

## The Legal Position of Indonesian in Foreign Business Contracts

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**Abstract.** *This research evaluates the legal status of the Indonesian language in foreign business contracts in Indonesia, considering its crucial role in the validity and enforceability of agreements in the current era of globalization. Using a normative juridical approach and case studies, this study found that despite the legal obligation, the implementation of using the Indonesian language is often hindered by the understanding of foreign parties, which can lead to legal disputes. Therefore, clear guidelines and intensive socialization efforts are needed to ensure compliance with these regulations, in order to support more effective legal policies and practices in the field of international business.*

**Keywords:** *Business; Contracts; Foreign; Indonesia; Language.*

### 1. Introduction

In the era of advanced globalization and growing international economic integration, business interactions between countries have become more intensive. This is where foreign business contracts play a crucial role in regulating legal and business relationships between domestic and international companies. However, challenges arise when the use of language in such contracts raises various legal and practical issues.

In response to this challenge, Indonesia passed Law No. 24 of 2009 on the Flag, Language, and Coat of Arms, as well as the National Anthem which requires the use of Bahasa Indonesia in any agreement involving Indonesian parties. Article 31 of this law clearly states that Bahasa Indonesia must be used in contracts involving state institutions, government agencies, Indonesian private institutions, or Indonesian citizens. This provision has important implications for the legal validity of foreign business contracts made in Indonesia, adding complexity to

international business practices.<sup>1</sup>

The mandatory use of Bahasa Indonesia in foreign business contracts presents various challenges and legal questions that need to be addressed. First, can a foreign business contract that does not use Bahasa Indonesia be recognized as valid and binding in Indonesia? Second, how to resolve disputes if there are differences in interpretation between the Bahasa Indonesia and foreign language versions of a contract? Third, what is the role of notaries in ensuring compliance with this provision?

In addition, the use of Bahasa Indonesia in foreign business contracts also has implications for the foreign parties involved. They need to understand the substance of the contract in Bahasa Indonesia, which may give rise to the need for the services of an official translator and the potential risk of misunderstanding or mismatching interpretations.<sup>2</sup>

In the context of international civil law, the legal position of Bahasa Indonesia in foreign business contracts also relates to international legal principles such as freedom of contract and choice of law. The question that arises is whether this mandatory Bahasa Indonesia provision is in line with these principles and how is it applied in international business practice?

International contract law is essentially similar to domestic contracts, but involves foreign actors. Therefore, the law that binds the parties is not only based on their interests, but also involves the government's role in protecting citizens. In this context, the government not only operates in the public sector but also plays an important role in private law.<sup>3</sup>

This research aims to evaluate and analyze the legal position of Bahasa Indonesia in foreign business contracts in Indonesia. The study will identify and assess various legal issues that arise, as well as provide practical recommendations for parties involved in foreign business contracts in Indonesia. Thus, it is hoped that this study can contribute to the development of contract law in Indonesia and support the creation of a more conducive and harmonious business climate in the era of globalization.

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<sup>1</sup> Teng Berlianty, "Penguatan Eksistensi Bahasa Tana Dalam Upaya Perlindungan Hukum Bahasa Daerah Sebagai Warisan Budaya Bangsa," *Kertha Patrika* 40, No. 2 (August 31, 2018): P. 99, <https://doi.org/10.24843/kp.2018.v40.i02.p04>.

<sup>2</sup> Fuad Setiadi, Ahadi Sulissusiawan, and Firman Susilo, "PENGUNAAN BAHASA INDONESIA DALAM AKTA NOTARIS DI KOTA SINTANG," *Jurnal Pendidikan Dan Pembelajaran Khatulistiwa (JPPK)* 3, No. 3 (2014), <https://doi.org/10.26418/jppk.v3i3.4886>.

