

New Language Regulation Requires Expats to Learn Indonesian but Leaves Contracts Alone

The government finally issued an ancillary / implementing regulation (Government Regulation 57/2014 - “the Regulation”) on 7 July 2014 to give effect to certain provisions of the National Language, Flag, Coat of Arms and Anthem Act of 2009 (“the Act”).ⁱ This Act was the focus of considerable controversy last year as a result of a judicial decision striking down a contract on the ground it was not executed in the Indonesian language (as discussed further below). While the Regulation focuses on the promotion and protection of the Indonesian language and literature and is silent on the question of contractual language, it does serve as a timely reminder that contracts involving Indonesian parties must be executed in Bahasa Indonesia (although versions in other languages are also permitted). In addition, it introduces a potentially significant requirement for expatriate workers in Indonesia to have a sufficient knowledge of the Indonesian language as to satisfy a standard to be set by the Minister of Education.

Contractual language issue

In June 2013, the West Jakarta District Court annulled a contract between an Indonesian borrower and a non-Indonesian lender on the ground that an Indonesian-language version of the agreement had not been executed, in contravention of Article 31(1) of the Act (see our Client Alert of 13 November 2013 -- <http://www.ahp.co.id/client-alert-13-november-2013>). The decision was subsequently upheld on appeal by the Jakarta High Court in a brief ruling handed down on 7 May 2014. Unfortunately, the High Court simply concurred with the court of first instance and failed to discuss the substantive legal issues involved (such as whether non-compliance should lead to annulment of the agreement or whether a non Indonesian-language version may prevail over the Indonesian version).

The West Jakarta District Court’s decision came despite the fact that the Act contains no sanctions for a breach of Article 31(1). While the decision came as a shock to some, in reality this should not have been the case as under Indonesian law a norm created by a statute is effective as of the time of the statute’s enactment. In this respect, the norm created by Article 31(1)ⁱⁱ is quite clear in imposing an obligation to execute an Indonesian version of any agreement to which an Indonesian entity or individual is a party. Given that the Regulation is silent on the matter, that remains the situation now: – *a contract to which an Indonesian natural or legal person is a party must be executed in the Indonesian language*. This is an imperative and, if breached, may be used as a ground to have the agreement annulled.

Tighter Indonesian Language Requirement for Expats

Article 20 of the Regulation provides that non-Indonesian nationals intending to work in Indonesia must possess a sufficient knowledge of the Indonesian language as to satisfy a standard prescribed by the Minister of Education (based on recommendations from the Language Promotion and Development Board / *Badan Pengembangan dan Pembinaan Bahasa*).

The Regulation is not the first to require some knowledge of the Indonesian language on the part of expatriate employees. This is also stipulated by Minister of Manpower and Transmigration Regulation No. 12 of 2013 and Minister of Energy and Mineral Resources Regulation No. 31 of 2013 (for the oil and gas industry). However, in both cases, the level of proficiency required is confined to “the ability to communicate in Bahasa Indonesia.” Obviously, this is highly subjective – what appears to be an ability to communicate to one person may be outright gibberish to another. We recently talked to an official of the Ministry of Manpower and Transmigration about the communication requirement and were informed that, in practice, expats are permitted to study Indonesian during their time working here. While there are no sanctions for an inability to communicate in Indonesian under Regulations 12 and 31, we were nevertheless informed that officials do visit places of employment from time to time to check whether or not expatriate employees are able to communicate in Indonesian. Given the absence of official sanctions, it is difficult to imagine what such visits could legitimately achieve.

Article 20 translates freely as “A foreign citizen who intends to work ... in Indonesia ... must have a level of proficiency in Indonesian that satisfies the prescribed standard”—clearly a stricter language requirement than under Regulations 12 and 31, as referred to above. This is because it will no longer be sufficient for expats to be able to simply communicate in Indonesian, they will also need to satisfy a standard of proficiency to be set by the Minister of Education. Accordingly, future developments in this regard will be worth keeping an eye on as this expanded language requirement has the clear potential to be used for protectionist purposes, i.e., to keep foreign manpower out of the Indonesian market on language grounds following the launch of the Asean Economic Community in 2015. Similar strategies have often been used in the past to circumvent the principle of free movement of labor in the European Union.

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- i. *Undang-undang No. 24/2009 tentang Bendera, Bahasa, dan Lambang Negara, serta Lagu Kebangsaan*
- ii. *A free translation of Article 31(1) reads as follows: “Bahasa Indonesia shall be used in a memorandum of understanding or agreement to which one of the parties is a state institution, Republic of Indonesia government institution, Indonesian private entity or Indonesian citizen.”*

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