Indonesia’s so-called Language Law of 2009 requires the use of Indonesian language in all agreements to which Indonesian companies, Indonesian citizens or State/Government institutions are party. While not specified in the law, it is widely recognised that the Indonesian language requirement must be followed, even where the governing law is not Indonesian law. This applies to all Indonesian companies, even where the shares are 100 per cent foreign-owned.

This has led to agreements involving Indonesian parties being executed in Indonesian-English (dual-language) format.

The law does not specify the consequences of failure to execute agreements in the Indonesian language. As is typical with Indonesian laws, further details are to be contained in implementing regulations. To date, those implementing regulations have not been issued.

The West Jakarta District Court recently held that a loan agreement executed in English language only was invalid. The basic rationale for the decision was that an English-only agreement was in breach of the Language Law and, therefore, did not have a “legal cause” under the Civil Code.

Indonesia does not follow a system of judicial precedent and, therefore, the decision is not binding on other courts. The losing party has filed an appeal to the High Court. There is a further right of appeal from the High Court to the Supreme Court. Accordingly, it may be several years before Indonesia’s top court confirms its position on this issue.

While not a precedent, the West Jakarta District Court decision may indicate the direction which Indonesian courts will follow in interpretation of the Language Law. We continue to advise clients to execute agreements in bilingual format.

To the extent that this is not possible given time constraints, the agreement should include a provision which states that an Indonesian translation will be prepared and executed within a certain time period. We do not recommend that the time period be left open-ended, as this is ultimately an “agreement to agree”, which relies on the co-operation of the parties.

Given that an Indonesian translation is most likely to be required for the purposes of court enforcement in a dispute, one party could merely refuse to execute an Indonesian version, with the potential results that a court would decide along similar lines to the West Jakarta District Court.

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