<sup>3</sup> Syahmin, (2011). *Hukum Kontrak Internasional*, Jakarta: Rajawali Pers

## 2. Research Methods

The research conducted in this journal is normative legal research, which seeks to identify and explain the problems that arise, then relate them to the applicable regulations. The approach used is the statute approach, which involves a thorough analysis of all laws and regulations relevant to the legal issues being discussed.<sup>4</sup>

## 3. Results and Discussion

### 3.1 Legal Framework for Language Use in Foreign Business Contracts in Indonesia

#### Law No. 24 of 2009 on the Flag, Language and Coat of Arms, and National Anthem

Law No. 24 of 2009 on the Flag, Language and Coat of Arms, and National Anthem has a very important influence on foreign business contracts in Indonesia. This law explicitly stipulates that Bahasa Indonesia must be used in any agreement involving parties from Indonesia, including in the context of international business contracts.<sup>5</sup> The aim is to establish Bahasa Indonesia as the official language of the country and to encourage its use in various aspects of social, cultural and economic life in Indonesia.<sup>6</sup>

Article 31 of the Law mandates that Bahasa Indonesia must be used in naming buildings, roads, apartments, offices, trading complexes, trademarks, business institutions, educational institutions, as well as organizations established or owned by Indonesian citizens or Indonesian legal entities. However, exceptions are permitted if the use of a regional or foreign language has significant historical, cultural, customary or religious value.

In the context of foreign business contracts, this obligation to use Bahasa Indonesia raises several implications that need to be considered. First, the legal validity of foreign contracts that do not comply with the Indonesian language requirement is a major concern. This may affect the validity of the contract before Indonesian law, as well as complicate the dispute resolution process in the event of differences in interpretation between the Bahasa Indonesia and foreign

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<sup>4</sup> Ahamad Rosidi, M Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Law and Government* 2, No. 1 (February 27, 2024): P. 46–46, <https://doi.org/10.31764/jlag.v2i1.21606>.

<sup>5</sup> Ifada Qurrata A'yun Amalia, "AKIBAT HUKUM PEMBATALAN PERJANJIAN DALAM PUTUSAN NOMOR 1572 K/PDT/2015 BERDASARKAN PASAL 1320 DAN 1338 KUH PERDATA," *Jurnal Hukum Bisnis Bonum Commune* 1, No. 1 (August 1, 2018): P. 61, <https://doi.org/10.30996/jhbbc.v0i0.1757>.

<sup>6</sup> Ghiska Fajari and Yosephine Fransisca Andriani, "ANALISIS TEORI PERJANJIAN DAN IMPLIKASINYA DALAM BISNIS MODERN," *Jurnal Inovasi Global* 1, No. 2 (December 1, 2023): P. 60–70, <https://doi.org/10.58344/jig.v1i2.10>.

language versions of the contract.<sup>7</sup>

Secondly, for foreign parties involved in business contracts in Indonesia, the use of Bahasa Indonesia requires them to have an adequate understanding of the language or rely on the services of an official translator. This not only affects the negotiation and contract drafting process, but also takes into account the additional costs that may be required for the services of an official translator, which can be an additional cost factor in business transactions.<sup>8</sup>

Third, the use of Bahasa Indonesia in foreign business contracts also reflects Indonesia's commitment to legal sovereignty and the use of the national language as the official means of communication at the international level. This is in line with the principles of international law that emphasize the importance of state sovereignty in regulating its own internal affairs.<sup>9</sup>

Overall, Law No. 24 of 2009 plays an important role in regulating the legal standing of Bahasa Indonesia in the context of foreign business contracts in Indonesia. While providing a clear legal foundation for the use of Bahasa Indonesia, it also raises a number of legal and practical challenges that need to be understood and addressed by parties involved in international business transactions in Indonesia.<sup>10</sup>

#### **Article 31 of Law No. 24 of 2009: Provisions for the Use of Indonesian in Foreign Business Contracts**

Article 31 paragraph (1) of Law No. 24 of 2009 on the Flag, Language, and Coat of Arms, and National Anthem states that Bahasa Indonesia must be used in any memorandum of understanding or agreement involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens. Meanwhile, Article 31 paragraph (2) emphasizes that such memorandum of understanding or agreement involving a foreign party must be written in the national language of the foreign party and/or in English.

This Article 31 regulates the obligation to use Bahasa Indonesia in all agreements involving Indonesian entities. The second paragraph explains that if a foreign party is involved, the agreement must also be available in the foreign party's

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<sup>7</sup> Aliya Sandra Dewi, "Perjanjian Berbahasa Asing Yang Dibuat Oleh Notaris Berdasarkan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris," *Jurnal Cita Hukum/Jurnal Cita Hukum* 1, No. 1 (April 4, 2013), <https://doi.org/10.15408/jch.v1i1.2922>.

<sup>8</sup> Sriyono Sriyono, "PENERJEMAHAN TEMA PADA TEKS HUKUM," *Adabiyāt* 13, No. 1 (June 1, 2014): P. 66–66, <https://doi.org/10.14421/ajbs.2014.13104>.

<sup>9</sup> Sophar Maru Hutagalung, (2013). *Kontrak Bisnis Di ASEAN: Pengaruh Sistem Hukum Common Law Dan Civil Law*. Rawamangun, Jakarta: Sinar Grafika

<sup>10</sup> Tatu Afifah, "Identitas Nasional Di Tinjau Dari Undang-Undang Dasar 1945 Dan Undang-Undang Nomor 24 Tahun 2009," *Ajudikasi: Jurnal Ilmu Hukum* 2, No. 2 (December 31, 2018): P. 187, <https://doi.org/10.30656/ajudikasi.v2i2.903>.

national language or English. The use of more than one language in these agreements can lead to the risk of different interpretations or meanings in the two versions of the agreement. For example, the words “to avoid” and “to prevent” are often considered synonyms when they have different meanings.

In the case of differences in interpretation, determining which treaty applies, the Indonesian version or the English version, becomes problematic. Therefore, Article 31 of Law No. 24 of 2009 on the Flag, Language and Coat of Arms of the State and the National Anthem shows the potential normative vagueness that may arise in its implementation.<sup>11</sup>

Article 31 of Law No. 24 of 2009 and Article 43 of Law No. 2 of 2014 stipulate that the use of Bahasa Indonesia is mandatory in notarial deeds as well as contracts or agreements involving the parties, as Bahasa Indonesia is the official language of the state and also the official language of the Indonesian people. The word "obligatory" in Article 31 indicates that this is an order that has a normative nature.

Normative legal principles create responsibilities for legal subjects in the form of commands or prohibitions. As a legal command, it is difficult to circumvent this obligation to use Bahasa Indonesia. If an agreement does not use Bahasa Indonesia, it tends to avoid the obligation. This obligation is a positive legal norm that regulates individual behavior by imposing sanctions on violating behavior. Thus, there are legal consequences that must be faced by the agreement.

Although there are no sanctions imposed if Bahasa Indonesia is not used, both Articles still have binding legal force. Formally, the regulations in the Civil Code in Book III state that an agreement must fulfill all legal requirements to be considered valid. The absence of Bahasa Indonesia in the agreement indicates non-compliance with the objective requirements of the agreement, especially in relation to the non-prohibited cause. Article 1337 of the Civil Code confirms that a cause is considered illicit if it violates the Law or is contrary to decency or public order (“JDIH Pemerintah Kota Yogyakarta,” 2024).<sup>12</sup>

By applying this provision, agreements that do not use Indonesian can be considered null and void because they violate the provisions of Article 31 paragraph (1) of Law No. 24 Of 2009.

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<sup>11</sup> Suryadi Suryadi and Triwati Rahayu, “Legal Interpretation of Terms, Phrases, and Clauses in the Notarial Deeds,” *Jurnal Hukum Novelty/Jurnal Hukum Novelty* 14, No. 2 (December 31, 2023), <https://doi.org/10.26555/novelty.v14i2.a25751>.

<sup>12</sup> Pemerintah Yogyakarta, “JDIH Pemerintah Kota Yogyakarta,” [Jogjakota.go.id](https://jdih.jogjakota.go.id/index.php/articles/read/48), 2024, <https://jdih.jogjakota.go.id/index.php/articles/read/48>.

