Ratio Decidendi of Judges' Decisions on The Use of Foreign Language Agreements in Indonesia

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Abstract

This research examines the legal issues surrounding agreements made in foreign languages without an accompanying Indonesian version, specifically regarding the judges' legal considerations in canceling such agreements and the resulting legal consequences. The study uses a normative juridical method with statutory and case approaches. Primary legal materials were derived from relevant laws and judicial decisions, while secondary materials were obtained from literature studies, analyzed using grammatical interpretation. The study reveals inconsistencies in judicial interpretation. In Decision No. 3395 K/Pdt/2019, the court ruled that an agreement not using Indonesian was *null and void*. Conversely, in Decision No. 1124 K/Pdt/2020, the court considered a similar agreement *valid and binding*, despite the absence of an Indonesian translation. This discrepancy reflects a lack of uniformity in upholding the mandatory use of Indonesian as regulated by Article 43(1) of Law No. 2 of 2014 on Notary Position. The article mandates that deeds involving foreign parties must be in Indonesian or accompanied by an Indonesian translation. Violations of this requirement constitute breaches of imperative legal norms, rendering the agreement void. The research aims to promote legal awareness on the mandatory use of Indonesian in agreements and to highlight the need for consistent judicial interpretation to uphold legal certainty.

Keywords: Ratio Decidendi; Agreement; Legal Effect; Legal Interpretation; Contract Law.

Introduction

Indonesian as the official language of the state language must be used in accordance with the rules, orderly, careful, and reasonable (Utama, 2020) . This statement is emphasized in Article 36 of the 1945 Constitution of the Republic of Indonesia which states, "The State Language is Indonesian. " As a continuation, regulations regarding the use of Indonesian are regulated in Law Number 24 of 2009 concerning Flags, Language, and State Emblems, as well as National Songs. Then in the context of agreements made in Indonesia, it refers to paragraph 1 of Article 43 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Offices, namely "Deeds are made in Indonesian" (Kosasih, 2019).

In comparative law practice, many countries impose mandatory use of the national language in contracts valid within their jurisdiction. For example, in France and China, every domestic business contract must be written in the country's official language. This policy is not a mere formality, but is designed to protect citizens and ensure contractual fairness through a widely understood language (Brutti, 2022) . Indonesia has also adopted a similar approach through Article 31 of Law No. 24 of 2009.

This shows the importance of using Bahasa Indonesia in various official documents, including notarial deeds, to ensure legal compliance and clarity in communication. In addition, the use of appropriate language also contributes to to ensure legal safeguarding for all entities engaged in the contractual arrangement (Sidik et al., 2021) . The use of Bahasa Indonesia in accordance with applicable rules also facilitates better understanding between the parties involved, thereby reducing the risk of disputes.

However, in addition to the obligation to use the Indonesian language, on the facts of the trial there were 2 (two) different determinations pertinent to the employment of the Indonesian language within the context of the agreement. As in the decision of case Number 3395 K / Pdt / 2019 the judge decided that the agreement between PT Jasa Angkasa Semesta, Tbk. and PT Gatari Air Services in the agreement which used only foreign language was "null and void", while in the same case in the decision of case Number 1124K / Pdt / 2020 the judge

decided that the agreement between PT Dunia Retail Indonesia and PT Mulia Intipelang, in which the agreement was only made using foreign language, was still "valid and binding". So, in this case, due to the difference in the results of the judge's decision, it creates legal uncertainty for every party who will make a contract in Indonesia, especially for foreign parties. This makes a legal certainty of an agreement made in a foreign language only in Indonesia as an agreement that is "null and void" or an agreement that is "valid and binding".

There have been studies on similar themes that have examined similar research, because this research is not something entirely new. However, this research has a different focus compared to previous studies. In research by Lia Salsiah (2022), agreements that are not accompanied by the Indonesian version are contrary to Law No.24 of 2009 concerning Flags, Languages, and State Emblems, as well as National Songs (Salsiah et al., 2022) . Similarly, in research by Annisa Nurulita Rachma (2022), the use of foreign languages in the agreement is not expressly prohibited but still must use Indonesian as the main language in the agreement (Rachma, 2022). Likewise, research by Widi Nugrahaningsih and Marginingsih (2022), agreements made in the presence of a background that is contrary to the Law in the sense that they are made in English only, then they can be said to be canceled or not allowed(Nugrahaningsih & Marginingsih, 2022). Similarly, in research by Michael Tunggono and Sri Harini Dwiyatmi (2024), an agreement must basically be in accordance with existing regulations in order to ensure compliance with the legal stipulations set forth in the agreement which can result in the agreement being canceled (Tunggono & Dwiyatmi, 2024). Similarly, in research by Ni Made Ayu Pasek Dwilaksmi (2020), agreements that do not use the Indonesian language are a prohibited cause (Pasek Dwilaksmi, 2020).

Compared to previous research, this research has a differentiating element that focuses on what is the reason for the judge so that there are differences in handling cases of canceling agreements that use foreign languages without copies Indonesian and how legal certainty for parties to contracts or agreements using foreign languages. In this case, it is necessary to conduct an in-depth analysis to find out the differences and the basis for judges in deciding cases, with the aim of

uniformity of decisions. This research contributes to making people aware of the importance of using Indonesian in an agreement so that later they can avoid the existence of an agreement dispute and this research is expected to be a reference in providing juridical considerations for law enforcers, especially judges in examining, adjudicating and deciding similar cases.

