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Research Article

Enforceability of Foreign Language Contracts in Indonesia: A Legal Analysis of Language Law in Cross-Border Business Agreements

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Abstract

This study explores the enforceability of foreign language contracts within the Indonesian legal system, focusing on the implications of Law No. 24 of 2009 and its implementing regulation, Presidential Decree No. 63 of 2019. These legal instruments mandate the use of Bahasa Indonesia in agreements involving Indonesian parties, including cross-border business transactions. Employing a qualitative, normative legal research methodology grounded in literature review (library research), this article examines statutory provisions, judicial decisions, and scholarly commentary to assess the consistency and clarity of legal enforcement. The study reveals significant inconsistencies in judicial interpretation and application of the language law—rulings have varied from nullifying contracts to accepting foreign language agreements, often dependent on interpretations of legal formality and good faith. The recent issuance of Supreme Court Circular Letter No. 3 of 2023 signals a shift toward more flexible enforcement, emphasizing intent and fairness over strict linguistic formalism. This inconsistency, however, generates legal uncertainty, increases transaction costs, and creates risks for opportunistic contract annulment. The study also compares Indonesia's regulatory stance with Malaysia's more permissive approach, which prioritizes contractual intent over language requirements. It argues that Indonesia must reform its legal framework to enhance certainty and investment

attractiveness without undermining national identity. This reform includes clearer legal guidance and harmonization of judicial decisions to strike a balance between statutory compliance and international commercial practice.

Keywords: Language Law; Foreign Contracts; Legal Certainty; Cross-Border Business; Indonesian Contract Law.

INTRODUCTION

As Southeast Asia's largest economy, Indonesia, with an estimated population of 285.7 million in 2025, is a pivotal player in the global economic landscape. Its significance as a key trade and investment destination is undeniable, particularly as the global economic focus shifts increasingly towards Asia. As an active member of ASEAN, Indonesia further benefits from the bloc's commitment to deepening regional engagements and fostering a free trade zone. This aligns perfectly with Indonesia's national long-term development plan (2005-2025), which emphasizes increased international engagement. Navigating these growing global interactions necessitates adherence to various national and international regulations.

One regulation that must be followed and will be discussed further in this research is the language law regulated under the Law of the Republic of Indonesia No. 24 of 2009 on National Flag, Language, Emblem, and Anthem. This law imposes the use of the Indonesian language on contracts involving Indonesian citizens, especially when foreign parties are involved. This law was clarified further 10 years later through an implementing regulation under the Presidential Decree No. 63 of 2019, which states that in contracts involving a foreign party, the contract in the native language of the foreign party and/or English is used as an equivalent or translation of the Indonesian language version for parties to achieve a common understanding of the contents of such contract.

Despite the existence of a clear law that regulates the chosen language in business contracts involving foreign parties, the practice of enforcing the language provisions has been inconsistent. Historically, some courts have rendered contracts null and void due to illegality solely due to the absence of an Indonesian language version (Ikhbal et al., 2020). Conversely, the Supreme Court later issued a resolution stating that the lack of an Indonesian language translation of an agreement cannot be used as a ground for annulling a contract unless it can be proven that the absence of such translation is due to the bad faith of one of the parties (Ibrahim et al., 2024).

This legal ambiguity surely poses a threat to both foreign investors and Indonesian businesses in carrying out their business activities within the territory of the Republic of Indonesia.

METHODS

Focused on understanding the legal framework, this study conducts normative legal research to comprehensively analyse the norms, principles, and doctrines

related to foreign language use in Indonesian international business contracts. The data used to substantiate this research was obtained via literature studies, drawing from primary legal sources (laws, regulations, court decisions), secondary legal sources (journals, books, articles), and tertiary legal sources (legal dictionaries). Our methodology combines a legislative approach to review relevant laws, a conceptual approach to define legal terms, and a case approach to see how these rules apply in practice.

RESULT AND DISCUSSION

Legal Framework on Language Use in Contracts in Indonesia

The use of language in contracts in Indonesia is principally governed by Law Number 24 of 2009 on the National Flag, Language, State Emblem, and National Anthem (INDONESIA, 2011) (hereinafter referred to as "Language Law"). This law establishes Bahasa Indonesia not only as the national language but also as a mandatory language in certain formal and legal contexts, including contracts involving Indonesian parties. The interpretation and application of this requirement have sparked debates, particularly in the context of international business agreements where foreign languages are commonly used.

