Eduvest – Journal of Universal Studies
Volume 4 Number 05, May, 2024
p- ISSN 2775-3735- e-ISSN 2775-3727

THE USE OF THE INDONESIAN LANGUAGE IN INTERNATIONAL CONTRACTS AFTER THE CIRCULAR LETTER OF THE SUPREME COURT NUMBER 3 OF 2023 AS GUIDELINES FOR THE IMPLEMENTATION OF DUTIES FOR COURTS

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ABSTRACT

The use of the Indonesian language in memoranda of understanding and agreements with foreign parties is mandated as regulated in Law Number 24 of 2009 concerning the Flag, Language, State Institutions, and National Anthem as well as Presidential Regulation Number 63 of 2019 concerning the Use of the Indonesian Language. However, the provisions do not clearly stipulate the legal consequences if not adhered to, leading to the issuance of Supreme Court Circular Letter Number 3 of 2023 regarding the Implementation of Formulations from the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Duties for Courts. This raises questions about the status of the Supreme Court Circular Letter within the National Legal System and the legal implications of the Supreme Court Circular Letter regarding the use of the Indonesian language in memoranda of understanding and agreements between foreign parties.

KEYWORDS *Contract Agreements, Indonesian Language, Foreign Parties*

INTRODUCTION

Business activities are a crucial support for economic development. Depending on the type of business being conducted, the cooperation involved can vary widely. Contracts are considered part of business law because nearly all business collaborations begin with a contract. An agreement, or "Overeenkomst," is an event

How to cite: Yustina Anggraeni, Moh. Saleh (2024). The Use Of The Indonesian Language In International Contracts After The Circular Letter Of The Supreme Court Number 3 Of 2023 As Guidelines For The Implementation Of Duties For Courts. *Journal Eduvest*. *4* (5): 3938-3947
E-ISSN: 2775-3727
Published by: https://greenpublisher.id/

where one person makes a promise to another, or two people make mutual promises to do something.

Contract law is a subset of civil law (private law) that focuses on self-imposed obligations, classified under civil law because breaches of contractual obligations are primarily a matter for the contracting parties. The definition of an agreement is also outlined in Article 1313 of the Indonesian Civil Code (KUHPerdata), stating, "An agreement is an act by which one or more parties bind themselves to one or more other parties."

A contract or agreement must meet the validity requirements specified in Article 1320 of the Civil Code, which states: For an agreement to be valid, four conditions must be met: a) Consent of the parties who bind themselves; b) Competence to make a commitment; c) A specific subject matter; d) A lawful cause. When these four conditions are met, an agreement becomes legally binding for the parties involved. A written contract is necessary to provide legal certainty for the parties.

The growth of business cooperation activities influences the development of contracts or agreements. Therefore, such cooperation activities are often formalized in written contracts or agreements. If, during implementation, the parties do not fulfill the terms agreed upon in the contract, they can seek legal recourse. Legal issues generally arise from the parties' lack of caution in agreeing to the terms of the contract, leading to regret when problems occur.

One essential element in making agreements in Indonesia is the use of the Indonesian language. Contracts made in Indonesia must adhere to the Kamus Besar Bahasa Indonesia (KBBI). As the national language, Indonesian is the official language, as stated in Article 36 of the 1945 Constitution of the Republic of Indonesia: "The State language is Indonesian." This is further regulated in Law No. 24 of 2009 concerning the National Flag, Language, Emblem, and Anthem.

It is unusual for contracts involving foreign parties made in Indonesia to be written solely in a foreign language or English. If Indonesian parties do not fully understand the foreign language used, they must rely on translators, who might make translation errors due to unfamiliar foreign terms. Therefore, the obligation to use Indonesian in agreements is explicitly stated in Article 31(1) of Law No. 24 of 2009, which requires the use of Indonesian in memorandums of understanding or agreements involving state institutions, Indonesian government agencies, Indonesian private entities, or Indonesian citizens.

The use of Indonesian in agreements involving foreign parties is also regulated by Presidential Regulation No. 63 of 2019 on the Use of Indonesian, specifically Article 26, which states:

1. Indonesian must be used in memorandums of understanding or agreements involving state institutions, Indonesian government agencies, Indonesian private entities, or Indonesian citizens.
2. Such agreements involving foreign parties must also be written in the foreign party's national language and/or English.
3. The foreign language and/or English version serves as an equivalent or translation to ensure mutual understanding of the agreement with the foreign party.