Research Method

The type of research used in this research is normative research. Normative research is research that discusses doctrines or principles in legal science(Ali, 2019) . This research examines the judge's consideration in deciding an agreement that uses a foreign language in Indonesia and its legal certainty. Based on the object of research, the approach used in this research is a statutory approach, which is an approach that focuses on analyzing legislation such as Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Positions and a case approach that aims to analyze related to the judge's consideration in making a decision on decision Number 3395 K / Pdt / 2019 and decision Number 1124K / Pdt / 2020. The categorization and origins of legal materials in normative research encompass primary legal materials that comprise statutes and regulations, such as Law Number 2 of 2014, which pertains to amendments of Law Number 30 of 2004 regarding Notary Positions, in addition to secondary legal materials that include scholarly books, academic publications, and both national and international journals pertinent to the research theme. The legal materials utilized in this investigation were acquired through comprehensive library research. To address the research inquiries, this study employs the methodology of legal interpretation. The process of interpreting legal regulations constitutes an attempt to ascertain the significance of the legal provisions, to distill their meanings or to extract and elucidate them within the context of legal texts or legal significance (Marzuki, 2017). This investigation is centered on grammatical legal interpretation. Grammatical interpretation serves to elucidate the implications of the object by way of interpreting the law, thereby examining the significance of terms or phrases that

are relevant to the necessity of employing the Indonesian language within a contractual agreement.

Results and Discussions

Judges' Considerations in Decisions on the Use of Foreign Language Agreements in Indonesia

This subsection will discuss the issue of the use of foreign language in agreements in Indonesia and its legal implications for the validity of agreements under positive law. The main focus is given to the differences in court decisions related to foreign language agreements and the ratio decidendi of judges in interpreting them.

In Indonesian law, the validity of an agreement is regulated in Article 1320 of the Civil Code, which stipulates four main requirements, namely: an agreement between the parties, legal capacity to enter into an agreement, a clear object of agreement, and a lawful cause. These four elements are divided into two categories, namely subjective conditions and objective conditions. Subjective requirements include the agreement and capability of the parties as legal subjects, while objective requirements include the clarity of the object of the agreement as well as the legality or lawfulness of the cause of the agreement. If the subjective conditions are not met, the agreement is voidable at the request of the injured party. Conversely, if the objective conditions are not met, the agreement is null and void, meaning that it is considered never to have existed in the first place because it does not meet the basic legal provisions (Subekti, Various Agreement Laws, 2014) . In civil law systems, such as that of France, a stringent approach is adopted regarding the use of the national language in legal documents, including contracts executed within the jurisdiction of the state.

In France, the requirement to use the French language in commercial contracts is strictly governed by the Loi Toubon (Law No. 94-665 of August 4, 1994 on the Use of the French Language). Article 2 of the law mandates the use of French in employment contracts, technical documents, and all legal documents involving French parties. This obligation is mandatory in nature, and

non-compliance may result in the contract being void, or at the very least, unenforceable against the French party particularly where the French party does not comprehend the foreign language used in the contract. The French courts consistently enforce this provision to uphold legal certainty and to protect the rights of French nationals. In certain circumstances, non-compliance may result in the contract being declared null and void. The provision is intended to safeguard the interests of French citizens from potential harm arising from unfamiliarity with contractual terms drafted in a foreign language, and to uphold the supremacy of national law (Brutti, 2022). This approach aligns with Article 31 paragraph (1) of Law No. 24 of 2009 in Indonesia, which likewise emphasizes the use of Bahasa Indonesia as an expression of national language sovereignty**.**

In addition to material validity, Indonesian law also emphasizes formal validity, namely the fulfillment of procedural and administrative aspects so that the agreement is legally valid. This includes the form of the agreement (written/oral), the requirement for a notarial deed in certain agreements, the utilization of linguistic constructs in compliance with statutory regulations (Yolandini & Apriandi, 2022). According to Article 43 of Law No. 2/2014 on Notary Position, the deed must be made in Indonesian. Non-compliance with this provision can cause the deed to lose its status as an authentic deed and is not legally valid (Akbar & Cahyono, 2021).

Language is an important aspect of formal validity. Law No. 24/2009 it is imperative to utilize the Indonesian language in contractual agreements that involve parties from Indonesia. The aim is to protect national interests and prevent misinterpretation between parties (Rajagukguk, 2023). Agreements that only use a foreign language without an Indonesian version risk being considered formally invalid, especially if one of the parties claims ignorance of the contents of the agreement (Puspita, 2023) . Therefore, the selection of the right language is an integral part of the legal procedures that determine the validity of an agreement so as to avoid a dispute in the agreement.

The term ‘lawful cause’ refers to the valid reason for an agreement, as stipulated in Article 1337 of the Civil Code. Causes that are contrary to law or public order make the agreement null and void.

As for cases of violation of the obligation to use Indonesian in agreements recorded in the Directory of Decisions of the Supreme Court of the Republic of Indonesia, such as cases handled by the Supreme Court with case number 3395 K/Pdt/2019, in the decision the litigant was PT Jasa Angkasa Semesta, Tbk. against PT Gatari Air Services.

Based on legal considerations, the panel of judges decided that the Standard Ground Handling Agreement (SGHA) agreement that was not in Indonesian was a prohibited agreement on the grounds that the SGHA agreement had violated the Legislation, namely the provisions of Article 31 of Law Number 24 of 2009 concerning Flags, Language, and State Emblems and National Songs so as to make it null and void, the decision was contained in decision Number 617/Pdt.G/2017/PN.Jkt.Sel, which was later strengthened by decision Number 408/Pdt/2018/PT.DKI and decision Number 3395 K/Pdt/2019.

