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WHEN LANGUAGE BECOMES LAW: INDONESIAN JUDGES AND THE CHALLENGE OF BILINGUAL INTERNATIONAL CONTRACTS

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Abstract

The regulation of contractual language has become a significant legal issue in Indonesia following the enactment of Article 31(1) of Law No. 24 of 2009, which requires *Bahasa Indonesia*, or the Indonesian language, to be used in agreements involving Indonesian parties. Although this provision was intended to affirm the legal status of the national language, its practical application has generated uncertainty, particularly due to inconsistent judicial interpretations concerning the validity of contracts drafted in foreign languages. This study examines the tension between linguistic formalism and the principle of freedom of contract as reflected in Articles 1320 and 1338 of the Indonesian Civil Code. Using a doctrinal legal research method supported by statutory, conceptual, case-based, and comparative approaches, this research analyses divergent judicial paradigms in several Indonesian court decisions. The Supreme Court in Decision No. 1572 K/Pdt/2015 and Decision No. 3395 K/Pdt/2019 adopted a strict formalistic approach by declaring foreign-language contracts null and void. Conversely, Decision No. 3415 K/Pdt/2021 and Amlapura District Court Decision No. 254/Pdt.G/2019/PN.Amp placed greater emphasis on substantive justice by recognising contractual validity based on consent, legal capacity, a specific subject matter, and a lawful cause. This article argues that Indonesian courts have inconsistently transformed an administrative language obligation into a substantive requirement for contractual validity, thereby weakening legal certainty and commercial predictability. Unlike previous studies that primarily addressed the legality of foreign-language contracts after the enactment of Law No. 24 of 2009, this research develops a broader analytical framework by examining judicial inconsistency through the theory of legal certainty, Economic Analysis of Law, and comparative contract law. It also positions contractual language regulation not merely as a technical drafting issue, but as a structural problem affecting investment predictability and transnational commercial stability. The comparative analysis of the Netherlands, Malaysia, and Singapore shows that these jurisdictions prioritise contractual intention and commercial practicality over linguistic rigidity. Accordingly, this study concludes that Indonesian contract law requires doctrinal reconstruction to reposition language as an evidentiary and administrative instrument rather than as a determinant of contractual validity.

Keywords: Contractual Language; Freedom of Contract; Legal Certainty; Foreign-Language Contracts; Indonesian Contract Law.

A. Introduction

As social creature, individuals continually engage in legal interactions, many of which give rise to contractual relationships (Markovits, 2004; Suzor, 2018; Zumbansen, 2007). Contracts establish mutual agreements creating private rights and obligations embodied within legally binding arrangements (Penner, 1996; Teubner, 2000). The existence of commercial contract,

whether concluded in written or oral form, constitute a fundamental mechanism driving economic activity and commercial exchange (Gilson et al., 2014; Suchman, 2003; Wiwoho & Mashdurohatun, 2022). In Indonesia, the substantive validity of a contract is contingent upon the cumulative fulfilment of the four legal requirements prescribed under Article 1320 of the Indonesian Civil Code *(Kitab Undang-Undang Hukum Perdata/KUHPerdata):* consent, legal capacity, a specific subject matter, and a lawful cause (Sugiastuti & Purnamasari, 2023). Based on a doctrinal perspective, the absence of the subjective requirements—namely consent and capacity—renders a contract voidable (*vernietigbaar*), whereas non-compliance with the objective requirements concerning the subject matter and lawful cause results in the contract being *void ab initio (nietig van rechtswege),* meaning that it is deemed never to have existed in the eyes of the law (Lestari & Santoso, 2017). Accordingly, these legal requirements must be satisfied when entering into any contractual agreement (Kronman, 1985).

However, amid accelerating economic globalisation, which demands speed, flexibility, and efficiency in cross-border transactions, Indonesian positive law has created a fundamental tension between linguistic nationalism and the need for legal certainty in investment and international commerce (Kasih & