

## NEW IMPLEMENTING REGULATION ON LANGUAGE LAW: DOES IT CHANGE THE CURRENT PRACTICE?

The implementing regulation for Law No.24 of 2009 concerning Flags, Languages, Symbols and National Anthem ("**Language Law**") was finally issued through Presidential Regulation No.63 of 2019 concerning the Use of Bahasa Indonesia ("**Implementing Regulation**").

The Implementing Regulation affirms the requirement that agreements made with an Indonesian party must use the Indonesian language and that if a foreign party is involved, an English language version (or any other foreign language version) of an agreement can be agreed as the equivalent (*padanan*) or translation (*terjemahan*) of the Indonesian version in order to align or conform the understanding of the parties.

Further, the Implementing Regulation provides that if there is a different interpretation between the Indonesian version and the foreign language version, then the parties can agree on the governing language.

It has been the practice that in cross-border transactions, mainly due to time constraint, the parties would agree to first sign the foreign language version of the transaction documents which will then be followed by the signing of the Indonesian version within a certain period.

### SHOULD THIS CHANGE?

With the issuance of the Implementing Regulation, parties should err on the side of caution and sign a bilingual version of the transaction documents or have the foreign language and Indonesian versions signed at the same time. This would be the best approach.

However, the reality is that, in many cross-border transactions, where multiple parties are involved and the transaction is done under tight deadlines, it may not be possible to prepare and sign a bilingual version or the foreign language and Indonesian versions at the same time. In such circumstances, in our view, there is no prohibition to sign the foreign language version first and the Indonesian version later. However, a valid and enforceable contract from an Indonesian law perspective will only be achieved once the Indonesian version has also been signed. The parties can agree on the effective date of the agreement which means that the effective date of the valid and enforceable contract can be retroactive from the date of the foreign language version is signed.

During the period where only the foreign language version is signed, from an Indonesian law perspective, in our view, the foreign language version will serve as evidence of the intention of the parties which would need to be implemented in good faith.

With regards to agreements where all parties are Indonesian (which includes foreign investment (PMA) companies), there is no prohibition for an agreement to be signed in bilingual, however, our view is that the Indonesian language should be the governing language of the agreement.

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### TAKE-AWAYS

- Best approach is to sign a bilingual version or the foreign language and Indonesian versions of the agreement at the same time with an agreed governing language.
- There is no prohibition to sign the foreign language version first. However, from an Indonesian law perspective, a valid and enforceable agreement will be achieved once the Indonesian version is also signed.
- The foreign language version serves as evidence of the intention of the parties before the Indonesian version is signed. The intention of the parties will need to be implemented in good faith.

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