The results of the above decision are inversely proportional to the decision of Case Number 1124K/Pdt/2020, in which the litigant was PT Dunia Retail Indonesia against PT Mulia Intipelang. In his decision, the judge considered that the lease agreement between the two made in a foreign language and there was no Indonesian copy remained valid and binding on the grounds that the agreement had been agreed upon when signing and PT Dunia Retail Indonesia had bad faith in its lawsuit.

As a country that adopts a legal codification approach, positive law, especially laws, is the main basis for judges in enforcing Indonesian law. The court has the duty to conduct legal discovery (rechtsvinding) when a statutory regulation is ambiguous or unable to regulate a particular situation, and one way to do this is through interpretation (Setiawati, 2021). As in the decision of the Panel of Judges in deciding case Number 3395 K / Pdt / 2019 which states that the Standard Ground Handling Agreement (SGHA) dated April 1, 2011, an agreement between PT Jasa Angkasa Semesta, Tbk, with PT Gatari Air Services to be null and void is appropriate because the Standard Ground Handling Agreement (SGHA), (simplified procedure), Number .../JAS-GATARI AIR/III/2011, Between PT GATARI AIR SERVICE and PT JASA ANGKASA SEMESTA, Tbk, dated April 1, 2011, that the SGHA is only made

in English only, this is evidenced by the absence of translation in Indonesian, so that the agreement is contrary to Law Number 24 of 2009 concerning Flags, Language and State Emblem and National Anthem, in the provisions of Article 31 paragraph (1), which requires the Indonesian language to be used in every agreement, therefore agreements that do not use the Indonesian language are null and void because they are made with forbidden causes (Article 1335 and Article 1337 of the Civil Code).

Meanwhile, there is a jurisprudence that decides different things in the case of canceling a contract that is not in Indonesian, namely in the decision Number 1124K/Pdt/2020. In this case, PT Dunia Retail Indonesia filed a lawsuit for the cancellation of the Lease Agreement made in one language only, namely English between PT Dunia Retail Indonesia and PT Mulia Intipelang on the grounds that the contract was invalid because it violated Article 31 paragraph (1) of Law Number 24 of 2009 so that it did not meet the valid requirements of the contract, namely a halal cause. In his verdict, the judge rejected PT Dunia Retail Indonesia's lawsuit because it was proven to file for annulment with an identified default. Thus, the judge stated that the Lease Agreement and Lease Conditions made using only one language, namely English, between PT Dunia Retail Indonesia and PT Mulia Intipelang remained valid and binding.

In addition to the formal aspects of the validity of a contract, in the context of the Indonesian legal system which upholds the principles of legality and legal certainty, the judge's consideration of the validity of contracts using foreign languages is not only limited to the linguistic side. Judges are also required to assess the integrity of the contract formation process, including the parties' intentions, good faith, and substantive justice to be achieved (Aditya, 2023). In the doctrine of contract law, it is known that not all administrative violations cause the agreement to be null and void, but the impact on the substance of the agreement and the legal protection of the parties involved must be seen.

In the context of the ratio decidendi in Supreme Court Decision Number 3395 K/Pdt/2019, the enforcement of Indonesian positive legal norms is the main foundation. The judge stated that a contract that is only made in a foreign language not only violates administrative procedures, but also damages the

essence of the legality of the contract because it does not comply with the mandatory provisions as stipulated in Article 31 of Law Number 24 Year 2009. Therefore, the argumentation built by the judge shows the enforcement of imperative norms as a form of national legal sovereignty, so that deviation from the norm is considered a violation of the objective terms of the contract and automatically makes the agreement null and void (Puspita Sari & Mara Ditta Caesar Purwanto, 2024). This also emphasizes the position of the norm of the use of Indonesian as a mandatory provision, not just a moral or administrative recommendation.

In contrast, in Supreme Court Decision Number 1124K/Pdt/2020, the judge positioned the language violation not as a substantive error affecting the validity of the contract, but rather as a technical issue. This consideration arose from the fact that there was no real loss suffered by the defendant and that the plaintiff had substantially breached the agreement. Thus, the judge's approach tended to be oriented towards legal efficiency and the protection of the contractual trust that had been established between the parties. This decision has the potential to open a new discourse space that linguistic aspects in agreements only become an issue if it is proven to cause significant harmful misinterpretation (Halim, 2003).

The inconsistency between the two decisions reflects the different interpretations of the imperative value of Article 31 of Law Number 24 Year 2009. Decision 3395 K/Pdt/2019 views a violation of the norm as sufficient reason to declare the contract null and void, while decision 1124K/Pdt/2020 considers that the contract remains valid as long as there is no evidence of harm or malicious intent from either party. This difference creates juridical problems regarding legal consistency that have a direct impact on legal certainty and the protection of the rights of Indonesian legal subjects in cross-language contracts.

The strengthening of the ratio decidendi argument of the decision declaring null and void is also based on the legal principle that laws and regulations must be obeyed without exception. In the principle of lex superior derogat legi inferiori, the provisions in the law have a higher position than the agreement between the parties. Therefore, the principle of freedom of contract cannot be

used as a basis to override imperative legal norms (Kesuma & Mahmudah, 2015). Article 1320 of the Civil Code mentions the legal requirements of an agreement, and when one of the objective conditions is not met, the logical legal consequence is null and void.