4. In case of interpretation differences, the agreed language in the memorandum of understanding or agreement prevails.

This means that agreements involving foreign parties must use Indonesian and also be written in the foreign party's national language. This requirement is reinforced by a decision of the West Jakarta District Court, case number 451/PDT.G/2013/PN.JKT.Brt, which invalidated a loan agreement written only in English as it violated Article 31(1) of Law No. 24 of 2009.

On December 29, 2023, the Supreme Court issued Circular No. 03 of 2023, which includes guidelines for court operations. The General Civil Chamber's legal formulation states, "Indonesian private entities or individuals who make agreements with foreign parties in a foreign language without an accompanying Indonesian translation cannot use this as grounds for invalidating the agreement unless it can be proven that the absence of Indonesian was due to bad faith by one party." This indicates that agreements involving foreign parties that do not use Indonesian are not automatically void unless bad faith is proven.

The Supreme Court's circulars, based on Article 12(3) of Law No. 1 of 1950, provide guidelines to lower courts and judges. Based on these points, I am motivated to examine the legal certainty of using Indonesian in agreements involving foreign parties following the issuance of Supreme Court Circular No. 03 of 2023.

Based on the background outlined above, the following issues can be formulated: 1. The status of Supreme Court Circular No. 3 of 2023 within the national legal system. 2. The legal implications of Supreme Court Circular No. 3 of 2023 on the use of Indonesian in international agreements.

RESEARCH METHOD

Using normative research with a statutory approach by examining all legislation related to the legal issues at hand, namely the hierarchy of legislation, agreements, the legal consequences of agreements, and a conceptual approach that focuses on principles, concepts, views, and doctrines that have developed in legal science and are relevant to this research.

RESULT AND DISCUSSION

Legal Standing of Supreme Court Circular Letter No. 3 of 2023 in Legislation

According to Harjono, legal standing refers to a situation where a party or individual has met the requirements to submit a request to resolve an issue in the Constitutional Court. The issue in question is not only about actions but can also involve problems in legal products for state regulations. According to M. Solly Lubis, state regulations (staatsregelings) are written rules issued by official agencies, either institutions or officials. These include laws, government regulations in lieu of laws, presidential regulations, ministerial regulations, regional regulations, instructions, circulars, announcements, and decrees. Therefore, a circular can be considered a written regulation whose status can be accounted for.

The Supreme Court Circular (SEMA) is a legal instrument providing guidelines or directions related to judicial procedures or specific legal issues by the

Supreme Court in Indonesia. As the highest judicial body in Indonesia, the Supreme Court issues circulars that provide guidance for courts across the country. SEMAs aim to harmonize law enforcement nationwide by clarifying or providing guidelines on specific judicial procedures, preventing divergent legal interpretations among courts in different regions. They also provide guidance for judges, court staff, or related parties to perform their duties with ethical and legal standards.

The legal basis for issuing SEMAs is regulated in Article 32, Paragraph (4) of Law No. 14 of 1985, which states: "The Supreme Court is authorized to provide guidance, reprimands, or warnings deemed necessary to courts in all judicial environments." This can be interpreted to mean that such guidance can take the form of individual letters or circulars within the judicial environment, including courts and judges.

According to Law No. 13 of 2022, which amends Law No. 12 of 2011 on the Formation of Legislation, Article 7, Paragraph (1) of Law No. 12 of 2011, as amended by Law No. 15 of 2019, details the types and hierarchy of legislation:

1. The Constitution of the Republic of Indonesia of 1945;
2. Decisions of the People's Consultative Assembly;
3. Laws/Government Regulations in Lieu of Laws;
4. Government Regulations;
5. Presidential Regulations;
6. Provincial Regulations; and
7. Regency/City Regulations.

Article 8, Paragraph (1) of Law No. 12 of 2011, as amended, states: "Other types of legislation not mentioned in Article 7, Paragraph (1) include regulations formed and established by the House of Representatives, the People's Consultative Assembly, the Regional Representative Council, the Constitutional Court, the Supreme Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, institutions, bodies, or commissions of equivalent status established by law or the government at the command of the law, provincial Regional House of Representatives, Governors, regency/city Regional House of Representatives, Regents/Mayors, village heads, or equivalents."

