



RESPONDEK & FAN

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Dear Reader,

This edition of our Legal E-Bulletin features a new appeal decision from the Indonesian High Court with regard to Indonesian Law No. 24 of 2009. The High Court confirmed that ever since July 2009, all contracts entered into in Indonesia must (also) be drafted in Bahasa Indonesia. This appeal decision has very far reaching implications.

As usual, if you have any comments, remarks or questions, we would love to hear from you. Please contact me at +65-6324-0060 or by email: respondek@rflegal.com.

Kind regards,
RESPONDEK & FAN
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INDONESIA

Important appeal decision from the Indonesian High Court: Mandatory use of Bahasa Indonesia in all contracts in Indonesia

On 09.07.2009 the Indonesian Parliament passed the “Law No. 24 of 2009” regarding the country’s Flag, Language, National Coat of Arms and National Anthem. This law stipulated — among other things— that any memorandum of understanding or agreement involving Indonesian parties must be drafted in Bahasa Indonesia.

The relevant Art 31 of the law regulates as follows:

“(1) Indonesian must be used in memoranda of understanding and/or agreements that involve state organs, government institutions of the Republic of Indonesia, private Indonesian institutions or individuals who are citizens of the Republic of Indonesia.

(2) Memoranda of understanding and/or agreements as specified in paragraph (1) that involve foreign

parties shall also be written in the national language of the foreign parties and/or English.”

The wording of the law is drafted rather vaguely and raises a number of questions:

- What shall apply to contracts that were made before July 2009?
- Does the law apply also if the parties to a contract agree on a choice of law clause that a foreign set of laws shall be applied to their contract?
- If contracts will be made in two languages in the future (i.e. English and Bahasa Indonesia), which of the two languages can be taken to be the controlling language in case of differing interpretations?
- What are the legal consequences if a contract is not made in Bahasa Indonesia?

According to the wording of Law No. 24 of 2009, at the latest 24 months after the law had been enacted, implementation guidelines should have been promulgated. However until today, no such guidelines have been enacted.

Meanwhile the West Jakarta District Court (*PT Bangun Karya Pratama Lestari v Nine AM Ltd* (Decision No. 451/Pdt.G/2012/PN.Jkt.Bar) had for the first time the opportunity to address the scope of the law and its application.



The West Jakarta District Court held that all contracts that are not drafted in the national language, are invalid.

This decision was criticized in many international publications and some authors assumed that the West Jakarta District Court decision would be reversed on appeal. However this expectation was not fulfilled and the decision of the Indonesian Court of Appeals („High Court“) has now been published (No. 48/Pdt/2014/PT.Dkl):

The Indonesian High Court has confirmed the West Jakarta District Court’s decision without any amendments. It should be further noted that also the High Court decision can be appealed to the Indonesian Supreme Court. But in view of the most recent developments in Indonesia (termination of bilateral investment treaties; new introduction of investment restrictions for foreign investors in several economic areas) it does not seem very likely that the High Court decision will be reversed.

In view of these developments, in order to avoid having invalid and unenforceable contracts in Indonesia, foreign investors in Indonesia should:

- Draft any new agreements (also) in Bahasa Indonesia. This also applies to General Terms and Conditions of Trade that are often published on a company’s website. (A quick internet research revealed that a significant number of international companies doing business in Indonesia publish their General Terms for Indonesia only in English.)
- All contracts that have been entered into in Indonesia since July 2009 should be executed again in Bahasa Indonesia to avoid their invalidity.

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