However, in judicial practice, a more lenient approach as in Decision Number 1124K/Pdt/2020 is considered relevant to the legal proportionality approach that takes into account the real consequences of the violation. The judge in this case did not only look at the formality of the contract, but also paid attention to the principles of justice, good faith, and stability of legal relations between business actors. In this decision, the plaintiff was considered to have filed a lawsuit with the intention of avoiding contractual obligations that had been agreed upon and carried out. Therefore, the judge's approach emphasized the principle of equity and did not immediately impose the cancellation of a contract that had been executed without prior objection.

Despite this, the decision in the case of PT Dunia Retail Indonesia is still considered inappropriate because it overrides the imperative norms of Article 1320 paragraph (4) and Article 1337 of the Civil Code and Indonesian language must be used in agreements involving Indonesian legal subjects in accordance with Article 31 of Law No. 24 of 2009 and Article 43 of the Notary Position Law.

The different views in court decisions in cases of foreign language contract annulment reflect legal uncertainty regarding the obligation to use Indonesian in contracts. The essence of the difference is whether the use of Indonesian in contracts is optional or mandatory, because it has not been explained the legal consequences of its violation. This is shown by the absence of articles regulating the legal consequences in Law Number 24 of 2009, Presidential Regulation No.63 of 2019 concerning the Use of Indonesian Language. Because in essence, a law that provides orders or consequences for violations of the law, then the law will function as protection.

As a point of comparison, civil law jurisdictions demonstrate a similar tendency to treat the use of the national language in contracts as a non-negotiable legal norm. To understand how other legal systems address comparable issues, it

is essential to examine the approach taken by civil law countries such as France. In France, the law explicitly requires that contracts involving domestic parties be drafted in the French language, as stipulated under the Loi Toubon. A breach of this requirement may render the contract unenforceable against the French party.

Responding to legal uncertainty related to the obligation to use Indonesian in the contract is optional or mandatory, then by interpreting the word "mandatory" in Article 31 paragraph (1) is mandatory rules, meaning that the word "mandatory" indicates that the agreement by the parties to the agreement must use Indonesian because the provisions of the law are legal obligations based on the law (mandatory rules), without having to wait for the implementing regulations (Suyudi & Budi, 2022) , because the law already has a validity after being promulgated in the state gazette, the parties to the agreement are legal subjects who must comply with the provisions of the law. Budi, 2022) , because the law already has a validity after being promulgated in the state gazette, the parties who make the agreement are legal subjects who must comply with the provisions of the law, the principle of freedom of contract in the agreement is ruled out when dealing with mandatory rules. The use of Indonesian language as required in Article 31 paragraph (1) is the sovereignty and honor of the state in the field of language, as mandated in the 1945 Constitution, therefore it must be implemented.

This issue is evident in the two types of contract nullification reflected in the differing ratio decidendi of Supreme Court Decision No. 3395 K/Pdt/2019 and Decision No. 1124K/Pdt/2020. In the former, the court regarded the violation of language requirements as a substantive breach of positive law, thereby rendering the contract null and void. In contrast, in the latter decision, the court treated the language violation as an administrative irregularity that caused no actual harm and did not affect the substantive agreement between the parties; thus, the contract was deemed valid and binding.

To avoid legal problems due to the use of foreign languages in the agreement, the most appropriate solution and in accordance with the provisions of the legislation is to prepare the agreement first in Indonesian as the main

version, then accompanied by an official translation into a foreign language if it involves foreign parties. This bilingual agreement format not only fulfills the provisions of Article 31 paragraphs (1) and (2) of Law No. 24 Year 2009, but is also in line with Article 43 of the Notary Position Law which requires translations in foreign language deeds. Thus, all parties involved can understand the contents of the agreement equally, while fulfilling the formal and substantive elements in the formation of a valid agreement. In practice, the Indonesian version should be declared as the legally binding version if there are differences in interpretation between the two language versions. This provides legal certainty, as it clarifies the rules of the game used to interpret the contents of the contract in the event of a dispute. Legal certainty in this context means that there is clarity and legal protection for the parties regarding the validity and enforceability of the contract made, as well as minimizing the risk of contract cancellation at a later date due to formal defects.

Legal Effects of Foreign Language Agreements in Indonesia

Importing used clothing commodities from abroad is an illegal act. However, preventing the distribution of illegal thrift products is not easy. High consumer demand, the significant economic value of Trade, and weak law enforcement make thrifting activities challenging to overcome. Apart from consumers' right to freely choose the products they will consume, one of the Indonesian government's efforts to overcome this is an express prohibition on business actors importing used clothing. Not only used branded or branded clothing but all types and brands of used clothing without exception. The number of government actions against imported used clothing has increased from 165 actions with a confiscated value of IDR 17.42 billion in 2021 to 220 actions with a confiscated value of IDR 23.91 billion in 2022. The details of the prosecution carried out by the Directorate General of Customs and Excise in 2022 show that there were 220 prosecutions in several channels of used imported clothing. These channels are through passengers (89 cases), general imports (38 cases), goods/postal shipments (83 cases), free trade zones (7 cases), and bonded

zones (3 cases). Most prosecutions related to used imported clothing are held in the Batam General Service Office (KPU) area (Immanuel and Johannes 2024).