Article 31 paragraph (1) of the Language Law states:

"Bahasa Indonesia shall be used in a memorandum of understanding or agreement involving a state institution, government agency of Indonesia, Indonesian private institution, or individual Indonesian citizen." (INDONESIA, 2011)

This article indicates that Bahasa Indonesia is a mandatory requirement in any contracts involving at least one Indonesian party, regardless of whether the other party is foreign or domestic.

To address ambiguities previously found under the Language Law and support the practical implementation of the Language Law, the government issued Presidential Decree No. 63 of 2019 (hereinafter will be referred to as the "Language Decree"), which specifically regulates the use of Bahasa Indonesia in formal settings, including contracts.

Under Article 26(1) of the regulation:

"Every agreement involving Indonesian parties must be made in Bahasa Indonesia." (Marpaung & Dewi, 2023)

Then, Article 26(2) further explains that:

"The memorandum of understanding or agreement as referred to in paragraph (1) that involves a foreign party shall also be written in the national language of the foreign party and/or in English." (INDONESIA, 2011)

This clause allows contracts to be written in a foreign language or in a bilingual format when a foreign party is involved. This represents a practical compromise, recognising the realities of cross-border contracts while still preserving the mandatory use of Bahasa Indonesia.

Even though this regulation gives more flexibility, especially for international contracts, the main rule still stands, Bahasa Indonesia has to be used if an Indonesian party is involved. Therefore, the Language Decree serves as the implementing regulation to the Language Law to smooth out practical issues while still preserving the core requirement on the use of Bahasa Indonesia under the Language Law.

Analysis of Inconsistent Legal Enforcement

Although Indonesian law explicitly requires the use of Bahasa Indonesia in contracts, its implementation in practice is often still inconsistent. The inconsistency in judicial enforcement has led to considerable legal uncertainty, especially concerning international business transactions. This lack of uniformity arises from various contributing factors, all of which complicate the legal environment and potentially undermine the reliability of contractual arrangements.

1. Ambiguity in Interpreting "Mandatory" and Its Legal Fallout: The Language Law unequivocally states that Bahasa Indonesia "must" be used. However, it fails to define the legal repercussions of non-compliance explicitly. A critical judicial divide exists: some courts deem the absence of an Indonesian version to render the contract null and void (ab initio), asserting a violation of the lawful cause requirement under Article 1320 of the Civil Code, thereby deeming the contract contrary to public order (Panggabean, 2010). Conversely, other tribunals adopt a more pragmatic view, treating such omissions as a procedural defect that does not inherently invalidate the substantive contents of the contract or preclude subsequent rectification. This fundamental interpretive split fuels unpredictable outcomes.

2. History of Legal Enforcement: The implementation of the law itself is not always this inconsistent. There are some cases throughout history that showed the strict enforcement of the Language Law. In 2015, the Supreme Court nullified an English-language Loan Agreement between PT. Bangun Karya Pratama Lestari vs. Nine AM Ltd. The court stated that this agreement was a form of non-compliance with the Language Law and thereby nullifying such contract. This ruling is an example of strict interpretation of Article 31 of the Language Law that prioritises statutory compliance. However, history shows that there are at least two other types of court decisions regarding the implementation of the Language law, namely (i) that the contract remains valid and enforceable, and (ii) that the court does not have jurisdiction to rule on this matter.

3. Legal Flexibility: The birth of the Supreme Court Circular Letter No. 3 of 2023 (SEMA 3/2023) hints at a flexibility regarding the law itself. It clarifies that foreign-language contracts are enforceable unless a party acted in bad faith by intentionally omitting a Bahasa Indonesia version. Because of this, the usage of foreign-language agreements has been increasing post 2023, reflecting a balance between statutory requirements and international business practices.

Impact of Inconsistent Legal Enforcement

The judicial inconsistencies in enforcing the Language Law carry significant and quantifiable ramifications for market participants:

1. Heightened Legal and Commercial Uncertainty: This lack of predictability poses a substantial risk to businesses, particularly foreign investors. Without clear assurance that a duly executed contract will be upheld by Indonesian courts, regardless of its substantive merit, parties face significant planning hurdles. This directly impedes long-term strategic investments and introduces unforeseen transactional risks, making due diligence more complex and costly (RAS, H., & Suroso, J. T. 2020).

