

INDONESIA



Indonesia's Language Law and business agreements

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In a landmark decision on June 20th, 2013, the West Jakarta District Court annulled a Loan Agreement because it was executed in English instead of the Indonesian language. The case involved a Loan Agreement that was concluded in English between the Plaintiff and the Defendant, with the Plaintiff asking the Court to declare the Loan Agreement and its derivative agreement null and void. The Court granted the Plaintiff's claims and annulled the agreement and also ordered the Plaintiff to return the remaining outstanding loan to the Defendant.

The Plaintiff argued that the Loan Agreement, which was governed and interpreted under the laws of the Republic of Indonesia, did not fulfill the formal requirements of a valid agreement as stipulated by the laws of Indonesia and was therefore void by law. As regulated under Article 31, paragraph (1) of Law Number 24 of 2009 regarding Flag, Language, National Emblem and Anthem ('Language Law'), it is "mandatory" that the Indonesian language be used in a memorandum of understanding or agreement that involves national institutions, government institutions of the Republic of Indonesia, Indonesian private institutions or Indonesian citizens.

In its court filing, the Plaintiff argued that the Loan Agreement, which was concluded in English, violated the Language Law and should be deemed to not fulfill the requirements of a valid agreement under Article 1320 of the Indonesian Civil Code. In other words, it argued that because the Agreement violated the Language Law it was not legally enforceable.

The Court, in its legal consideration, said it was of the opinion that the phrase "mandatory" in Article 31, paragraph (1) of the Language Law meant that a memorandum of understanding or agreement concluded in a language other than Indonesian was a violation of such law. The Court further commented that if the Defendant did not agree with its interpretation of the phrase "mandatory" it could submit a Judicial Review with the Constitutional Court. The Court also argued that because the Loan Agreement was null and void, its derivative agreement should also be declared null and void.

In some sense the decision is not controversial since the Loan Agreement was governed by Indonesian law and the Language Law clearly provides that such an agreement involving an Indonesian party must be concluded in the Indonesian language. However, this is undoubtedly an important court decision for a number of reasons.

First, it is the first time an agreement has been successfully challenged pursuant to the Language Law. Second, the remedy awarded by the Court, which is the annulment of the Loan Agreement, is rather controversial. As argued by the Defendant, Article 31, paragraph (1) of the Language Law does not expressly provide that an agreement is rendered void by law if it does not use the Indonesian language. This argument is in conformity with a letter issued by the Ministry of Law and Human Rights – Letter No. M.HH.UM.01.01-35, dated December 28, 2009, regarding Request for Clarification on the Implications and Application of Law Number 24 of 2009. This letter states expressly that the use of the English language in an agreement does not violate the formal requirements provided for in the Language Law.

The Defendant also argued that Article 40 of the Language Law stipulates that a Presidential Regulation would further regulate the application of Article 31 of the Language Law. To date, such Presidential Regulation has not been issued.

Companies doing business in Indonesia will want to take this court decision, and its implications for the application of the Language Law, into consideration when they execute agreements. The West Jakarta District Court decision is under appeal, but it is a reminder that the applicability of the freedom of contract principle must conform to the application of the laws and regulations of

Indonesia. Companies operating here must remember that all agreements must at least have a version in the Indonesian language if they involve an Indonesian counterpart and are governed under the laws of the Republic of Indonesia.

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