Based on these provisions, it can be concluded that circulars are not included in the types of legislation and therefore do not fall under formal legislation. SEMAs aim to harmonize judicial practices nationwide, allowing courts in different regions to follow the same guidelines. Although SEMAs are strong legal instruments, they are generally not mandatory or legally binding. However, in practice, SEMAs are often regarded as guidelines that should be followed by judicial parties involved in a legal process.

In resolving disputes, SEMAs can be used as references or legal arguments by parties involved in legal cases. Courts, judges, and involved parties are generally expected to comply with SEMAs. Non-compliance may lead to legal consequences, and court decisions may be reviewed or annulled. Thus, SEMAs play a crucial role in maintaining consistency and justice in Indonesia's judicial system.

Based on the above explanation, it can be concluded that Supreme Court Circular Letter No. 3 of 2023 on the Implementation of the Results of the Supreme

Court Chamber Plenary Meeting of 2023 as a Guideline for Court Duties is not a piece of legislation. Its legal standing is limited to the internal environment that issued the circular, namely courts, judges, clerks, and other judicial officers. The SEMA serves as a guideline for judges within the Supreme Court's jurisdiction in carrying out their leadership and supervisory functions, providing clarity and insight into the interpretation of regulations to prevent errors that could lead to legal uncertainty.

Legal Implications of Supreme Court Circular Letter No. 3 of 2023 on the Use of the Indonesian Language in International Agreements

As discussed in the preceding subsection regarding the legal position of Supreme Court Circular Letter No. 3 of 2023 within the legislative framework, the Supreme Court issued Circular Letter No. 03 of 2023 on December 29, 2023. This Circular concerns the implementation of formulations derived from the 2023 Plenary Session of the Supreme Court's Chamber as guidelines for the execution of court duties. It can be inferred from the issuance of this Circular that it applies solely to courts, judges, clerks, and other court officials, or specifically, only within the internal scope of the Supreme Court. This Circular provides guidance to the internal scope of the Supreme Court by giving instructions, particularly in the General Civil Chamber, stating that "Indonesian private institutions and/or individuals entering into agreements with foreign parties in a foreign language without an accompanying Indonesian translation cannot use the absence of an Indonesian translation as grounds for nullifying the agreement, except if it can be proven that the absence of an Indonesian translation was due to bad faith by one of the parties".

Based on this Circular, it is mandatory for courts, judges, especially when dealing with issues in the general civil chamber, to consider this Circular, which means that the lack of an Indonesian translation in agreements with foreign parties cannot be used as a reason for nullifying the agreement unless it can be proven that the absence of an Indonesian translation was accompanied by bad faith by one of the parties. Thus, it can also be concluded that this Circular is not applicable and binding to the public because it is not a product of legislation and only serves as a guideline within the internal scope of the Supreme Court.

In making agreements or contracts, language is an important consideration, especially when one of the parties is foreign. Essentially, agreements made by parties are binding (pacta sunt servanda). This expression is recognized as a rule that all agreements made by parties reciprocally are intended to be fulfilled and enforced. The binding force (pacta sunt servanda) of agreements is closely related to the consequences of the existence of the agreement, namely the binding of the parties entering into the agreement. This indicates that rights arising from agreements are individual rights and are relative.

Although Indonesia's contract law adopts an open system, the Civil Code (KUHPerdata) as a guideline for making agreements between parties provides requirements for the validity of an agreement. Agreements made by parties must fulfill the requirements for their validity, as stipulated in Article 1320 of the Civil Code. If we examine the meaning of the elements of the validity requirements for an agreement, they can be elaborated as follows:

1. **Consensus:** There must be free consent from the parties binding themselves, and they must have the free will to bind themselves, expressed either explicitly or implicitly.
2. **Capacity:** The parties must be capable of making an agreement.
3. **Certain Object:** The object of the agreement must be clear or specific, whether it is a thing or a certain object, in order to establish the obligations of the parties.
4. **Legal Consideration:** The purpose desired from the agreement made by both parties must be clear.

Based on the provisions of Article 1320 of the Civil Code, as explained above, their agreement to bind themselves and the capacity to make an agreement are subjective requirements. If an agreement fails to meet these two requirements, the agreement can be canceled. Meanwhile, the requirement of a specific object and a lawful cause is an objective requirement, which means that if an agreement fails to meet this objective requirement, the agreement is null and void from the beginning.