2. Increased Cross-Border Transaction Costs and Reluctance: Foreign entities become increasingly hesitant to engage in significant investments or complex transactions in Indonesia. The elevated risk of contract invalidation due to a linguistic technicality, irrespective of the underlying commercial rationale, forces parties to either absorb higher risk premiums or seek alternative, more predictable jurisdictions. This directly impacts the deal flow and the efficiency of cross-border capital deployment (RAS, H., & Suroso, J. T. 2020). Additionally, the requirement to prepare bilingual contracts may also increase the related costs of such transactions as foreign parties will require the appointment of local legal counsel and potentially a sworn translator.

3. Elevated Risk of Opportunistic Exploitation: The ambiguous enforcement landscape creates a perilous loophole for parties acting in bad faith. They may strategically invoke the language requirement as a pretext for contract annulment, even when their true motivation is to evade legitimate contractual obligations or extract an unfair advantage. This introduces moral hazard and undermines trust in the sanctity of contracts. This risk is amplified for international parties who may not fully grasp the nuanced domestic legal interpretations.

4. Diminished Investment Attractiveness and Economic Impact: In the long term, persistent legal uncertainty in such a fundamental aspect of contract law erodes Indonesia's reputation as a stable and predictable investment destination. This systemic risk directly impacts foreign direct investment (FDI) inflows, potentially diverting capital to countries with more robust and consistent legal frameworks. Ultimately hindering the overall economic growth and development, counteracting efforts to attract and retain global capital.

Comparative Perspective: Contract Language Policies in Malaysia

Given the challenges and ambiguities surrounding the Language Law's implementation in contracts, it is beneficial to examine how other ASEAN nations address similar linguistic issues. A comparative analysis with active international trade participants like Malaysia can reveal how their legal systems manage language use in cross-border business contracts. This comparison offers valuable insights for developing a legal framework that simultaneously supports international commerce and upholds national language policies.

Malaysia approaches the issue of language in cross-border business contracts in a more flexible way. Unlike Indonesia, which requires the use of Bahasa Indonesia for cross-border business contracts under the Language Law, Malaysia has no requirement obliging contracts to be written in Bahasa Malaysia. Even though Bahasa Malaysia is the national language, and its promotion is a policy goal under the National Language Act 1963/67, there is no jurisprudence indicating that failure to use it in private contracts renders an agreement invalid. Instead, the Contracts Act 1950 governs the general principles of contract formation, validity, and enforcement without imposing any linguistic constraints. In practice, English is widely accepted as the standard language of commercial agreements, particularly in cross-border contracts. Consequently, Malaysian courts are primarily concerned with the parties' intention and mutual assent, rather than the language in which that intention is expressed. Even when contracts are written solely in English, they are generally enforceable so long as the terms are clear and the parties are competent and consenting.

CONCLUSION

Despite the issuance of the Language Decree, the Language Law continues to create significant legal uncertainty in contracts, posing a considerable challenge for both domestic and international business. This ambiguity is primarily fueled by a troubling inconsistency in judicial interpretations, where courts have issued at least three distinct types of decisions: declaring contracts entirely invalid, upholding their validity and enforceability, or, in some instances, declining jurisdiction over the matter.

Such unpredictable judicial outcomes directly contradict the need for a stable and transparent legal environment. This inconsistency not only creates confusion for businesses operating in Indonesia but also severely undermines the Indonesian market's attractiveness to foreign investors. The heightened legal risk and unpredictability associated with contractual agreements directly impact investor confidence, thereby potentially leading to a decrease in crucial Foreign Direct Investment (FDI) and hindering Indonesia's economic growth.

When viewed comparatively, especially with Malaysia, it's evident that a more flexible legal approach to language in contracts can better support international business interests without compromising national identity. Malaysia accepts English

in cross-border contracts and focuses on both parties' intentions rather than language use. This suggests Indonesia could benefit from clearer, more pragmatic regulations. Aligning with Supreme Court Circular Letter No. 3 of 2023 (SEMA 3/2023), which allows foreign language contracts unless bad faith is proven, can help balance legal compliance with commercial practicality. Resolving current inconsistencies is crucial to ensuring legal certainty, protecting contractual rights, and improving Indonesia's appeal to foreign investors.

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