
RESEARCH ARTICLE

The Use of Foreign Language in a Contract and Its Relevance on the Annulment of an Indonesian Arbitral Award

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ABSTRACT

Current Indonesian municipal law obliges the use of the Indonesian language in transaction activities, Memorandum of Understanding and other agreements. The choice of language in a contract between the subject of law in international commercial transactions becomes an essential tool to reach a consensus on a common intention. This, too, could become a triggering factor of conflict between the parties. This study discussed the legal implications and the possibility of using a foreign language in a contract as a reason to nullify an Indonesian arbitral award. This study elaborates the doctrinal legal research on legal norms and judicial decisions regarding the use of language and the annulment of an arbitral award. It is argued that a contract or agreement in a foreign language is valid. Furthermore, the annulment of an Indonesian arbitral award on the ground of the use of a foreign language is unjustifiable. Hence, it recommends an update on the Indonesian Arbitration Law concerning the mechanisms of the annulment of an arbitral award.

KEYWORDS

Contract; Indonesian Language; Arbitral Award; International Business Transaction; Annulment

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1. Introduction

The government of Indonesia issued Law no 24 of 2009 on National Flag, Language, Emblem and Anthem (herein after referred to as NFLEA Law). This Law regulates the use of the national flag, language, symbol, and anthem. This law also further challenges the practice of business, notably when it comes to an international agreement with foreign parties. The Law includes provisions regarding the use of the Indonesian language in business transactions and in a Memorandum of Understanding or agreement (Prodjodikoro, 2011). At first, the emergence of NFLEA Law was not debated legally. However, the situation escalated as the West Jakarta District Court ruled that the loan agreement made between Bangun Karya Pratama Lestari, Ltd and Nine AM Ltd., dated April 23, 2010, was *null and void* (Manalu, 2016). The decision was further reinforced through Appeal Court and Supreme Court. The judges ruled to cancel the credit agreement between the parties due to the absence of the Indonesian language on the draft. It was considered that an agreement not to use the Indonesian language violates Article 1320 of the Indonesian Civil Code. It is also clearly stated in Article 31 paragraph (1) of the NFLEA Law that the Indonesian language is obliged to be used in a memorandum of understanding or agreement made by a state agency, an agency of the government of the Republic of Indonesia, private institutions of Indonesia, or Indonesian citizens (Situmorang, 2014, p. 573).

The verdict becomes the initial emergence of legal issues due to the liability of using the Indonesian in any agreement or contract. NFLEA Law becomes a "door" to implementing a contract not using the Indonesian language in everyday practices. Although other Supreme Court decisions have not followed the verdict, this decision has become a poor precedent and potentially be used as a basis for others to find a ground to file a lawsuit. Theoretically, a person has the right to file any lawsuit if he has a strong reason

for it. The possibility of invoking the voiding of an agreement is an essential means for a modern legal system to ensure the implementation of access to justice principles and ensure the preservation of the rule of justice principle (Pramono, 2010, p. 35).

This becomes a risk for foreign investors to invest their capital in Indonesia in the sense that starting and running their business in Indonesia is subject to be sued by business partners simply on the ground of language use. There are previous research and writings regarding the obligation of drafting contracts in the Indonesian language, most of them focusing on the implementation of Article 31 Law no 24 of 2009, while this research emphasizes reviewing Article 31(1), which initiates challenges on the issue at hand. It raised confusion if there is such regulation but why it is not fully implemented, and if it's implemented according to the law, it will start legal complexions and result in high cost and effort.

The present study aims to analyze the legal implications of using a foreign language in a contract or agreement and the possibility for a foreign language in the agreement/contract to be used as a reason for the annulment of the Indonesian arbitral award. Empirically, it is argued that language selection in the communication between the subject of laws in international commercial transactions is an effective tool for reaching an agreement. On the other hand, it can also become the main triggering factor of conflict (Febriansyah, 2017, p. 3). The use of the Indonesian language in an agreement or contract involving Indonesian private institutions or Indonesian citizens is one of the obstacles to stimulating international business activities.