Article 1338 paragraph (1) of the Civil Code states: "All legally made agreements are binding as law for those who make them." The principle of freedom to contract is a principle that gives freedom to the parties to: (1) make or not make an agreement; (2) enter into agreements with anyone; (3) determine the content, implementation, and conditions of the agreement; and (4) determine the form of the agreement, whether written or oral.

Law No. 24 of 2009 concerning the National Flag, Language, Emblem, and National Anthem, especially in Article 31, states: (1) Indonesian language must be used in memoranda of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens; (2) Memoranda of understanding or agreements as referred to in paragraph (1) involving foreign parties shall also be written in the foreign party's national language and/or English.

The formulation of the provision of Article above regarding the obligation to use the Indonesian language in an agreement will have legal consequences if the clause regarding the use of the Indonesian language in the contract is not fulfilled as regulated in Law No. 24 of 2009 concerning the National Flag, Language, Emblem, and National Anthem. In Article 31 paragraph 1, it is also explicitly stated that all memoranda of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens "must" use the Indonesian language. The word "must" in Article 31 paragraph 1 means it must be done, cannot be left undone or made in languages other than Indonesian, so it is compulsory, in other words, cannot be violated or deviated from. This compulsory regulation can also be said to contain elements of public interest because there are parties protected from misunderstandings in interpreting contracts or agreements made using foreign languages or English without the presence of the Indonesian language.

Furthermore, Presidential Regulation Number 63 of 2019 concerning the Use of Indonesian is specifically regulated in Article 26 which reads:

(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 individuals of Indonesian citizens.
(2) The memorandum of understanding or agreement referred to in paragraph (1) involving a foreign party is also written in the foreign party's national language and/or English.
(3) The foreign party's national language and/or English as referred to in paragraph (2) is used as the equivalent or translation of Indonesian to equalize the understanding of memorandums of understanding or agreements with foreign parties.
(4) In the event of a difference in interpretation of the equivalent or translation as referred to in paragraph (3), the language used is the language agreed in the memorandum of understanding or agreement.

With the enforcement of Presidential Regulation No. 63 of 2019, it means that one thing must always be considered in the drafting and preparation of agreements involving Indonesian parties, namely, they must be written in Indonesian. Even if involving foreign parties who have no knowledge of the Indonesian language at all, the Indonesian version of the agreement must always exist alongside the foreign language version. This also reinforces that an agreement made subject to Indonesian law should also be made in an Indonesian language version, even if the agreement is made abroad. Despite the principle of freedom to contract and the agreement of the parties, the use of the Indonesian language remains necessary to avoid the risk of agreements being null and void under the law.

The failure to use the Indonesian language in an agreement means the non-fulfillment of one of the valid requirements of an agreement, specifically regarding the objective requirement of a lawful cause for an agreement. Article 1337 of the Civil Code asserts that "a cause is forbidden if it is prohibited by law, or if it is contrary to decency or public order." If we apply the provisions of Article 1337 of the Civil Code, then it is certain that deeds and contracts or agreements made without using the Indonesian language will have legal implications or be null and void because they violate the provisions in the law, specifically Article 31 paragraph (1) of Law No. 24 of 2009 and Article 26 of Presidential Regulation No. 63 of 2019 Concerning the Use of the Indonesian Language. Thus, the cancellation of an agreement contrary to the law can be done if it relates to provisions that are mandatory. This means that parties cannot ignore the prohibitions in the law because there are sanctions resulting in the cancellation of the agreement if the prohibitions in the law are violated.

The opinion regarding the non-compliance with Article 31 paragraph (1) of Law No. 24 of 2009 is reinforced by the fact of the cancellation of foreign language business contracts by the West Jakarta District Court through Decision number: 451/PDT.G/2013/PN.JKT. Brt, jo. Jakarta High Court number: 48/PDT/2014/PT. DKI and jo. Supreme Court of the Republic of Indonesia Decision number: 601 K/Pdt/2015. The Plaintiff's argument in the lawsuit was that the Loan Agreement was made in English, which is contrary to the provisions of Article 31 paragraph

(1) of Law No. 24 of 2009 concerning the National Flag, Language, Emblem, and National Anthem. With this argument, the Plaintiff requested the West Jakarta Court to declare that the Loan Agreement was null and void or at least did not have legal binding force (null and void/nietig). The West Jakarta District Court, which tried and decided on the lawsuit, stated in its legal considerations that the failure to make the agreement (Loan Agreement) in Indonesian language is contrary to the law, in this case Law No. 24 of 2009, thus constituting an illegal agreement because it was made with a forbidden cause (vide Article 1335 of the Civil Code juncto Article 1337 of the Civil Code). It was then ruled that the Loan Agreement dated April 23, 2010, made by and between the Plaintiff and the Defendant, is null and void.

