

CHAPTER I

INTRODUCTION

1.1 Background

In business field, a contract or an agreement is an important component or element. In general, an agreement or contract is used to create and formulate a legal and valid relationship which consist the matters that have been agreed by the parties of the agreement itself. According to Salim, there are two function of agreement, juridical function and economical function.¹ The juridical function is to give a legal certainty to the parties and the economical function is to change the resources of utilization value to a higher value. Along with the globalization era, business field in Indonesia also developed rapidly.

Business in Indonesia is now not only carried out domestically but also carried out internationally. This international business relation, directly or indirectly, need a legal assurance and certainties with regards to its parties' rights and obligations which further formulated in a contract or an agreement. Then, this international relationship raise a language issues. Such issues are related to which language will be used in the agreement. In general, English language, as an international language, will be chosen as the language of the agreement. The agreement in this thesis will be in context of an agreement not made in Indonesian language which is executed by Indonesian party.

¹ Salim H.S., SH, MH. *Hukum Kontrak: Teori & Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2006), p. 45.

In 2009, the Government of Indonesia enacted the Law Number 24 Year 2009 concerning Flag, Language, State Symbol and National Anthem (“**Law No. 24 Year 2009**”) which one of its article stipulates the regulation concerning mandatory usage of Indonesian language for an agreement which involves Indonesian entities. In addition to the foregoing, the District Court of West Jakarta issued a decision No. 451/Pdt.g/2012/PN.Jkt.Bar dated 17 June 2013. The parties of this case are PT Bangun Karya Pratama Lestari as the plaintiff and Nine AM Ltd as the defendant. PT Bangun Karya Pratama Lestari is a company duly established under the law of Republic of Indonesia, having its domicile in West Jakarta, in which carrying out its main business activities in the area of rental of heavy equipment (“**PT BKPL**”). While, Nine Am Ltd is limited partnership company which duly incorporated under the law of Texas (“**Nine AM**”) (PT BKPL and Nine AM hereinafter collectively referred to as the “**Parties**”). The Parties had signed a Loan Agreement dated 23 April 2010 where PT BKPL received a loan in the amount of USD 4,422,000 (four million four hundred twenty two thousand United States Dollars) from Nine AM (“**Loan Agreement of 2010**”). The Loan Agreement of 2010 itself is made in English language because the one who prepared the Loan Agreement of 2010 is Nine AM, in which PT BKPL only need to sign the Loan Agreement of 2010. Notwithstanding of the foregoing, Section 18 of the Loan Agreement of 2010 contains a provision which states:

“This Agreement is governed by and shall be construed and interpreted in accordance with the laws of Republic of Indonesia. For this Agreement and all its consequences the Borrower chooses irrevocable and permanent

domicile at Registrar's Office of the District Court of West Jakarta (Kantor Panitera Pengadilan Negeri Jakarta Barat)".

This provision has made the Loan Agreement of 2010 as an agreement construed and regulated under the law of Republic of Indonesia.

PT BKPL then requested the court to revoke the Loan Agreement of 2010 or declare the Loan Agreement of 2010 as null and void based on the argument that the Loan Agreement of 2010 does not fulfill the formal requirements based on Article 1335 *juncto* Article 1337 of Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or "**KUH Perdata**") which states:

"Article 1335

Any agreement without a cause, or concluded pursuant to a fraudulent or prohibited cause, is not be enforceable";

"Article 1337

A cause is prohibited if it is prohibited by law, or if it violates morality or public order".

PT BKPL argues that the Loan Agreement of 2010 has violated Article 31 (1) of the Law No. 24 Year 2009 which states:

"Indonesian language shall be used in a memorandum of understanding or an agreement which involves State institutions, government agencies of Republic of Indonesia, Indonesian private institutions or individual Indonesian citizen";

and therefore, since the Loan Agreement of 2010 has violated such provision, the Loan Agreement of 2010 shall be declared as null and void because it does not fulfill the fourth element of contracts which requires a legal cause. Furthermore, PT BKPL also request to the court to revoke the Deed of the Loan Agreement 2010 on the Fiduciary Guarantee No. 33 dated 27 April 2010, made before Popie Savitri Martosuhardjo Pharmanto, SH, a notary at Jakarta, which a guarantee and

security to the Loan Agreement of 2010 (“**Deed of Fiduciary Guarantee No. 33/2010**”), as such deed is an *accessoir* agreement of such Loan Agreement 2010.

Nine AM then rebut that the argument of PT BKPL which states that such Loan Agreement of 2010 shall be revoked based on the reasoning of the Loan Agreement of 2010 is made in English, despite the stipulation of Law No. 24 Year 2009, is groundless since the Parties have already executed a loan agreement which was also made in English back then on 10 November 2008. Nine AM argued that the Loan Agreement of 2010 is a result of a discussion between both Parties with no objection on the process of the preparation until the execution date.

The court then granted the claim of PT BKPL to declare both the Loan Agreement of 2010 and the Deed of Fiduciary Guarantee No. 33/2010 as null and void with the consideration that the fourth element of an agreement according to Article 1320 of KUH Perdata is not fulfilled. The court declared that the Agreement has violated Article 31 (1) of the Law No. 24 Year 2009 *juncto* Article 1335 *juncto* Article 1337 of KUH Perdata, in which the Loan Agreement of 2010 involves an Indonesian private institution and the Loan Agreement of 2010 itself is made after the effective date of the enactment of the Law No. 24 Year 2009, which is 9 July 2009, therefore the Loan Agreement of 2010 between PT BKPL and Nine AM shall be executed in Indonesian language.