This paper argues that one cannot stand on the reason of unintentionally binding himself to an agreement because he is unable to understand the draft as it is written in a foreign language unless it is proven that there is certain intentional wrongful on the object and subject of the agreement. Furthermore, the writers, through this writing, clarify that the formal requirement, as mentioned in Article 31 (1) of NFLEA Law, is unrelated to satisfying one of the elements needed to constitute a valid contract as provided under Article 1320 of the Indonesian Civil Code. Therefore, an agreement drafted in a foreign language is less convincing to be concluded as a breach of legal cause and unintentional wrong, as stated in Article 1320. Regarding the practice of arbitration as dispute settlement means, this writing is expected to enlighten the arbitration tribunals not to address the use of foreign language in an agreement as it cannot satisfy the requirement to annulling an arbitral award. Lastly, this paper provides a comprehensive understanding of the use of foreign languages in business under Indonesian law. This is to ensure foreign investors and other business practitioners to received legal certainty while performing their agreement drafted in a foreign language under the freedom of contract principle while respecting the good faith principle and Indonesian law.

2. Methodology

This research incorporates normative legal study and elaborates doctrinal legal research focusing on legal provisions regarding the obligation to use the Indonesian language in a contract as stated in NFLEA Act. The legal norms promulgated in that Act have become the primary legal source. This study also supported through depth analysis of judicial decisions concerning the use of the Indonesian language encountering the annulment of an arbitral award. At least six court decisions on the issue were analysed to picture judicial responses toward the obligation to use the Indonesian language in drafting a memorandum of understanding or agreement involving foreign parties. This study also relied on secondary sources of books and scientific journals on contract law and international arbitration law.

3. Results and Discussion

3.1. The Legal Implications of Drafting a Contract in a Foreign Language.

Contract law essentially rules the legal relationship between two or more parties. It consists of personal rights to claim and a duty to render performance (Zimmermann, 1996). NFLEA Act regulates the use of Indonesian language in transaction activities, and an MoU or agreement, as stated in Article 31 paragraph (1), stipulates as follows: "The drafting of memorandum of understanding or agreement involving a state agency, a government agency of the Republic of Indonesia, Indonesian private institutions, or Indonesian must be drafted in the Indonesian language". Furthermore, it is also mentioned that "a memorandum of understanding or agreement involving foreign parties, shall be written in the national language of the foreign parties and/or English." In the official explanation of the Law, the "agreement" includes an international agreement, namely any agreement in public law governed by international law and those of made by the government and state, international organizations, or the other international law subjects. International treaties must be written in Indonesian and other official languages and/or English. An agreement with international organizations uses the languages of international organizations. In a bilateral agreement, the treaty text is written in Indonesian, the national languages of other states, and/or English, and all these texts are similarly original.

The use of the word "shall" in the NFLEA Law indicates the law is considered a legal norm without sanctions (*lex imperfecta*). Strict adherence to the legal norm is based on the sanctions that are forced but also influenced by decency or trust consideration. Not all violations of the legal norm are punishable through sanctions. Some obligations are not bound to prosecution according to the law by force (Mertokusumo, 2010). However, the imperative legal norm rule without providing the sanction can be considered incomplete or weak. Pramono argued that the obligation without the sanction should have facultative meanings (Manalu, 2016).

This means that if such an obligation is violated, there will be no sanction for the related parties. In this context, Article 31, paragraph (1) of NFLEA Law should not be contrasted with Article 1320 of the Indonesian Civil Code, paragraph (4) concerning the terms of the lawful clause. Pramono also confirms that the original intent (*Memori van Toelichting*) of NFLEA Law is not to regulate language use in a strict manner. It also argued the word "shall" in the NFLEA Law does not necessarily annul the contract drafted in foreign or two languages. The word "mandatory" should be translated as an obligation to use the Indonesian language without the consequence of cancelling the contract if it is not or has not been written in Indonesian.