Focusing on the statement of the Supreme Court Circular Letter No. 03 of 2023 Concerning the Implementation of Formulations of the 2023 Plenary Session of the Supreme Court's Chamber as Guidelines for the Execution of Court Duties, in the General Civil Chamber, "Indonesian private institutions and/or individual Indonesians, entering into agreements with foreign parties in a foreign language without an accompanying Indonesian translation, cannot use the absence of an Indonesian translation as grounds for nullifying the agreement, unless it can be proven that the absence of an Indonesian translation was due to bad faith by one of the parties". It can be concluded that the absence of the Indonesian language in agreements with foreign parties cannot nullify the agreement unless there is bad faith by one of the parties, with the phrase "bad faith" being key to the cancellation of an agreement between foreign parties if Indonesian is not used. However, this Circular applies and binds only to the internal scope of the Supreme Court, namely the courts and judges.

The implications of Supreme Court Circular Letter No. 03 of 2023 Concerning the Implementation of Formulations of the 2023 Plenary Session of the Supreme Court's Chamber as Guidelines for the Execution of Court Duties, regarding the use of the Indonesian language in memoranda of understanding or agreements with foreign parties are not binding to the public. The regulation of the use of the Indonesian language is mandatory in memoranda of understanding and agreements between foreign parties as regulated in Article 31 paragraph (1) of Law No. 24 of 2009 concerning the National Flag, Language, Emblem, and National Anthem and Article 26 of Presidential Regulation No. 63 of 2019 Concerning the Use of the Indonesian Language, so if the Indonesian language is not used in the agreement, it may mean the non-fulfillment of one of the valid requirements of an agreement, specifically regarding the objective requirement of a lawful cause as stipulated in Article 1337 of the Civil Code, which states that "a cause is forbidden if it is prohibited by law, or if it is contrary to decency or public order". Thus, the cancellation of an agreement contrary to the law can be done if it relates to provisions that are mandatory. This means that parties cannot ignore the prohibitions in the law because there are sanctions resulting in the cancellation of the agreement if the prohibitions in the law are violated.

CONCLUSION

Based on the discussion presented, the following conclusions and recommendations can be provided: 1. The position of the Circular Letter of the Supreme Court No. 3 of 2023 Regarding the Implementation of Formulations from the 2023 Plenary Session of the Supreme Court's Chamber as Guidelines for the Execution of Court Duties is not that of statutory regulations. This Circular Letter applies and binds only to the internal scope of the Supreme Court. 2. The implications of Circular Letter of the Supreme Court No. 03 of 2023 Regarding the Implementation of Formulations from the 2023 Plenary Session of the Supreme Court's Chamber as Guidelines for the Execution of Court Duties, regarding the use of the Indonesian language in memoranda of understanding or agreements with foreign parties, are not binding to the public. The use of the Indonesian language is mandatory in memoranda of understanding and agreements between foreign parties as regulated in Article 31 paragraph (1) of Law No. 24 of 2009 concerning the National Flag, Language, Emblem, and National Anthem and Article 26 of Presidential Regulation No. 63 of 2019 Concerning the Use of the Indonesian Language. Failure to use the Indonesian language in memoranda of understanding and agreements with foreign parties can have legal consequences resulting in the cancellation of the agreement as it violates Article 1337 of the Civil Code.

The following suggestions can be given : 1. There is a need to establish clear and non-contradictory legal regulations that do not conflict with the above-mentioned statutory regulations, to avoid norm conflicts or provide vague norms that may lead to inconsistency in legal regulations, particularly regarding the legal certainty of the use of the Indonesian language in memoranda of understanding or agreements with foreign parties. 2. There is a need for clarity and legal certainty regarding the consequences of not using the Indonesian language in memoranda of understanding or agreements with foreign parties in Indonesian national law.

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