### 3.2 Implications of the Use of Indonesian for Foreign Parties in Foreign Business Contracts

The implications of using Bahasa Indonesia for foreign parties in foreign business contracts involve several significant aspects. First of all, the use of Bahasa Indonesia requires the foreign party to have an adequate understanding of the language or to consider the involvement of an official translator. Bahasa Indonesia as the official language of the contract creates an additional responsibility for the foreign party to ensure that they properly understand the contents of the contract, including their rights and obligations.

The involvement of an official translator is also important, as it can affect the negotiation process, contract drafting and interpretation of agreed terms. The use of an official translator can minimize the risk of misunderstandings or interpretation discrepancies that may arise due to cultural and linguistic differences between foreign parties and local parties in Indonesia.<sup>13</sup>

In addition, in a legal context, the use of Bahasa Indonesia affects the legal validity of the contract. The foreign party needs to ensure that the Bahasa Indonesia version of the contract complies with the applicable legal provisions in Indonesia. There are legal questions that arise, such as whether the Bahasa Indonesia version has the same legal force as the foreign language version of the contract, and how dispute resolution will be regulated in the event of a difference in interpretation between these two versions.<sup>14</sup>

The use of Bahasa Indonesia may also affect the practical aspects of executing a business contract. The foreign party may need to incur additional costs for the services of an authorized translator or language consultant, which can be an additional cost factor in the overall business transaction. In addition, the process of using Bahasa Indonesia in foreign business contracts requires the foreign party to understand and comply with the requirements strictly governed by Indonesian law relating to the use of language in legal transactions.<sup>15</sup>

Overall, the use of Bahasa Indonesia in foreign business contracts carries significant implications for foreign parties, both in terms of legal understanding, practicalities and the additional costs involved. A thorough understanding and preparation in dealing with the use of Bahasa Indonesia in contracts can help foreign parties to minimize risks and ensure compliance with Indonesian laws and regulations.

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<sup>13</sup> Made Dita Widyantari, "Fungsi Dan Kedudukan Penerjemah Tersumpah Dalam Pembuatan Akta Notaris," *Acta Comitatus* 4, No. 1 (April 30, 2019): P. 34, <https://doi.org/10.24843/ac.2019.v04.i01.p04>.

<sup>14</sup> None Ni and Dewa gede, "Keabsahan Kontrak Secara Elektronik Sebagai Alat Pembuktian Di Tinjau Secara Hukum Perdata," *Jurnal Hukum Dan Sosial Politik* 1, No. 4 (August 16, 2023): P. 1–18, <https://doi.org/10.59581/jhsp-widyakarya.v1i4.1136>.

<sup>15</sup> Yolandini, W., & Apriandi, M. (2020). Lex LATA. Retrieved July 16, 2024, from journal.fh.unsri.ac.id website: <http://journal.fh.unsri.ac.id/index.php/LexS>, n.d.

#### 4. Conclusion

This research reveals that the legal position of Bahasa Indonesia in foreign business contracts in Indonesia has a significant impact. Law No. 24 Of 2009 which regulates the use of Bahasa Indonesia in contracts involving Indonesian parties, including state institutions, government agencies, and Indonesian citizens, establishes Bahasa Indonesia as the official language of the country. The aim is to ensure clarity and legal certainty in international business transactions in Indonesia. However, the use of Bahasa Indonesia in foreign business contracts also poses challenges. One of them is the potential for differences in interpretation or word meaning between the Bahasa Indonesia and foreign language, especially English, versions of the same contract. These differences can pose legal risks related to the interpretation and enforcement of the contract, as well as create uncertainty for the parties involved. From a civil law perspective, the provision of the use of Bahasa Indonesia in a contract is governed by the Civil Code which emphasizes that a contract must meet legal requirements, including the use of the official language of the country. The presence of Bahasa Indonesia in a contract is a legal requirement, and its absence can cause the contract to be declared null and void if it violates this provision.

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