This subsection will discuss the legal consequences of foreign language agreements in Indonesia, particularly in relation to the obligation to use Indonesian in contracts under Article 31 of Law No. 24/2009. The lack of strict sanctions against this violation has led to legal uncertainty.

To understand the legal consequences of agreements that use foreign languages, it is necessary to refer to Article 1337 of the Civil Code which states that a cause is considered prohibited if it is contrary to law, decency, or public order. This is closely related to Article 1320 of the Civil Code regarding the legal requirements of an agreement: "a cause is forbidden, if it is prohibited by law, or if it is contrary to good morals or public order"

The legal consequences of an agreement as stated in Article 1337 of the Civil Code are related to the validity of an agreement in Article 1320 of the Civil Code paragraph (4) which states: "A cause that is not prohibited" which is an objective requirement.

Objective conditions mean that if these conditions are not met in an agreement, the agreement is considered null and void. An agreement that is null and void is an agreement that was invalid from the start, so it is considered that it never existed and the situation will return like a beginner (H.Sidik, 2008). It can be concluded that Article 1320 with 1337 has a strong correlation in determining the validity of an agreement.

Agreements made involving at least one of them is a party from Indonesia, whether a state institution, institution, legal entity or individual legal subject must use the Indonesian language (Auliya Yasyfa Anwar and Togi Marolop Pradana Pangaribuan, 2021). In order for the parties to obtain legal certainty, the deed must still be made in Indonesian even if it involves parties from other countries who speak foreign languages. However, a mutually agreed foreign language version may be included. This standard clause is a formal requirement of the deed of agreement (Septiara & Utomo, 2024) . If this clause is violated, the deed can be declared null and void or only has evidentiary power as a deed under hand. Therefore, a deed of agreement made in a foreign language without

Indonesian translation is not permitted if at least one of the parties is an Indonesian legal subject (Cahyadi et al., 2024) . Standard Ground Handling Agreement (SGHA) dated April 1, 2011 made and signed between PT Jasa Angkasa Semesta, Tbk. and PT Gatari Air Services in English became the subject matter of the cancellation of the agreement made in a foreign language without translation into Indonesian. The South Jakarta District Court has considered this case and has given a decision in Number 617/Pdt.G/2017/PN.Jkt.Sel. This decision was later upheld by Number 408/Pdt/2018/PT.DKI and Number 3395 K/Pdt/2019.

The Supreme Court in its decision rejected the cassation appeal from PT Jasa Angkasa Semesta, Tbk for the following reasons:

That the Agreement agreed between the two parties, namely the Standard Ground Handling Agreement (SGHA) was made in English and there was no translation into Indonesian, whereas the provisions of Article 31 paragraph (1) of Law Number 24 of 2009 concerning Flags, Language and Coat of Arms and National Anthem states: "The 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"; That in the case a quo the Plaintiff and Defendant are companies established under Indonesian Law, therefore the Agreement made and agreed should/should use the Indonesian language as stipulated in Law Number 24 of 2009; That because the Standard Ground Handling Agreement (SGHA) is contrary to the Law, then the agreement is an agreement made with forbidden causes (Articles 1335 and 1337 of the Civil Code), such an agreement is null and void and invalid.

According to the judge's consideration, although Article 1338 of the Civil Code provides legal standing for the will of the parties and freedom of contract, the making of an agreement in a foreign language while the company is both established under Indonesian Law, then it is declared as a prohibited cause and contrary to law so that it does not fulfill the provisions regarding the terms of the agreement as stipulated in Article 1320 of the Civil Code. So every agreement involving Indonesian legal subjects, especially when made by a Notary, must pay

attention to the provisions of laws and regulations regarding how to make it so that the agreement is legally binding and has legal force according to Indonesian law (Irawan Aprian et al., 2024).

In this case, it should also be emphasized that there is a relevant principle of international law, namely the principle of lex loci contractus, which states that the contract is subject to the law of the country where the contract is made. When a contract is made in the jurisdiction of Indonesia, it must be subject to Indonesian national law, including the linguistic provisions in the agreement (Laitupa et al., 2022). This is to ensure that the contract is not only admissible in Indonesian courts, but also has maximum evidentiary power in the event of a dispute. This provision is reinforced by the existence of Article 43 of the Notary Position Law, which states that deeds made in Indonesia by notaries must be prepared in Indonesian, so that they are binding and can be used as valid and perfect evidence.

Furthermore, the practice of avoiding the use of Bahasa Indonesia in contracts has the potential to open loopholes for legal exploitation, especially in unequal contractual relationships between local and foreign entities. The absence of the Bahasa Indonesia version puts local parties at a disadvantage, especially if disputes arise involving the interpretation of contractual articles. Therefore, the imposition of the use of Bahasa Indonesia is actually a form of state affirmation in protecting domestic parties and strengthening the position of national law in international transactions carried out in the territory of Indonesian jurisdiction (E. Rajagukguk, 2005).

Furthermore, the provisions of Article 1337 of the Civil Code do not only address the prohibition against unlawful contract content, but also include violations of formal legal provisions. In other words, Indonesian law views formal aspects such as language as part of the non-negotiable objective requirements. Thus, contracts that violate these formal provisions must be placed in a position as a contract that is null and void. This understanding is reinforced by the theory of legal norm qualification which distinguishes between regulative and constitutive provisions. The Indonesian language provision in the contract is a

constitutive norm that determines the validity of the agreement itself (Sidharta, 2000).

