TAMBA & KUMARA

LAW OFFICES

# Supreme Court Circular Letter No. 3 of 2023: Clarity upon the Language in the Memorandum of Understandings or Agreements involving Indonesian Party

On 29 December 2023, the Supreme Court of the Republic of Indonesia (*Mahkamah Agung Republik Indonesia* – "**MA**") has just enacted the Supreme Court Circular Letter No. 3 of 2023 on the Enforcement of 2023 Supreme Court Chamber Plenary Meeting Result Formulations as Guidelines for the Implementation of the Duties of the Court ("**MA Circular 3/2023**").

MA Circular Letter on chamber plenary meeting result formulations generally stipulates regarding legal formulations on the administrative and/or hearing of court proceedings based on the plenary meetings of each chamber within MA, that issued and/or provided in order to clarify certain doctrines or often argued provisions of laws. The said legal formulations are inseparable and should be applied as guidelines during the processing of court cases and administrative matters that fall under the jurisdiction of the MA, including the court of appeal and first level courts either Criminal, Civil, Administrative, Religious and Military chamber.

Among others, MA Circular Letter 3/2023 provides certain clarity and certainty on the often-argued provision and/or doctrine relating to the required Indonesian language as the validity of the agreement entered into by Indonesian party and/or entity.

## 1. Mandatory Indonesian-language Agreement Requirements

It is worth noting that pursuant to Article 31 (1) of Law No. 24 of 2009 on The Official Flag, Language and Emblem, as well as National Anthem ("**Law 24/2009**") and Article 26 (1) of Presidential Regulation No. 63 of 2019 on the Use of Indonesian Language ("**Perpres 63/2019**"), it is mandatory to use Indonesian language in any memorandum of understandings or agreements where one of the contracting party is Indonesian private entities or individuals, reads as follows [*Unofficial English Translation*]:

Article 31 (1) of Law 24/2009 and Article 26 (1) of Perpres 63/2019

> "*Indonesian languages **must be used** in a memorandum of understandings or agreement involving state agencies, government institutions of the Republic of Indonesia, Indonesian private agencies or individual Indonesian citizens."*

However, upon the enactment of the Law 24/2009, there have been several precedents as well as development, upon the interpretation of the said provision, especially on whether the unsatisfactory of the required Indonesian language would affect the validity of the agreement, especially be considered as the prohibited or non-admissible causes.

In that regard, the Supreme Court previously viewed that an absence of Indonesian-translated version of agreement is contrary to the language requirement provisions as stipulated under Article 31 (1) of Law 24/2009, as such the said agreement is made based on prohibited causes, as sought in the Supreme Court Landmark Decision No. 1572K/Pdt/2015 between PT Bangun Karya Pratama, as the Plaintiff and Nine AM Ltd., as the Respondent, reads as follows [*Unofficial English Translation*]:

> "*As a matter of fact, the Loan Agreement **was not made in Indonesian language**, which proves that the agreement made by the parties is contrary to the provisions of Article 31 paragraph (1) of Law No. 24 of 2009, as such the said a quo agreement/Loan Agreement is **an agreement made based on prohibited causes**, in accordance with the provisions*

> *of Article 1335 jo. Article 1337 of the Indonesian Civil Code, thus the agreement* ***shall be null and void****."*

According to Article 1337 of the ICC, the provisions of an agreement shall be deemed as a prohibited clause if such provisions is prohibited by law or if it is contrary to morality, good conduct, or public order. Nonetheless, according to the MA Legal Restatement on Explanation of the Law regarding Voidability of Agreements, in order to find out which provisions in the applicable laws and regulations that stipulates a coercive provision which shall not be deviated in any form and may result in legal consequences, **it is necessary to consider whether the formulation of the provisions explicitly stipulates the legal consequences in the event that such provisions is not fulfilled**.

In that regard, there is no any provision under the Law 24/2009 and/or Perpres 63/2019, in which stipulates the legal consequences in the event that the language requirement is not fulfilled. Due to the absence and multiple interpretation of the law provision, the newly issued MA Circular 3/2023 eventually provides clarity and certainty of the argued interpretation of the Law.

**2. Use of Mandatory Indonesian-language Agreement Requirements as the Justification for Agreement Nullification Through Courts**

Pursuant to Section B.1 of MA Circular 3/2023, Indonesian private entities or individuals that enter into agreements with foreign counterparts without an Indonesian-translated version of the agreement, **may not use such absence of Indonesian-translated version of the agreement as a justification to file an agreement nullification through courts**, reads as follows [*Unofficial English Translation*]:

Section B.1 of MA Circular 3/2023

> "*Indonesian private institutions and/or Indonesian individuals, who enter into an agreement with a foreign party in a foreign language which is* ***not accompanied by an Indonesian translation cannot be used as a justification for an agreement nullification****, unless it can be proven that the absence of an Indonesian translation is due to bad faith by one of the contracting parties."*

However, filing for an agreement nullification through courts with such justification may be permitted, if it can be proven that the absence of Indonesian-translated agreements is the result of a lack of good faith from one of the contracting parties.

In light of the above, in accordance with newly issued MA Circular 3/2023, the absence of Indonesian language would not be deemed as a prohibited or non-admissible cause, unless it is the result of a lack of good faith from one of the contracting parties.

**Remarks**

Based on the foregoing, we believe that the enactment of MA Circular 3/2023 would provide changes and development as well as a clearer guideline to the administration and hearing of cases in both criminal and civil court proceedings. Nevertheless, the enactment of MA Circular 3/2023 provides clarity for every private entity and/or individuals which is a party with an Indonesian counterpart in regards to the mandatory requirement for Indonesian language agreement and its use as the justification for an agreement cancellation through court.

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In the upcoming client update, we will strive to address these developments as well as the most recent developments from the Supreme Court Plenary Meetings. If you would like to discuss this with us, please contact us by email at info@tnklaw.id or phone at (021) - 2528636.

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