The Validity of The Absence of An Indonesian Translation in International Business Contracts

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Abstract.
An agreement is a legal act between two or more parties who bind themselves to one another. Indonesian law requires agreements to be drafted in the Indonesian language, as stipulated in Law Number 24 of 2009 and Law Number 2 of 2014. However, Supreme Court Circular Letter (SEMA) Number 3 of 2023 states that the absence of the Indonesian language in an agreement shall not automatically render the agreement null and void, creating a potential conflict with the contractual validity requirement of a lawful cause. This study aims to analyze the legal implications of agreements drafted without an Indonesian-language version in light of SEMA Number 3 of 2023. The research serves for the preparation of a Master of Notarial Law thesis at Sebelas Maret University, providing deeper insight and understanding of the legal issues involved. Using a normative legal research method with statutory and conceptual approaches, this study concludes that the absence of the Indonesian language in agreements may result in nullity by operation of law, violates Article 31 of Law Number 24 of 2009 and Article 43 of Law Number 2 of 2014, which explicitly mandate the use of Indonesian. Such violations affect the objective validity requirement of a lawful cause. This normative inconsistency has broader implications for Indonesia's economic stability, as legal certainty supports economic growth. The obligation to use the Indonesian language is reinforced by Article 7 of Law Number 12 of 2011 concerning the hierarchy of laws, applying the principle of lex superior derogat legi inferiori.

Keywords: *Validity; Agreement and SEMA Number 3 of 2023.*

I. INTRODUCTION

According to Article 1313 of the Indonesian Civil Code (KUHPer), an agreement is a legal act in which one or more persons bind themselves to one another within a legal relationship. Within the Indonesian legal system, two types of agreements are recognized: private agreements and authentic agreements.[1] A private agreement is one intentionally made by the parties concerned to bind themselves without the involvement of an authorized public official. In contrast, an authentic agreement is drafted by the parties and executed before an authorized official, namely a notary.[2] The regulation concerning the use of the Indonesian language in agreements is explicitly set out in Article 31 paragraph (1) of Law Number 24 of 2009 on the National Flag, Language, State Emblem, and National Anthem. The provision requires the use of the Indonesian language in all forms of agreements involving state institutions, government agencies, Indonesian private entities, or Indonesian citizens.[3] This requirement aims to strengthen national identity and ensure that all parties involved have a consistent understanding of the contents of the agreement. Moreover, the obligation to use the Indonesian language serves as a safeguard for parties who may have insufficient proficiency in foreign languages.[4] In practice, the mandatory use of the Indonesian language in agreements often presents challenges, particularly when the agreement involves foreign parties. Globalization in the business sector has made the use of foreign languages, especially English—which is widely regarded as the universal language of commerce—a common practice in international transactions. In cross-border agreements, the parties typically choose a foreign language.

However, the absence of an Indonesian-language version may create issues regarding the validity

and enforceability of the agreement in Indonesia. This challenge arises from the tension between preserving national linguistic sovereignty and accommodating the need for flexibility in international business relations.[5] The use of the Indonesian language in agreements is also regulated under Law Number 30 of 2004 on the Office of the Notary (UUJN). Article 43 expressly requires notaries to use the Indonesian language or provide its translation when preparing deeds involving Indonesian citizens or legal entities. This provision aligns with Article 31(1) of Law Number 24 of 2009, which mandates the use of Indonesian in all agreements to ensure clarity, readability, and the avoidance of misinterpretation. Furthermore, notaries are responsible for ensuring that the agreements they prepare fulfill the essential validity requirements, namely mutual consent, legal capacity, a clear object, and a lawful purpose. In practice, when a deed is not prepared in Indonesian, the notary is required to attach an official translation produced by a sworn translator.[6] In 2023, a new regulation relating to the use of the Indonesian language in agreements that choose Indonesian law emerged. Supreme Court Circular Letter Number 3 of 2023 concerning the Implementation of the Formulations of the Plenary Meeting of the Chambers of the Supreme Court as Guidelines for Judicial Duties (SEMA No. 3 of 2023) introduces a new perspective on language use in business contracts in Indonesia. In the legal formulation adopted by the civil chamber, it is stated that an agreement made with a foreign party in a foreign language without an accompanying Indonesian translation is not automatically void solely due to the absence of such translation.