A different view was expressed by the Judge who ruled in the case of PT. Bangun Karya Pratama Lestari v. Nine AM Ltd. The judge highlighted the issue of foreign language use in their loan agreement, argued as contravening Article 31 (1) of Law no 24 of 2009, mentioning the obligation of Indonesian language on a memorandum of understanding or agreement. The judges pointed out this contravene as the loan agreement was drafted in the English language without providing a second copy written in the Indonesian language; consequently, the agreement shall not be enforceable as it is considered unlawful according to Articles 1335 and 1337 of the Indonesian Civil Code. The loan agreement failed to meet the conditions as stated in Article 1320 of the Indonesian Civil Code, resulting in the agreement having no binding force or being null and void (*Nine AM Ltd vs Bangun Karya Pratama Lestari*, 2015). A similar view believes that the absence of the Indonesian language consequence in the annulment of an agreement as the objective conditions of the lawful clause is not concluded. This view relies on the ground that an agreement drafted in a foreign language becomes unlawful as it contradicts the Law as stated in Article 1337 of the Indonesian Civil Code as follows: "A cause is not permissible if it is prohibited by law, or if it violates good conduct or public order."

The government of Indonesia has issued a Presidential Decree of the Republic of Indonesia No 16 of 2010 concerning the use of the Indonesian language in the official speeches of the President and/or Vice-President and other state officials (Regulation 16/2010). This regulation does not answer the concern of foreign investors, legal practitioners, and the community to engage in an agreement with foreign elements. The content of this regulation simply governs the use of the Indonesian language in the official speech of the President and/or Vice-President and other state officials. It does not regulate the use of the Indonesian language in agreement with foreign elements. Moreover, there is a concern raised about the use of the Indonesian language in agreement with foreign elements. The Presidential Regulation of the Republic of Indonesia No. 63 of 2019 concerning the use of the Indonesian language (Regulation 63/2019). This regulation stipulates the obligation to use the Indonesian language in the covenants set in Article 26 as follows:

- (1) Indonesian official language is obliged to be used in a memorandum of understanding or agreement involving a state agency, an agency of the government of the Republic of Indonesia, Indonesian private institutions, or Indonesian citizens.
- (2) A memorandum of understanding or agreement involving foreign parties shall be written in the national language of the foreign parties and/or English language.
- (3) The national language of foreign parties and/or English is used as an equivalence or translation of Indonesian to equalize the memorandum of understanding or agreement with foreign parties.
- (4) In case of any divergence of interpretation of the equivalence or translation, the language used is the language agreed in the memorandum of understanding or agreement.

The regulation mentioned above signifies that Regulation 63/2019 has carryout the delegation as mentioned in Article 40 of Law 24/2009 to further rules on the use of the Indonesian language. The conformity of this legislation shows an affirmation of the obligation to draft an agreement in the Indonesian language. Meanwhile, if the agreement involves a foreign element, the use of a foreign language is seen as an equivalent translation of the Indonesian language. This does not conflict with Article 31 of Law No 24 of 2009. An interesting point to discuss in paragraph (4) of the law explains that if there is a different interpretation occurs, the prevailing language will be the language chosen and agreed upon in the agreement. This means that the existence of the Indonesian language is required only for the formal purposes of the agreement.

Article 44 Regulation of 63/2019 signifies the non-retroactive nature of the law, meaning terms of an obligation to draft an agreement in the Indonesian language is not effective on a prior legal event that occurs before the law exists. Indeed, there is no specific Indonesian law that determines the effective implementation of certain regulations would depend on the implementation ordinance. The Presidential Regulation of 63/2019 becomes the further provision of Law no 24 of 2009. The Presidential Regulation control the use of the Indonesian language in a particular agreement with foreign elements; thus, it does not contradict the rules mentioned earlier. Besides, the regulation is drawing the rules of the application instead of acting as a determinant obligation of language application in an agreement with foreign elements.

The previous discussion purported the elements of a valid agreement do not rely merely on the criterion. A valid agreement refers to the provisions of Article 1320 of the Indonesian Civil Code. Therefore, to prevent legal uncertainty regarding the language of

an agreement, such condition shall not constitute mandatory rules consequently in the annulment when it is not satisfied. Thus, a contract or an agreement drafted in a foreign language would remain valid and legally binds the parties.