In addition, in some notarial practices, there is also a non-uniform application regarding the preparation of deeds in foreign languages. Some notaries continue to make deeds even though they are only in English without including an official translation in Indonesian. This occurs due to ambiguity in the interpretation of regulations, especially regarding the phrase "shall" which is sometimes perceived as a suggestion. Therefore, in the future, an active role is needed from professional organizations such as the Indonesian Notary Association (INI) and the Directorate General of General Legal Administration to provide more detailed technical guidelines on the use of language in making deeds as well as administrative sanctions against notaries who violate these provisions (Nurhilmiyah, 2022).

Finally, it is important to emphasize that while there are currently no explicit criminal or administrative sanctions set out in Law No. 24/2009 for violations of Article 31, the legal consequences in the civil sphere remain significant. If a judge decides that an agreement is null and void because it does not use Bahasa Indonesia, then the consequence is that no legal rights and obligations arise from the agreement. Thus, the agreement is considered to have never existed (null and void ab initio), and all obligations arising from it become invalid. This interpretation is important as a form of protection for the integrity of the national legal system and encourages interested parties to comply with legal provisions as a whole.

As long as the law does not specify otherwise, the deed can be made in a language that can be understood by the interested parties and witnesses, in accordance with Article 43 paragraph 4 of Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning Notary Position. Thus, the determination of the deed language depends on the expressed will of the parties. The intention of the parties is the basic principle underlying every contract or agreement. Nonetheless, Article 43 paragraph 5 mandates that the Notary translates the deed into Indonesian if the deed is executed in a foreign language in accordance with the intention of the parties as referred to in

paragraph (4) (Nugrahaningsih, 2022) . The Deed of Agreement made in a foreign language by a Notary is authorized to bind the parties because the provisions contained in Article 43 of Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Office of Notary are in accordance with the provisions of Law Number 24 of 2009.

Unlike agreements signed by a person that are exclusively regulated by Law No. 24 of 2009, agreements signed by a person must use Indonesian or, in the case of foreign parties, must use Indonesian and other languages. As a result, agreements formulated in a foreign language constitute a violation of legal regulations. Similarly, although an agreement notarized by a notary or registered by a notary signed by a person in a foreign language is legally binding for the parties, the agreement has no evidentiary power (Yuhelson et al., 2020).

A deed under hand is a legal document signed by the parties only, without the assistance of a civil servant. An underhand deed has the same legal force as an authentic deed in terms of the binding nature of the parties; consequently, if the agreement is executed in accordance with the provisions of the law, which means it does not violate the law, then in accordance with Article 1338 of the Civil Code, the agreement is considered valid and obligatory for the parties who signed it, making the agreement irrevocable, unless terminated by mutual consent of both parties or based on legally established reasons (Yuhelson et al., 2020). Regarding the evidentiary authority of an underhand deed, as articulated by Subekti, an underhand deed is defined as any instrument made without the mediation of a public official, and its evidentiary capacity can have the equivalent of an authentic deed (argumentum per analogiam) provided that the signatories of the agreement do not dispute their signatures, indicating an acknowledgment of the truth of the content written in the agreement. Conversely, if there is a dispute regarding the signature between the parties to the agreement, the party presenting the agreement bears the burden of proving the authenticity of the signature or the accuracy of the contents of the deed (Subekti, 2001).

Whereas an authentic deed has complete evidentiary authority, this is attributed to its formulation by an official endowed with the necessary authorization. The term “perfect” in this context signifies that the deed is capable

of proving its own authenticity, can attest to the truth of the facts documented by the public official, and is recognized as valid and truthful among the contracting parties, their heirs, and the beneficiaries of their rights. An authentic certificate, when presented before a court, is considered sufficient for the presiding judge, eliminating the need for additional evidence (Safira et al., 2024).

Despite the formation of Agreements or contracts in Indonesia being anchored on the principle of freedom of contract, this does not imply that the formulation of such agreements or contracts can be implemented without constraints in accordance with the wishes of the parties involved. The legal framework governing Agreements in Indonesia, as illustrated in the aforementioned context regarding the inherent freedom of the Agreement, continues to illustrate the parameters that must be adhered to in the drafting of such contracts in Indonesia. For example, Article 1320 of the Civil Code describes the legal prerequisites for a valid agreement, which include subjective and objective conditions. In the event of a breach of the subjective conditions as articulated in Article 1320, specifically the mutual consent of the parties to the agreement and the dual competence of those parties, a request for rescission may be filed, indicating that either party may request such rescission (Satrio, 1999). The agreement itself remains binding on both parties unless it is annulled (by a judicial authority) at the behest of the party entitled to request annulment (the incompetent party or the party who gave consent under duress), whereas a breach of the objective conditions, which pertain to certain legal justifications, may render the agreement null and void ab initio, implying that it is as if there had never been an agreement (Rakhman et al., 2021).

The use of foreign languages often gives rise to differences in interpretation among the parties involved, which consequently results in disputes between these entities, and in certain cases, escalates to judicial proceedings (Brutti, 2022) ; nonetheless, this reality does not prevent the general public from engaging in illicit arrangements articulated in foreign languages. This phenomenon is supported by the large number of individuals who sign agreements using a foreign language as the main mode of communication in the contracts they make.

For example, in the case of PT Jasa Angkasa Semesta, Tbk. vs PT Gatari Air Services, which related to the Standard Ground Handling Agreement (SGHA) dated April 1, 2011, the agreement was made and signed in English without an Indonesian version, which resulted in the agreement being canceled by the court.