Nullification is only possible if one party can prove bad faith relating to the contents of the agreement.[7] This provision offers greater flexibility for international business actors. However, on the other hand, it may create imbalances within contractual relationships. Without a translation, parties who do not understand the foreign language may face difficulties in comprehending their rights and obligations. This situation presents challenges in law enforcement, particularly when disputes arise involving contracts drafted in different languages. Furthermore, SEMA Number 3 of 2023 is considered to conflict or overlap with Article 31(1) of Law Number 24 of 2009, which mandates the use of the Indonesian language in agreements. This inconsistency has the potential to create legal uncertainty, especially in determining the enforceability of agreements before the courts. Therefore, regulatory harmonization is necessary so that business actors and legal practitioners can fulfill their obligations clearly and minimize the risk of disputes.The issuance of SEMA Number 3 of 2023 has created an overlap in the regulation of the use of the Indonesian language in agreements. Accordingly, this research focuses on the normative conflict between SEMA Number 3 of 2023 and Article 31(1) of Law Number 24 of 2009 concerning the mandatory use of the Indonesian language in agreements. This lack of synchronization leads to uncertainty regarding the validity and binding force of agreements that do not include an official Indonesian translation, particularly in contracts involving foreign parties.[8] Considering aspects of legality and good faith, this study examines the legal consequences of the absence of translation within the context of international business. It is expected that this research will contribute to the development of legal scholarship and serve as a reference for practitioners and policymakers in formulating regulations that harmonize national interests with business practices. Therefore, this journal is entitled "**THE VALIDITY OF THE ABSENCE OF INDONESIAN-LANGUAGE TRANSLATION IN INTERNATIONAL BUSINESS AGREEMENTS**".

II. METHODS

This research employs a normative legal research method aimed at examining regulations related to the validity of agreements that do not use the Indonesian language. This study is prescriptive in nature, meaning that it does not merely describe legal norms but also provides solutions to the legal issues encountered. The research utilizes two approaches: the statutory approach and the conceptual approach. In addition, this study relies on primary legal materials, including legislation and official records or minutes related to the drafting of laws and regulations, such as Law Number 24 of 2009 on the National Flag, Language, State Emblem, and National Anthem; Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of the Notary; Presidential Regulation Number 63 of 2019 on the Use of the Indonesian Language; the Indonesian Civil Code; and Supreme Court Circular Letter Number 23 of 2023 concerning the Implementation of the Formulations of the Plenary Meeting of the Chambers of the Supreme

Court of 2023. Secondary legal materials consist of books, journals, and expert opinions relevant to the issues examined, supported by tertiary legal materials sourced from online information. Tertiary legal materials used in this study include legal dictionaries, encyclopedias, and legal directories, which serve as additional references to strengthen the understanding of legal concepts and terminology applied in the analysisditerapkan.

III. RESULT AND DISCUSSION

A. The Absence of the Indonesian Language in International Business Agreements Under Indonesian Contract Law

Agreements constitute an essential part of human life and are present in various daily activities. From birth to death, individuals are continuously involved in legal acts related to agreements. Under Indonesian contract law, agreements may be made either in written or oral form, involving at least two or more parties who mutually consent to the terms and legal consequences. Even where the agreement appears unequal, it remains valid and legally binding so long as it is entered into voluntarily by all parties. In addition to understanding its contents, it is also important to recognize the nature and characteristics of the agreement.[9] According to Article 1233 of the Indonesian Civil Code, obligations arise from agreements between parties or from statutory provisions. An agreement always involves at least two parties, whether individuals or legal entities, who consent to terms that produce legal consequences for all parties involved. In drafting agreements, legal principles play a vital role. These principles guide the formulation, implementation, and enforcement of agreements.[10] Particularly in international agreements, the principles of freedom of contract and good faith must be upheld to ensure that agreements are executed fairly and that the parties' objectives are achieved.[11]

