



RESPONDEK & FAN

LEGAL E-BULLETIN

VOLUME 9

04/12/2013



Dear Reader,

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
Dr Andreas Respondek
Managing Director

Important Indonesian Court Decision: Contract Requirements

We had summarized the gist and implications of Indonesia's "*National Language, Flag, Coat of Arms and Anthem Act 2009*" ("the Act") in Respondek & Fan's previous E-Bulletin dated 11.01.2010 (<http://www.rflegal.com/images/publications>). **Art. 31 (1)** of the Act continues to be of special interest to foreign investors and stipulates in its relevant part as follows:

"Bahasa Indonesia shall be used in a memorandum of understanding or agreement to which one of the parties is a state institution, Republic of Indonesia government institution, Indonesian private entity or Indonesian citizen."

Due to the continued lack of official implementation guidance (Presidential Regulations required under Art. 40 of the Act) from Indonesian authorities and courts with regard to the application of the Act in practice, the scope of the law and Art. 31 (1) remains cloudy.

The West Jakarta District Court had now for the first time the opportunity to deal with the requirements of the Act in a decision rendered on 20.06.2013.

The Court held (*PT Bangun Karya Pratama Lestari vs Nine AM Ltd (No. 451/Pdt.G/20/2012/PN.Jkt Bar.)*) that a loan agreement between an Indonesian Borrower and a non-Indonesian lender that was only drafted in English, was invalid due to a violation of Art. 31 (1) of the Act. The Court interpreted Art. 31 (1) of the Act in such a way that it required every contract to be concluded in Indonesia to be drafted in Bahasa Indonesia. In essence the Court held that any contract to be concluded in Indonesia after 09 July 2009 is only valid, if it is drafted in Bahasa Indonesia. Failure to execute a contract in Indonesia in Bahasa Indonesia renders the contract void ab initio.

The West Jakarta District Court's decision has been appealed. In this respect, legal scholars and practitioners are currently debating the merits of the decision of the West Jakarta Court and whether other Indonesian Courts would follow the decision or not, as Indonesia is a Civil law and not a Common Law country. This discussion has no doubt academic value, but on a day-to-day basis it would seem foolhardy to ignore the decision of the West Jakarta Court.

SINGAPORE Office

1 North Bridge Road
#16-03 High Street Centre
Singapore 179094

Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office

323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500

Tel: +66-2-635-5498 Fax: +66-2-635-5499



RESPONDEK & FAN

LEGAL E-BULLETIN

VOLUME 9

04/12/2013

Our Recommendation:

Several years could pass until the final appeal judgment is rendered and it remains to be seen what the final appeal judgment will ultimately say. Until clarification through the appeal regarding the interpretation of Art. 31 (1) of the Act has been obtained, it seems advisable for foreign investors to execute all agreements in Indonesia (also) in Bahasa Indonesia.

SINGAPORE Office

1 North Bridge Road
#16-03 High Street Centre
Singapore 179094

Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office

323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500

Tel: +66-2-635-5498 Fax: +66-2-635-5499