3.2. Foreign Language in a Contract: The Judicial Responses of an Arbitration Award

The Agung Glory Cargotama Limited Liability Company (PT AGC) filed a request for arbitration to the Indonesian National Board of Arbitration (BANI) listed in the case register No. 809/III/ARB-BANI/2016 against Kerui Limited Liability Company (PT Kerui). PT AGC filed a request for arbitration for believing that PT Kerui Indonesia has conducted non-performance of the contract on the Heavy-Duty Equipment & Light Vehicles Rental Agreement No. PTKRR13181 dated October 1, 2013, Amendment 1 and 2 dated March 28, 2014, and September 18, 2014 (*PT Kerui Indonesia vs Badan Arbitrase Nasional Indonesia*, 2017).

The case was examined by the arbitrators and decided the award as stated in the Decision of BANI No. 809/III/ARB-BANI/2016 dated February 24, 2017, with the following outcomes:

1. Partially granted the Claimant's request.
2. Order the Respondent to pay for their delayed demobilization of 3.6 billion Rupiahs to the Claimant.
3. Order the Respondent to pay 86.6 million Rupiahs for their delayed interest to the Claimant.
4. Order both Claimant and Respondent to pay the administration fee, examination fee, and arbitrator fees evenly;
5. Order the Respondent to return half of the administration fee, examination fee, and arbitrator fees of as much as 140.5 million Rupiahs to the Claimant.
6. Order the Respondent to meet the award within 45 (forty-five) days, effective since the parties are informed of the award.
7. Reject the remaining request of the Claimant.
8. Declare the Arbitration award as final and legally binding.
9. Assign the Arbitration Award to be registered in the South Jakarta District Court, requesting the parties to pay the fee within the grace period as defined in the Arbitration Law (*PT Agung Glory Cargotama*, 2017).

PT Kerui Indonesia challenged the award through objection Number 244/Pdt.G.ARB/2017/PNJkt.Sel. on August 22, 2017, at South Jakarta District Court. The judges who are in charge of this case express their decision on the following verdict: "With regards to the plaintiff's plea: reject the entire pleading.

On the merits:

- Reject all the plaintiff's lawsuit material.
- Order the plaintiff to pay the court fee, estimated to be 466 thousand rupiahs;"

PT. Kerui justified their request for an annulment of Arbitral awards based on the reason that the agreement violates Article 31 of Law No 24 of 2019. Since the agreement was drafted in the English language and left out the Indonesian version, this agreement failed to meet the formal condition. Therefore, the agreement is null and void as it became unlawful. Consequently, the agreement is deemed to be legally non-exist, and every dispute regarded on a similar ground shall be treated as lacking a fundamental legal base.

The legal justification delivered by PT Kerui regarding the violation of Article 31 shall annulling the arbitral awards is not the type of conditions that met the requirements of the application to nullify an arbitration award as set forth in Article 70 of Law No. 30 of 1999 concerning the Arbitration and Other Alternative Dispute Resolution (hereinafter referred as the Arbitration Law), consist as follows:

- a. Letters or documents submitted in the hearings which are admitted to be forged or are declared to be forgeries after the award has been rendered;
- b. Documents are found after the award has been rendered which are decisive in nature and were deliberately concealed by the opposing party; or
- c. An award is made based on fraud committed by one of the parties to the dispute.

There are a series of Supreme Court decisions that confirms the elements applicable to nullifying an arbitration award refereeing Article 70 of the Arbitration Law shall be implemented in a restrictive manner, meaning that it shall be interpreted narrowly and limited. In 2012, the Supreme Court ruled the Plaintiff's application unjustifiable as the South Jakarta District Court had concluded their merits based on the applicable law and rejected the appeal request as it does not meet the requirements as stated in Article 70 of the Arbitration Law which also non-exist during the first round of the trial (*PT Cipta Kridatama vs. Badan Arbitrase Nasional Indonesia*, 2012). In 2011, the Supreme Court refused to perform a judicial review on verdict No 396 K /Pdt.Sus/2010, as the decision

was made according to law, and there was no error made by the decision-maker. The appeal verdict relies on Article 70 of the Arbitration Law to nullify an arbitration award; therefore, a request of annulment based on the systematical content of an arbitration award and the arbitrators' signature (Article 54) and the time period of rendering the awards (Article 57) are unjustified by law (*PT Cipta Kridatama vs. Badan Arbitrase Nasional Indonesia*, 2011).