When viewed from the perspective of the Notary Position Law, the existence of an agreement prepared only in a foreign language without an Indonesian version is a form of violation of imperative provisions in laws and regulations, especially Article 43 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. The article explicitly stipulates that the deed is made in the Indonesian language. If it is related to a foreign party, the deed may be made in a foreign language but must be accompanied by an Indonesian version. This provision is not facultative, but mandatory, as a form of legal protection for parties making agreements in Indonesian jurisdiction. If the deed is prepared only in a foreign language and does not fulfill this provision, then the deed legally loses its quality as an authentic deed and only has the evidentiary power as a deed under hand. As a result, the deed cannot be used as perfect evidence in the process of proof in court, and does not meet the formal requirements set by law (Adjie, 2009).

In practice, this is clearly seen in two cases that have risen to the cassation level, namely the case between PT Jasa Angkasa Semesta, Tbk. and PT Gatari Air Services, as well as the case between PT Dunia Retail Indonesia and PT Mulia Intipelang. Both agreements, respectively the Standard Ground Handling Agreement (SGHA) in 2011 and the Lease Agreement in 2014, were made entirely in English, without an official version in Indonesian. Although both parties in each case are Indonesian legal entities, the courts in both cases determined the validity of the agreements with different considerations. However, the highlight was the case of PT Dunia Retail Indonesia and PT Mulia, where the court still validated the agreement between the two. As such, this approach potentially contradicts the principle of legal certainty and the principle of legality, given that the court overrode the applicability of the imperative norm in the law that clearly requires the use of the Indonesian language. Such an agreement should not only be viewed as an administrative violation, but as a

violation of the objective terms of the agreement, as it relates directly to the form and procedure prescribed by law.

Furthermore, if linked to Article 1320 of the Civil Code, non-compliance with objective requirements causes the agreement to be null and void ab initio. In this context, non-compliance with the obligation to use the Indonesian language is not just a technical shortcoming, but a form of violation of the legal framework underlying the validity of an agreement. This shows that the language requirement is an integral part of the fundamental formal validity.

Based on the number of existing cases, there are still no laws or regulations that explicitly mention sanctions or consequences. Article 31 of Law of the Republic of Indonesia Number 24 Year 2009 (for agreements in general) or Article 43 of the Law on Amendments to the Notary Office Law (for notarial deeds) can still be categorized as violated, if the deed or agreement is not made in Indonesian. Normatively, if this is violated, there are no sanctions. Although it is not emphasized that there are sanctions, it can be reviewed from the validity of the agreement as a prohibited cause . When a judge gives a verdict and states that the agreement becomes null and void because it only uses a foreign language without being accompanied by an Indonesian version, the sanctions given by the judge are not in the form of criminal or administrative, but in the form of civil legal consequences, namely the agreement is considered to have never bound the parties from the start (null void and void ab initio) (Anggraeni & Moh. Saleh, 2024) . This means that no legal rights and obligations arise from the contract.

Based on Article 1 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary, there are several definitions and terms as follows: “Notary is a public official authorized to make authentic deeds and has additional authority as referred to in this Law or other related laws and regulations.” The definition is found in numbers 1, 7, 8, 9, and 10 (Sidik et al., 2021).

An original document made by or before a notary in accordance with the form and process prescribed in this law is known as a notarial deed, or simply “Akta”. As an important part of the Notary Protocol, the Minutes of Deed serves as an original record that includes the signatures of the parties, witnesses, and

notary. The words "given as a COPY OF THE SAME as read" are written at the end of the deed copy, which serves as an exact reproduction of the complete document. The words "given as a QUOTE" are recorded at the end of a deed excerpt, which is defined as a verbatim quotation of one or more parts of the deed. The Grosse Deed is characterized as one copy of the deed acknowledging the debt, starting with the title "DEMI KEADILY BASED ON THE KINGDOM OF THE Almighty" and endowed with the power of execution (Hariawan & Adjie, 2022).

Notarial deeds, minutes of deeds, copies of deeds, and excerpts of deeds must all be made in the Indonesian language in accordance with Article 43 of the Amendment to the UUJN and Law Number 24 of 2009, specifically paragraphs (1) and (2). The following are the provisions of Article 43 of the amended UUJN: (1) Acts must be performed in the Indonesian language. Paragraph (2) The notary is obligated to elucidate or clarify the substance of the deed in a language comprehensible to the individual present, should that individual lack proficiency in the language utilized within the deed. According to Paragraph (3), a deed may be made in English if the person making the deed is able to understand it. Paragraph (4) As mentioned in Paragraph (3), the notary is obliged to translate the deed into Indonesian. Paragraph (5) it is asserted that should the notary be incapable of elucidating or clarifying the deed, such elucidation or clarification shall be undertaken by an individual deemed responsible. Article (6) The document executed in the Indonesian language shall be utilized in instances where there exists a divergence of interpretation regarding the stipulations of the document referenced in paragraph (2). Of course, the person who appears before the notary to make the deed must not speak Indonesian and must only master one of the regional languages of the country; this can also be classified as not being able to speak Indonesian (Siep, 2022).

Although laws and regulations have explicitly required the use of Indonesian language in Notarial Deeds and their derivatives, in practice there is still room for different interpretations, especially when the deeds are bilingual or even only made in foreign languages. This opens up opportunities for differences in application that create legal uncertainty, especially when the deed is used as

evidence in the judicial process. In fact, the principle of legal certainty demands uniform treatment of deeds with the same status and function.