The decision of the District Court then strengthen by the Decision of High Court of Jakarta No. 48/PDT/2014/PT.DKI dated 12 February 2013 and further, the cassation submitted by Nine AM is rejected by the Supreme Court based on

the Decision of the Supreme Court No. 601 K/Pdt/2015 dated 31 August 2015. Therefore, the final decision of this case is that the Loan Agreement of 2010 and the Deed of Fiduciary Guarantee No. 33/2010 are null and void or at least do not have the legal force to bind and order PT BKPL to repay and return the remaining payment that have not been paid to Nine AM in the amount of USD 115,540 (one hundred fifteen thousand five hundred forty United States Dollars).

However, in practices, there are still many Indonesian entities who executed agreements not made in Indonesian language and yet, the agreement can be conducted and not declared as null and void. Then, what is the legal standing of such agreement in the perspective of the positive law in Indonesia. In this thesis, the author will conduct a research on the legal standing of the agreement not made in Indonesian language which is executed by Indonesian parties according to the prevailing laws in Indonesia. Then, whether the nature of such agreement is executable and enforceable between the parties or not. In addition to the foregoing, the author will also raise the issue whether the provision of the obligation to use Indonesian language is contradicting with the principle of freedom of contract. Based on the foregoing, the author makes this thesis with title of **“Legal Consequences of Agreement Not Made in Indonesian Language”**.

The author realize that there is a thesis which is similar with this thesis, entitled “The Consequences of Null and Void of Foreign Language Agreement in Relation to the Law No. 24 Year 2009 (Case Study No. 45/Pdt.G/2012/Pn.Jkt.Bar)” as translated by author from the original title

Indonesian language “*Konsekuensi Batal Demi Hukum Perjanjian Berbahasa Asing Dihubungkan dengan UU No. 24 Tahun 2009 (Studi Putusan No. 45/Pdt.G/2012/Pn.Jkt.Bar)*”, written by Libby Angelia Santoso (Student Number: 00000009624). The differences between the two thesis are, this thesis discusses the legal standing of an agreement not made in Indonesian language and the relationship between the obligation of using Indonesian language with principle of freedom of contract and the thesis written by Libby discusses the validity of the Loan Agreement of 2010 between PT BKPL and Nine AM based on the positive laws in Indonesia and the effects of the declaration of null and void of the Loan Agreement of 2010 between PT BKPL and Nine AM.

1.2 Problem Formulation

In regards to the topic of this thesis, the author would discussed on the following formulation of issues:

1. How is the legal standing of an agreement not made in Indonesian language according to KUH Perdata and the Law No. 24 Year 2009?
2. Is the obligation of using Indonesian language in an agreement contradicting with the principle of freedom of contract?

1.3 Research Objectives

Based on the description in the previous subsection, the purpose of writing this research is to answer the formulation of the problem, namely:

1. to know the legal standing of an agreement not made in Indonesian language according to the KUH Perdata;
2. to know the legal standing of an agreement not made in Indonesian language according to the Law No. 24 Year 2009;
3. to know the stipulation of obligation of using Indonesian language in an agreement is contradicting with the principle freedom of contract or not.

1.4 Benefits of the Research

1.4.1 Theoretical Benefits

The theoretical benefits are related to the benefits of a legal research to the development of science in the field of law. From a legal theory's view, this research is hopefully can give a contribution to the development of law in Indonesia, especially in the areas of agreement or contract law and to know the validity and the legal consequences of an agreement not made in Indonesian language, specifically after the enactment of the Law No. 24 Year 2009.

1.4.2 Practical Benefits

The practical benefits are related to the benefits of a legal research to the problem solving in the field of law or the implementation of certain efforts. In practice, it is expected that this thesis can give a knowledge, useful feedback, suggestion and information to the companies and practitioners as well as the authorities, especially to Indonesian entities, in making an agreement after the enactment of the Law No. 24 Year 2009.

1.5 Systematics of Writing

To ease the reader of this paper, the author will describe the chapters briefly in order to provide a clearer picture of the discussion:

CHAPTER I : INTRODUCTION

The first chapter will discuss an introduction that includes the background of the problems, the formulation of the problems, research objectives, benefits of the research and the systematics of writing.

CHAPTER II : LITERATURE REVIEW

The second chapter will discuss a description of the theoretical foundation used by the author in writing this research that related to the formulation of the problems contained in the first chapter and the conceptual basis underlying this research to help answer the problems of this research.

In writing the theoretical basis, the author used a method of deductive logic to link the frames of the raised issue and the theory. It is a method of thought starting with something that is common which is drawn to a conclusion of something specific.

In writing the conceptual basis, definitions of the terminology used in this study were obtained from the understanding contained in the books, experts' opinion and the prevailing laws regarding contract or agreement in Indonesia.

CHAPTER III : RESEARCH METHODS

The third chapter will discuss the research approaches, the research methods, types of research, procedures for obtaining materials research, legal materials and research techniques used in this study, using a method of normative research which seeks the truth through legal formulations comprising of expert opinions, theories and statutory requirements.

CHAPTER IV : DISCUSSION AND ANALYSIS

The fourth chapter will discuss research problems along with solving the problems based on a theoretical foundation, principles of law and related regulations. In this chapter, the author will conduct an analysis of:

- a. The legal standing of an agreement not made in Indonesian language according to KUH Perdata and the Law No. 24 Year 2009; and
- b. The relationship between the obligation of using Indonesian language in an agreement with the principle of freedom of contract.

CHAPTER V : CLOSING

The fifth chapter will contain the closing consisting of the conclusion of this research and recommendation from the author's opinion based on issues that have been formulated and analysis.