The narrow and limited nature of nullifying an arbitration award is confirmed and strengthened through the Supreme Court's circular letter No 7 of 2012 (here in after referred to as SEMA 7/2012) concerning the Plenary Chamber's Legal Formulation as the Court Guideline. The circular letter highlights the narrow and limitative interpretation nature of Article 70 of the Arbitration Law with regards to domestic arbitral award is conclusive. The Constitutional Court's decision No 15/PUU-XII/2014, annulling the official explanation of Article 70 of the Arbitration Law, established a material legal certainty dealing with the notion of arbitral award annulment. The Constitutional Court took the official explanation that Article 70 is the main source of legal uncertainty and injustice and, therefore, contradicts Article 28 D (1) of the Indonesian Constitution concerning the person's certainty before a just law.

The elaborate discussion above signifies that PT. Kerui failed to provide the narrow and limited legal reasoning to annul the Arbitral award as stated in Article 70 of the Arbitration Law. Language use in an agreement is not even close to fulfilling the elements stipulated in Article 70. The authors share a common opinion with the judge's verdict on case No. 244/Pdt.G.ARB/2017/PN.Jkt. Sel, referring to previous Supreme Court decisions in 2009, 2011, 2012 and 2013, that nullifying an arbitration award may be made solely relying on Article 70 of the Arbitration Law. Therefore, a request for annulment based on a breach of Article 31 of the NFLEA Law and an error in the administrative procedure is unacceptable and unjustifiable as they are out of the scope interpretation of Article 70. Fact, however, PT Kerui filed an appeal to the Supreme Court. The Judges, in their verdict, mentioned the condition of the appeal of an arbitral award in accordance with Article 72 (4) is admissible under Article 70 of the Arbitration Law. This is reinforced through the Private Law Plenary Chamber's Legal Formulation of 2016. Since the District Court dismissed the application to nullify an arbitration award, therefore it does not establish the right of appeal, and such a request must be declared inadmissible (*Niet Ontvankelijk Verklaard*) (*PT Agung Glory Cargotama*, 2017; *PT Kerui Indonesia vs Badan Arbitrase Nasional Indonesia*, 2017).

Another similar case was found in *Blutether v. MNC*. In 2014, MNC entered into a sale and purchase agreement entitled "Sale and Purchase Agreement by and between Blutether Limited and PT. MNC Skyvision Tbk. For Purchase and Sale of Blutether Modules for Integration into New and Retrofitted Existing Indovision Set Top Boxes". The parties were using the English language throughout their correspondence as Blutether is a foreign company. In 2015 an official translation of the sale and purchase agreement was made in the Indonesian language by a sworn translator as requested by the MNC. In the same year, there was a dispute between the parties. According to Article 15 of their SPA, it stated that any dispute arising out of or in connection with the agreement, including any question regarding its existence, validity or termination, shall be governed by the law of Singapore and referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in the clause. An arbitration request was submitted to SIAC in December 2015. MNC were given the Notice of Arbitration and informed of the claimant's request for compensation for breach of the SPA conducted by MNC.

On the other hand, PT Global Mediacom Tbk (hereinafter referred to as Global Media), also acting as the party of the abovementioned SPA, filed a tort lawsuit against Blutether and MNC to West Jakarta District Court in 2016. The court decision 49/PDT.G/2016/PN. Jkt Brt. was concluded through the absence of the defendant from the court meeting to which they have been summoned. The court ordered the defendants not to perform their SPA as it violates Article 31 of the Indonesian NFLEA Law, and therefore, the court declared the SPA non-exist as it became unlawful and had no legal binding to its parties. The defendants are instructed to draft their future business contracts in the Indonesian language. Blutether filed an appeal to the High Court of Capital Region of Jakarta in 2017. The appeal verdict strengthened the previous District Court Decision. In March 2017, the SIAC issued their arbitral award ordering the MNC to pay 14.4 million US dollars with additional interest to Blutether. Referring to the case of *Bluetether v. MNC*, this writing focused on elaborating on the use of language in a contract. The parties of the SPA agreed to draft their agreement in the English language, followed by an official translation in the Indonesian language. Therefore, the agreement is valid, binds and enforceable according to the *pacta sunt servanda* principles. Since the legal bond was established and contributed to obligations to perform by the parties was made deliberately and consciously, the agreement thereof agreed by the parties must be performed (Adrian & G. W., 2008).

