

## Client Alert

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## Implementing Regulation on the Use of Indonesian Language Necessitates a New Approach for Commercial Agreements

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### Recent development in a nutshell

On 30 September this year, the President issued Presidential Regulation No. 63 of 2019 on the Use of Indonesian Language ("**PR 63**") as the implementing regulation of Law No. 24 of 2009 on National Flag, Language, Emblem and National Anthem ("**Law 24**").

Before the issuance of PR 63, the common practice to conform with Law 24 for agreements where a foreign party was involved was to (1) negotiate and execute the agreement in the national language of the foreign party ("**Foreign Language**") and/or English language, (2) prepare and execute the Indonesian language version shortly after but effective as of the date of the Foreign Language and/or English language version, and (3) have the Foreign Language and/or English language version effectively as the governing language version.

However, with the issuance of PR 63, that approach would need to be revisited. With the passage of PR 63, it is clear that for future transactions a bilingual format (or any other format the parties choose so long as there is a corresponding version in Indonesian language) is required. The regulation gives the rationale that the non-Indonesian language version is an equivalent or translation to ensure the common understanding of the parties to the agreement.

The stipulation on the use of English language and/or Foreign Language, as well as the ability to choose the governing language, applies only when there is a foreign party involved in the agreement. There is no further explanation of what kind of "involvement" of foreign parties is required to justify the use of another language under PR 63. PR 63 also does not define what is meant by "foreign parties (*pihak asing*)".

The regulation is silent on whether a bilingual form can still be prepared if the parties are all Indonesian entities. We take the view that in such case the parties can have a non-Indonesian language translation or a bilingual form agreement; however the governing language would need to be Indonesian language.

Like Law 24, PR 63 does not state any sanction for non-compliance, and therefore it would be subject to further interpretation or decision by the courts. Since it is mandatory under PR 63 to have an Indonesian version, there may be an argument that any infringement or non-compliance with this law would



constitute a breach, which may result in the agreement being declared null and void.

We will elaborate on some of the key points of PR 63 below.

## Official communications within the working environment

Affirming Law 24, it is mandatory under PR 63 to use Indonesian language in any official communications within the working environment of government institutions and the private sector. This would include written or verbal communication between employees and institutions or communication through electronic media. This would also include formal communication with foreign entities, for which an interpreter can be engaged to smoothen the communication.

PR 63 specifies further that official communications would include, among other things, consultation, advocacy, negotiation, meetings, discussion and correspondence. This would mean that official meetings, negotiations as well as correspondence would require the use of Indonesian language, and if there is a foreign party involved, an interpreter can be used.

It is not clear how this provision will be implemented in day-to-day business settings, especially in the case of meetings and negotiations. PR 63 also does not provide further guidance on the situation where there are discrepancies between the interpretations of the languages used in the official communication. A possible solution to be considered, at least for written correspondence, is to have all correspondence between Indonesian entities in Indonesian language, with a bilingual form to be prepared for correspondence with foreign entities.

## Memoranda of Understanding (“MOUs”) and Agreements

There are two possible scenarios under PR 63:

1. **Where the parties are all Indonesians**, in which case our view is that the MOUs and agreements would need to be executed in Indonesian language or in bilingual form or with a foreign language translation, provided that the governing language would need to be Indonesian language. Given that limited liability companies in Indonesia (“**PMAs**”) are in the form of Indonesian limited liability companies (PT), arguably they could fall under the category of Indonesian private entities, and as such could be assumed to understand Indonesian language and would be subject to the requirement.
2. **Where foreign parties are involved**, in which case our view is that the MOUs and agreements would need to be executed in bilingual form (consisting of the Foreign Language and/or the English language, and Indonesian language) or to have the Foreign Language version and/or English language version prepared at the time of execution, but the parties can agree on the governing language. We are of the view that a



local branch office of a foreign entity would fall under the category of a foreign party since legally the legal entity would be an offshore entity.

### ***All Indonesian Parties***

To elaborate on the first scenario, Article 26 (1) of PR 63 affirms Law 24, i.e., that in any MOUs and agreements involving an Indonesian party (i.e., an Indonesian government authority, an Indonesian private entity, and an Indonesian national) it is mandatory to use Indonesian language. The stipulation on the use of English language or the Foreign Language, as well as the ability to choose the governing language, only applies when there is a foreign party involved in the agreement. As mentioned above, the regulation is silent on whether a bilingual form or a foreign language translation can still be prepared if the parties are all Indonesian entities, especially if the Indonesian entities have non-Indonesian speaking management who are involved in the review or the negotiation process of the agreement, for instance in the case of PMAs. There is no explanation of what kind of "involvement" of foreign parties is meant under PR 63. It is unclear whether the involvement by way of shareholding by a foreign party or involvement by way of review and negotiation of the MOUs and agreements by a foreign party like in the case of PMAs could be deemed as an "involvement".

### ***Involvement of Foreign Parties***

For the second scenario, under Article 26 (3) of PR 63, the Foreign Language and/or English language version is only used as an equivalent or translation of the Indonesian language version to reconcile the understanding of the MOUs and agreements involving foreign parties. This provision gives rise to the question of when the Indonesian language version of the agreement needs to be executed.

The provision seems to imply that the Indonesian version would need to exist before the Foreign Language and/or the English language version exists. Therefore, the logical consequence would be that both versions need to be executed at the same time, or a bilingual form needs to be executed.

Furthermore, PR 63 expressly confirms that parties to an MOU and/or an agreement involving foreign parties are given the flexibility to agree on the governing language that would prevail if there are any inconsistencies between the language versions.

## **State official documents**

Consistent with Law 24, Article 4 of PR 63 requires the use of Indonesian language in state official documents. It is uncertain what kinds of documents fall under the category of state official documents. PR 63 provides a non-exhaustive list of what qualifies as a state official document, including certain agreements such as sale and purchase deeds (*akta jual beli*) and agreement letters (*surat perjanjian*). It remains to be seen whether certain agreements made in a notarial deed form could be deemed as state official documents.

It is worth noting that PR 63 states that Indonesian language must be the governing language of state official documents. A foreign language version of a state official document may be prepared only as a "companion" to state official documents that are valid internationally. In the event of different interpretations, the Indonesian language version must be used as the main reference.



## Other points worth noting

1. **The use of Indonesian language for buildings, trademarks etc.:**  
Aside from the above provisions, PR 63, affirming Law 24, requires the use of Indonesian language for, among other things, names of buildings, apartments and office spaces that are owned or established by an Indonesian national or Indonesian entity. PR 63 also requires the use of Indonesian language for trademarks that are owned by Indonesian nationals or Indonesian entities, except for foreign licensing trademarks.

We will be discussing the other implications further in a separate client alert.

2. **No transition period:** PR 63 does not provide a transition period, and therefore it became effective on the date it was enacted, i.e., 30 September 2019, though it appears the regulation was only made available to the public on 9 October. This would mean that all agreements that have been executed from 30 September onwards will be affected by this regulation. On a case-by-case basis, there might be a need to take certain actions to deal with that situation. We would be happy to discuss possible measures with you.

3. **Sanctions and supervision:** The regulation does not state any sanction for non-compliance, and therefore it would be subject to further interpretation or decisions by the courts.

PR 63 also mentions that the supervisory body of this regulation from the central government is the ministry responsible for education, but it does not specify whether it will be the responsibility of the Ministry of Education and Culture or the Ministry of Research, Technology and Higher Education. It also remains to be seen how strictly the authorities (from both the central as well as regional governments) will enforce the above requirements, and whether technical guidelines will be issued.



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