fitriani Ahlan Sjarif, "Ke Mana Bisa Melakukan Pengujian Peraturan Kebijakan?" *Hukumonline.com,* March 8, 2022, available on https://www.hukumonline.com/klinik/a/ke-mana-bisa-melakukan-pengujian-peraturan-kebijakan-lt5f4b669c17662/?utm_source=website&utm_medium=internal_link_klinik&utm_campaig n=peraturan_kebijakan, accessed on October 21, 2024.

values of the judges handling the case, not based on a criterion, or limitation or standard benchmark for good intentions regulated in a statutory regulation. This creates difficulties in interpreting the meaning of good intentions, because it creates problems for judges in taking legal considerations and issuing verdicts related to actions that can be categorized as good intentions. Therefore, the provisions in SEMA Number 3/2023 should continue to refer to the provisions stipulated in Article 31 of Law 24/2009 and Article 26 paragraph (1) of Presidential Decree 63/2019, as a legal umbrella that regulates the obligation to use Indonesian in agreements/contracts involving state institutions, government agencies, Indonesian private institutions or individual Indonesian citizens. In the case of the agreement/contract involving Indonesian and foreign parties as parties, then the agreement/contract is also written in the national language of the parties who are parties to the agreement, and/or in English. Therefore, the creation of an agreement/contract in Indonesian is a must as an imperative rule.

Legal Consequences of International Business Contracts That Do Not Use Indonesian If One of the Parties is a Foreign Legal Subject

The provisions regarding the obligation to use Indonesian in business agreements/contracts are regulated in Article 31 of Law 24/2009 and Article 26 paragraph (1) of Presidential Decree 63/2019, which states that "Indonesian must be used in memorandums of understanding or agreements/contracts involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens." Thus, agreements/contracts involving foreign parties, or foreign investment, when transacting in Indonesia are still required to use Indonesian. The parties entering into agreements/contracts in the territory of the Republic of Indonesia are required to comply with the laws and regulations in force in Indonesia without exception.

The use of the national language of the foreign party and/or English based on Article 26 paragraph (2) of Presidential Decree 63/2019 states that "every business agreement/contract involving a foreign party is also written in the national language of the foreign party and/or English. Thus, the use of the national language of the foreign party and/or English as an equivalent or translation of the business agreement/contract in Indonesian, to align the understanding of the memorandum of understanding or agreement/contract with the foreign party. Based on Article 26 paragraph (4) of Presidential Decree 63/2019, if there is a difference in interpretation regarding the equivalent or translation of the agreement/contract, then the language used is the language agreed upon in the memorandum of understanding or agreement/contract. However, Law 24/2009 does not regulate sanctions and legal consequences if the obligation regarding the use of Indonesian in business agreements/contracts involving foreign parties as one of the parties is not fulfilled.

In relation to the provisions of Article 1320 of the Civil Code regarding the requirements for a valid agreement/contract, 4 (four) conditions are required, namely:

1. Agree to those who bind themselves;
2. Capable of making an agreement;

3. Regarding a certain matter;
4. a lawful cause.

The first two conditions are called subjective conditions, because they concern the people or subjects who enter into the agreement. Meanwhile, the last two conditions are called objective conditions, because they concern the agreement itself or the object of the legal act carried out.[16]

In the case where the subjective conditions are not met, the agreement/contract is not void by law, but one party has the right to request that the agreement/contract be canceled. Meanwhile, if the objective conditions are not met, the agreement/contract is void by law. Regarding a business agreement/contract involving a foreign party as one of the parties, and the business agreement/contract does not use the Indonesian language, this constitutes a violation of the provisions in Article 31 of Law 24/2009 and Article 26 paragraph (1) of Presidential Regulation 63/2019. Based on Article 1337 of the Civil Code, a cause is prohibited if it is contrary to the law, decency, and public order.

Munir asserts that a prohibited motive is :

a. An agreement/contract without cause, with the purpose intended by the parties not being achieved;
b. A false cause, which is contrary to the law, public order, and morality.

Thus, according to the provisions of Article 1320 and Article 1337 of the Indonesian Civil Code, an agreement/contract that is not made in the Indonesian language, while one of the parties involved in the agreement/contract is a foreign party, can be requested for annulment in court. This is because it does not meet the fourth requirement for the validity of an agreement/contract, which is a lawful cause as stipulated in Article 1320 of the Indonesian Civil Code.