The signatory in an agreement indicates the party's agreement to voluntarily and consciously be bound and perform the contract. A voluntary statement confirms that an agreement may not be concluded without the voluntary will of the parties (Adrian & G. W., 2008). The dispute between Blutether and MNC was solely related to the object of their agreement, and as stated in their dispute resolution article, Blutether claimed for their loss through arbitration resulting in the award ordering MNC to pay the damage. The dispute is off the notion of language use in their SPA; instead, it was submitted based on a violation of their agreement. The writers concluded that MNC was responsible for a violation of the agreement, and, therefore, the arbitration award is legally

binding. The general principle is that the party in breach (the defendant) can only be liable for losses that were within the reasonable contemplation of the parties at the time the contract was made. The Arbitration Law adopt three of ten elements to nullify a decision as stated in Chapter 643 of *Reglement op de Burgelijke Rechtvorderingand*, codification, which becomes one of the source of Indonesian civil procedural law (Dinar, 2015, p. 79).

From a perspective of international arbitration, there are two significant international instruments potentially applicable and should be considered by the arbitrators in considering the case before adopting their decision. These instruments are the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the New York Convention) and have been ratified and then adopted through the Presidential Decree No. 34 of 1981. Another instrument is The United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Budidjaja, 2022). Article V of the New York Convention set out conditions of when an award may be refused, through a request only if the party furnishes to the competent authority where the recognition and enforcement is sought, proof that: the parties were under some incapacity or the said agreement is not valid under the law to which the parties have subjected it; The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; The award deals with a difference not falling within the terms or it contains decisions on matters beyond the scope of the submission to arbitration; The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or was not in accordance with the law of the country where the arbitration took place; or The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Article 5 (2) of the New York Convention and Article 66 of the Arbitration Law share a common ground on recognizing the refusal of an arbitral award if the authority is sought finds that the subject matter of the difference is out of the scope settlement by arbitration under the law of the country or the recognition or enforcement of the award would be contrary to the public policy of that country. An equal setting on the subject drafted in Article 34 (2) of the UNCITRAL Model Law on International Commercial Arbitration on the annulment of an arbitral award. The court may annul the arbitration award on the following conditions: the party to an agreement was under an incapacity, or the said agreement is not valid under the law of the State thereon; The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings; the award deals with a dispute not falling within the terms of the submission or contains decisions on matters beyond the scope of the arbitration; The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or The court finds that the subject-matter of the dispute is not capable of settlement by arbitration or the award is in conflict with the public policy under the law of their State (Adrian & G. W., 2008).

It can be referred to from the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration. There are basically two categories the court may adopt to set aside an arbitral award: the facultative reason opted for the parties and the permissible reasons (some of the arbitrators view this as compulsory). These permissible reasons are in case of the award was decided not to fall within the terms, or it contains decisions on matters beyond the scope of the arbitration or violates the public policy (R. Nazriyah, 2018, p. 701). The Indonesian Arbitration Law solely acknowledges one challenge mechanism, the arbitral award annulment; this is unlike the 2017 Fiji Arbitration Law. The law adopts two recourse mechanisms against the award. These are the application for setting aside as exclusive recourse against arbitral award (Article 52) and refusing recognition or enforcement of an award (Article 54). The two mechanisms cite a similar setting as drafted in Article 34 and Article 36 of the UNCITRAL Model Law on International Commercial Arbitration (Adolf, 2018, p. 25).