Civil agreements involving foreign parties are regulated in Law Number 24 of 2009 and UUJN-P. Law Number 24 of 2009 applies to:

1. To strengthen the unity and integrity of the nation and the Unitary State of the Republic of Indonesia.
2. To uphold the honor and sovereignty of the nation and the state.
3. To establish order, legal certainty, and standardization in the use of the national flag, language, emblem, and anthem

In agreements between Indonesian citizens or legal entities and foreign parties, English is typically used, as it serves as the international language of business. Pursuant to Articles 31 and 3 of Law Number 24 of 2009, official documents must be drafted in Indonesian, although foreign languages may be used as a supplementary reference. This requirement aims to provide legal certainty for all parties involved. International agreements are also required to include an Indonesian-language translation, and a language choice clause is used to designate the contract's language to ensure that all parties clearly understand the terms and to reduce the risk of disputes. The term "mandatory" in Article 31(1) of Law Number 24 of 2009 emphasizes that the parties must comply with the use of Indonesian. This provision is imperative to protect the legal interests of Indonesian citizens and to affirm the Indonesian language as a symbol of national unity and sovereignty.[12]

The use of Indonesian is also regulated under Article 43 of the Law on the Position of Notaries (UUJN), which requires a notary to prepare a deed of agreement in Indonesian. If the parties do not understand Indonesian, the notary or a certified translator must provide an official translation. Nonetheless, Article 43(3) of the amended UUJN allows the notarial deed (whether minuta, copy, excerpt, or grosse) to be drafted in a foreign language if requested by the parties present. However, this provision may conflict with Article 43(6) of the amended UUJN, which stipulates that in case of differing interpretations of a deed's contents, the Indonesian-language version shall prevail. Therefore, it is more appropriate for notarial deeds (minuta, copy, or excerpt) to be drafted in Indonesian from the outset.[13]

The validity of agreements in Indonesia is governed by Article 1320 of the Indonesian Civil Code, which stipulates four requirements as follows

1. **Mutual consent of the parties;**
2. **Legal capacity of the parties;**
3. **A definite object (subject matter of the agreement);**
4. **A lawful cause (legitimate purpose).**

Violation of the essential validity requirements of an agreement results in nullity by operation of law, and the agreement may be annulled. Such annulment occurs when the agreement breaches the subjective validity requirements, namely mutual consent and the legal capacity of the parties involved in forming the agreement.[14] An agreement is considered null and void by operation of law if it violates the objective validity requirements, which include a definite object and a lawful cause. Accordingly, if an agreement is not drafted in the Indonesian language, it constitutes a violation of the amended UUJN and Law Number 24 of 2009. In relation to the essential validity requirements, an agreement that does not use the Indonesian language is legally null and void by operation of law because it breaches one of the objective validity requirements, namely the requirement of a lawful cause.

B. The Impact of the Conflict Between SEMA Number 3 of 2023 and Law Number 24 of 2009 on Legal Certainty in International Business Agreements in Indonesia

The overlap of regulations has significant consequences for the socio-economic conditions of society, particularly for legal subjects intending to enter into agreements with foreign parties, due to the lack of legal certainty in the formation process. According to Hans Kelsen's theory of legal certainty, certainty can only be achieved if the legal system is structured hierarchically, where lower-level norms derive their validity from higher-level norms, thereby creating a consistent and non-contradictory legal order. In the realm of legal application, the Stufenbau theory emphasizes that every norm, whether constitutional or statutory, must be aligned and grounded in a basic norm (Grundnorm).[15] This principle is accommodated in Article 7 of Law Number 12 of 2011, which regulates the hierarchy of laws and regulations in Indonesia.[16]

The Supreme Court Circular Letter (SEMA) was first issued based on Article 12(3) of Law Number 1 of 1950 concerning the Structure, Powers, and Procedures of the Supreme Court of Indonesia. This provision stipulates that:

a. The Supreme Court has the authority to supervise the conduct and performance of lower courts, including judges, as part of the exercise of its supervisory functions; and

b. In carrying out this authority, the Supreme Court may issue warnings, reprimands, or directives deemed important and beneficial for judges and judicial institutions, either in the form of separate letters or through circular letters.