Therefore, it is imperative for the Supreme Court to issue interpretative guidelines or a Supreme Court Circular Letter (SEMA) that explicitly explains the legal consequences of notarial deeds that do not comply with the language provisions as stipulated in Article 43 of the Notary Public Office Law and Article 31 of Law 24 of 2009. With these guidelines, there will be consistency between law enforcement officials, notaries, and contracting parties in understanding the obligation to use the Indonesian language as a formal and essential aspect in the formation of a valid agreement.

Moreover, a revision or implementing regulation that explicitly regulates sanctions for violations of language provisions in notarial deeds is also needed. Provisions regarding the legal consequences of whether the deed becomes null and void, or only loses its evidentiary power as an authentic deed need to be clarified so as not to cause doubts in practice. The clarity of this norm is very important to maintain the credibility of notaries as public officials and ensure that the deeds they make can be relied upon as valid evidence.

Equally important is the need to increase awareness and guidance of notaries through periodic training and socialization initiated by professional organizations and related ministries. Effective implementation of legal rules does not only depend on normative formulations, but also on the understanding and awareness of legal practitioners in applying them. Thus, efforts to foster and supervise notaries in terms of compliance with the use of Indonesian language in every deed are very strategic to ensure that the principle of legality and strength of deeds is maintained in the national legal system.

Notarial deeds, deed minutes, deed copies, and deed citations must all be made in Indonesian in accordance with the normative provisions. Given that these documents are made in accordance with the formalities and processes outlined in the relevant regulations, the use of Indonesian in these documents is an important part of the formal qualities associated with notarial deeds. As such, notarial deeds, minutes of deeds, copies of deeds, or extracts of deeds that do not use the Indonesian language violate these formal criteria and are subject to

sanctions under Article 41 of the amended UUJN. (Suwardiyati & Rustam, 2024) . These violations, as referenced in Articles 38, 39, and 40, result in the document only having the evidentiary validity of an underhand deed. In addition, the necessity of the use of Indonesian language in these notarial documents can also be scrutinized under Article 1320 of the Civil Code, particularly with regard to the objective conditions of an agreement, specifically addressing the concept of forbidden cause. It is a widely recognized principle in contract law that any agreement that violates one of the essential objective conditions is considered void ab initio. As such, Notarial Deeds, Deed Minutes, Deed Copies, and Deed Excerpts executed without adherence to the Indonesian language are considered null and void, as they contravene one of the objective conditions, namely forbidden cause.

The provisions outlined in Article 1337 of the Civil Code explain that a cause is considered prohibited when it is prohibited by law or when it is contrary to public morality or social order. Notarial Deeds, Deed Minutes, Deed Copies, and Deed Extracts made without using the Indonesian language are clearly illegal acts because they violate the essential objective conditions prohibited in Article 1337 of the Civil Code (Sidik et al., 2021) . Compliance is required when the legal system requires a contract or agreement to be made in the Indonesian language, including Notarial Deeds, Deed Minutes, Deed Copies, and Deed Excerpts . This comes with the potential for invalidation in accordance with legal standards in the event of non-compliance.

Conclusion

The obligation to use Bahasa Indonesia in an agreement is regulated in Article 31 paragraph 1 of Law Number 24 of 2009 concerning Flags, Language, and State Emblems, and National Anthem. Then in the context of agreements made in Indonesia, it refers to paragraph 1 of Article 43 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Offices, namely “Deeds are made in Indonesian”. However, it has not been regulated regarding sanctions for violating the obligation to use the Indonesian language in the agreement so that the legal consequences are determined by the

judge in the relevant case decision. From the overall analysis, there are differences in legal considerations (Ratio Decidendi) by a judge in giving a decision regarding a violation of the obligation to use the Indonesian language in an agreement. The difference lies in the Supreme Court's decision in case number 3395 K/Pdt/2019 and case number 1124K/Pdt/2020. In order to create consistency of decisions and legal certainty, the legal consequences of violating the obligation to use the Indonesian language in the agreement are "null and void" because Article 31 paragraph (1) of Law No. 24 of 2009 states that agreements involving Indonesian parties must use the Indonesian language. This provision is a mandatory rule and is not optional

Seeing the tendency of jurisprudence that is still varied, it can be concluded that the direction of law formation in the future needs to emphasize a systemic approach that is not only fixated on the text of the law, but also considers the relationship between norms and the basic principles of treaty law. The absence of explicit sanctions in Law No. 24/2009 should not be interpreted as a free space for violations, but rather as a legal gap that requires legal discovery by judges through systematic interpretation. As a state of law, Indonesia needs to uphold the principle of consistency of law, where imperative norms must have the same applicability in all lines of legal practice. When there are two different decisions in cases with similar substance, guidance or permanent legal precedents are needed so that judicial practice has a consistent direction, and does not cause uncertainty for the public and business actors.

For future research, a more comprehensive analysis of the practice of judicial institutions at the District Court and High Court levels in various regions of Indonesia in handling similar cases is recommended, in order to obtain a comprehensive picture of the patterns of legal considerations that develop. In addition, empirical studies on the perceptions of notaries, business actors, and law enforcers regarding the implementation of the obligation to use the Indonesian language in contracts also need to be developed to determine the extent to which this norm is understood and applied in practice. Multidisciplinary research that combines legal and sociological approaches can

contribute more broadly in formulating solutions to the legal uncertainty created by this norm without explicit sanctions.

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Competing Interest

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