Article 52 of the 2017 Fiji Arbitration Law cited as follows:

Application for setting aside as exclusive recourse against an arbitral award

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections (2) and (3).
- (2) An arbitral award may be set aside by the court only if the following conditions meet.
 - a. The party making the application furnishes proof that:
 - i. A party to the arbitration agreement referred to in section 11 was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of Fiji.
 - ii. The party making the application was not given proper notice of the appointment of an arbitrator or the arbitral proceedings or was otherwise unable to present his or her case.
 - iii. The award deals with a dispute that did not contemplate his by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration, provided that if the

- decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not
- iv. submitted to arbitration may be set aside.
 - v. The composition of the arbitral tribunal or the arbitral procedure
 - vi. was not in accordance with the agreement of the parties unless such agreement conflicted with a provision of this Act from
 - vii. which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or
- b. The court finds that:
- i. The subject matter of the dispute is not capable of settlement by arbitration under the laws of Fiji; or
 - ii. The award conflicts with the public policy of Fiji.

The two Articles are similar in nature, with minor contrast mentioning that irrespective nature of the country in which an award was concluded, the court may still examine the application. International and municipal law govern the application for the setting aside or suspension of an arbitral award. The international perspective of the said mechanism is cited in Article VI of the New York Convention and Article 34 of the UNCITRAL Model Law on International Commercial Arbitration. The two international instruments enable its signatory state to seek recourse against the award through their court. The court has the power and competence to assess and conclude whether the arbitral award shall be set aside or suspended in accordance with the applicable law (the New York Convention). The UNCITRAL Model Law on International Commercial Arbitration sets a time frame to submit a recourse application of an arbitral award no later than three months since the concerned parties have received the knowledge of the said awards. The court may, at the request of a party, if it considers it proper, may adjourn the proceedings for a period. This is to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as, in the arbitral tribunal's opinion, will eliminate the grounds for setting aside (Article 34 (4)).

Another international instrument regarding the annulment of an award is set out in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter referred to as the ICSID Convention), formulated by the Executive Directors of the World Bank. The ICSID Convention established The International Centre for Settlement of Investment Disputes in 1966; in accordance with the convention, ICSID provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States. The Indonesian government has ratified the ICSID Convention through Law No. 5 of 1968. This convention regulated a clear and concise conditions annulment of an arbitral award. According to Article 52 of the convention, an award may subject to be annulled when the Tribunal has manifestly exceeded its powers; there was corruption on the part of a member of the Tribunal; there has been a serious departure from a fundamental rule of procedure; or the award has failed to state the reasons on which it is based (Situmorang, 2020, p. 573).

The UNCITRAL Arbitration Rules do not provide a mechanism to terminate an award; however, they provide another comprehensive set of procedural rules as follows: interpretation of award; correction of award; additional award (Pujiyono, 2018, p. 243). The parties of an arbitral award may request the arbitral tribunal to give an official interpretation of a specific point or part of the award with regard to the difference in understanding. Thus, it would no longer raise doubts. The correction of the award means the arbitral tribunal may correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature. These errors correction shall be requested by the parties, for they may affect the award enforcement (Article 33). The arbitral tribunal may consider making an additional award as to claims presented in the arbitral proceedings but omitted from the award. The application is possible to be submitted if the parties believe their claims were not listed in the award or not taken into consideration in the award (Timex, 2013, p. 48).

5. Conclusion

The validity of an agreement does not bind to language requirements. It shall refer to the provisions of Article 1320 of the Indonesian Civil Code. To prevent legal uncertainty in the drafting of an international agreement in Indonesia, the mandatory use of the Indonesian language shall not be an absolute requirement that the absence of it may invalidate an agreement. Therefore, an application of annulling an arbitral award on the ground of language chosen by the parties is unjustified as it is not a part of the narrow and limited condition as regulated in Article 70 of the Arbitration Law. The Indonesian lawmaker needs to consider an amendment of Article 31 (1) of NFLEA Law to accommodate the current demand of practical matters, including the rules on which language shall prevail as having a legal effect when a dispute occurs. This is also to avoid the law as not having a coercive nature of implementation.

The parties of an Indonesian arbitral award may seek recourse of annulment without priorly going through an evidentiary hearing, as stated in the Constitutional Court's Decision No 15/PUU-XII/2014 that a right to request termination of an arbitral award may be submitted to the court without an evidentiary hearing in a condition of the party making the application furnishes proof of as

stated in Article 70 of the Arbitration Law. Thus, it raises a demand the Indonesian legislators to perform legal amendments regarding the issue at hand as the Constitutional Court has already concluded its examination.

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