ALTA Insight

Foreign Language Contract

Post – Supreme Court Circular Letter No. 3 Year 2023 – A Better Clarity?

Supreme Court Circular Letter No. 3 Year 2023 on Implementation of 2023 Supreme Court Plenary Meeting Results Formulation as Implementing Guideline for the Courts ("**Circular Letter**") provides directions on various sectors including criminal procedures, civil matters, religious matters, military discipline, and state administration, aiming to ensure procedural clarity while protecting individual rights. The Circular Letter announced changes in various Supreme Court chambers, including rejecting unproven Judicial Review requests or convict applications in the Criminal Chamber, clarifying translation requirement in the Civil Chamber, refining legal formations in the Religious Chamber for divorce cases, explaining additional dismissal penalties in the Military Chamber, outlining requirements for bankruptcy statements in the State Administration Chamber, and elucidating task procedures in the Secretariat Chamber.

One of the interesting issues is the Circular Letter attempts to address the use of Bahasa Indonesia/Indonesian language translation as a counterpart of a contract in foreign language by stating [literal translation]:

> *"Indonesian private institution or Indonesian individual, entering into an agreement with foreign party in a foreign language without accompanying Indonesian translation, cannot be used as the basis to annul the agreement, except where it can be proven that the absence of the Indonesia translation was due to the bad faith of one of the parties."* [1]

The mandatory provision as set out in the ever-controversial Law No. 24 of 2009 ("**Language Law**"), particularly in its Article 31[2], regarding the use of Bahasa Indonesia primarily in contract with Indonesian entity or individuals, has been used as a ground for rendering an agreement "null and void" upon the court in many cases in the last decade. However, the court has not been making consistent decisions which leads to uncertainty. This Circular Letter gives light on the Supreme Court's position towards the interpretation of Article 31 of the Language Law as an institution, in hope that future decisions in regards of the absence of Bahasa Indonesia translation would be more predictable.

It should be noted, however, that the Circular Letter is persuasive at best. The Circular Letter issued as an internal document to be used as guidance to the court judges on how they rule/decide similar cases. It, theoretically, lacks the authoritative weight necessary to establish a binding legal rule or dictate new norms.

There are also a couple of issues which might need to be considered further i.e., (a) the lack of definition of the term "bad faith" – whether or not we could just conclude that it would be the opposite of the term "good faith" (as described in the Indonesian Civil Code). It is interesting to see how it would be implemented by the courts.

Furthermore, (b) the Circular Letter applies to contract entered into by Indonesian private institution or individual with foreign party and does not provide further clarity for contract entered into by Indonesian government or Indonesian state entity.

To conclude, the Circular Letter only functions as an internal guideline for judicial proceedings. Therefore, while the Circular Letter may offer valuable insights and suggestions, its impact remains contingent upon alignment with the existing legal frameworks and regulations. The current approach to provide the Bahasa Indonesia translation in contracts with foreign party and in foreign language, albeit conservative, should still be a safer route.

Contact Us

I. Fajar Ramadhan

Partner

fajar.ramadhan@altaadvocates.com

Agnes Galuh S.

Associate

agnes@altaadvocates.com

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[1] Original text:

Lembaga swasta Indonesia dan atau perseorangan Indonesia, yang mengadakan perjanjian dengan pihak asing dalam bahasa asing yang tidak disertai dengan terjemahan bahasa Indonesia tidak dapat dijadikan alasan pembatalan perjanjian, kecuali dapat dibuktikan bahwa ketiadaan terjemahan Bahasa Indonesia karena adanya iktikad tidak baik oleh salah satu pihak.

[2] Article 31 of the Language Law [literal translation]:

(1) The Indonesian language must be used in memorandum of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, private Indonesian institutions, or individual Indonesian citizens.

(2) Memorandum of understanding or agreements as referred to in paragraph (1) involving foreign parties shall also be written in the national language of the respective foreign party and/or English.