In the case between Nine AM Ltd and PT Bangun Karya Pratama Lestari, the Supreme Court of the Republic of Indonesia in its Decision Number 1572/K/Pdt/2015 annulled the loan agreement that was agreed upon and signed by Indonesian legal entities and foreign legal entities, on the grounds that the agreement was not made in the Indonesian language. The judges' consideration stated that the non-use of the Indonesian language by the parties in the said agreement/contract constitutes an unlawful and prohibited cause according to Article 1320 of the Indonesian Civil Code.[17]

In the drafting of agreements/contracts in two languages, namely Indonesian and the national language of the foreign party or English, it also poses its own challenges in practice. This is because there are technical terms that do not have an equivalent meaning or significance in one of the languages used in the agreement/contract. Therefore, a sworn official translator is needed to accurately translate a foreign term in accordance with the proper rules of good and correct Indonesian language.[18]

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[16]R. Subekti, *Hukum Perjanjian,* Cet. Ke 21, (Jakarta: Intermasa, 2005), pg. 20.
[17] Priskilla P., *Op. Cit.*
[18]Mochamad Januar Rizki, "Mengenal Kewajiban Penggunaan Bahasa Indonesia Dalam Perjanjian/kontrakBisnis," https://www.hukumonline.com/berita/a/mengenal-kewajiban-penggunaan-bahasa-Indonesia-dalam-perjanjian-

The use of 2 (two) languages in agreements/contracts applicable to foreign parties as one of the parties holds an equal position. The use of foreign languages and/or English can be employed in international business agreements/contracts under certain conditions. If there are differences in interpretation in the execution of the agreement/contract, the interpretation shall refer to the agreement/contract in Indonesian. In addition, the treatment of the agreement/contract in the two languages must be the same as the signing by the parties at the same time. Therefore, the creation of the agreement/contract must also be done simultaneously.

Conclusion

Indonesian is the official national language that must be used in every official state document used throughout the territory of the Republic of Indonesia as regulated in Law Number 24 of 2009 concerning the Flag, Language, and National Emblem. According to Article 31 paragraph (1) of Law 24/2009, Indonesian must be used in memoranda of understanding or agreements/contracts involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions or individual Indonesian citizens. In Article 31 paragraph (2) of Law 24/2009, it is stated that in the case of a memorandum of understanding or agreement/contract involving a foreign party, the agreement/contract must also be written in the national language of the foreign party and/or in English.

On September 30, 2019, Presidential Regulation Number 63 of 2019 concerning the Use of the Indonesian Language was issued. Based on Article 26 paragraph (2) of Presidential Regulation No. 63 of 2019, it is stated that "every business agreement/contract involving foreign parties must also be written in the national language of the foreign party and/or in English." Furthermore, in Article 26 paragraph (2) of Presidential Regulation No. 63 of 2019, it is stated that "every business agreement/contract involving foreign parties must also be written in the national language of the foreign party and/or in English." If there is a difference in interpretation of the equivalent or translation of the agreement/contract, the language used shall be the language agreed upon in the memorandum of understanding or the agreement/contract, as stipulated in Article 26 paragraph (4) of Presidential Regulation 63/2019.

In 2023, the Supreme Court of the Republic of Indonesia (MARI) issued MARI Circular Letter Number 3 of 2023. According to SEMA 3/2023, it is stipulated that "Indonesian private institutions and/or Indonesian individuals who enter into agreements/contracts with foreign parties in a foreign language without an accompanying Indonesian translation cannot use the absence of an Indonesian translation as a reason for contract cancellation, unless it can be proven that the absence of an Indonesian translation was due to the good faith of one of the parties." The provisions in SEMA 3/2023 have caused inconsistencies with other regulations. The provisions in SEMA 3/2023 are not in sync with the provisions in Article 31 of Law 24/2009 and Article 26 paragraph (1) of Presidential Regulation 63/2019.

Regarding a business agreement/contract involving a foreign party as one of the parties, which does not use the Indonesian language, this constitutes a violation of the provisions in

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Article 31 of Law 24/2009 and Article 26 paragraph (1) of Presidential Regulation 63/2019. Based on the provisions of Article 1320 of the Civil Code, if the agreement/contract does not meet the objective requirements, then the agreement/contract is null and void by law. Furthermore, Article 1337 of the Civil Code states that a cause is prohibited if it is contrary to the law, morality, and public order. Thus, agreements/contracts that are not made in Indonesian, while one party in the agreement/contract involves a foreign party, are considered invalid by law. Therefore, the agreement/contract can be requested for annulment in court.

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