Another legal basis supporting the issuance of SEMA is Article 79, along with its explanation, of Law Number 14 of 1985 concerning the Supreme Court. This provision remains in force as it has not been amended in Law Number 5 of 2004 or Law Number 3 of 2009. Article 79 grants the Supreme Court the authority to further regulate matters necessary for the smooth administration of justice, including aspects that are not adequately addressed in legislation. The explanation of Article 79 emphasizes that if there are deficiencies, gaps, or legal uncertainties in judicial practice, the Supreme Court may issue supplementary regulations to resolve such issues.SEMA serves as an instrument intended for the internal judicial environment. Its target subjects include court chiefs, judges, registrars, and other structural officials within the judiciary. This character aligns with the nature of policy rules, which are specifically designed to regulate internal aspects of an institution. Accordingly, judges, court chiefs, registrars, and other court officials are positioned as administrative officers required to comply with the administrative provisions established by the Supreme Court. On this basis, SEMA can be categorized as a policy rule (*beleidsregels*).[17] Hierarchically, SEMA occupies a position below statutory law because it functions as an internal regulation and does not hold equal status with formal legislation. In the legal system, norms are structured in layers, where lower-level norms must comply with and not contradict higher-level norms, ultimately reaching the basic norm at the top of the hierarchy.

Bagir Manan explains that positive law constitutes a set of principles and rules, both written and

unwritten, that are currently in force, binding, and enforced by or through governmental and judicial institutions in Indonesia.[18] The issuance of SEMA Number 3 of 2023 can be analyzed from the perspective of progressive legal theory, which views law as a tool to enhance human welfare and adaptively respond to social changes. The substance of this SEMA essentially provides flexibility in the implementation of transactions. Rather than declaring an agreement invalid solely for not using the Indonesian language, SEMA Number 3 of 2023 progressively accommodates global business practices by allowing the use of other foreign languages, provided that the validity of the agreement is determined based on the "substance of the agreement itself." According to CNBC data, at least 25,919 foreign companies operate in Indonesia. By recognizing this reality, the language flexibility permitted under SEMA is projected to facilitate cross-border business activities and ultimately accelerate economic growth. In this context, progressive legal theory holds that law should not act as a barrier but rather serve as a catalyst for economic development.

IV. CONCLUSION

1. If an agreement involves foreign legal subjects and Indonesian legal subjects, or between foreign parties that choose Indonesian law as the choice of law, and the agreement does not include the Indonesian language, the agreement must be drafted in Indonesian as stipulated in Articles 31(1) and (2) of Law Number 24 of 2009. Non-compliance with this requirement renders the agreement contrary to the validity requirements of an agreement under Article 1320 of the Indonesian Civil Code. Since the use of the Indonesian language constitutes part of fulfilling the lawful object of the agreement, its absence causes the agreement to be null and void by operation of law.

2. The conflict between SEMA Number 3 of 2023 and Law Number 24 of 2009 creates legal uncertainty in the enforcement of agreements involving foreign legal subjects, including in the execution of international business agreements. According to SEMA Number 3 of 2023, the absence of the Indonesian language or its translation does not automatically render an agreement void, provided there is no evidence of bad faith on the part of the parties. This provision clearly contradicts several court decisions in Indonesia, which consistently hold that international business agreements without the use of the Indonesian language or without an official translation are considered null and void by operation of law.

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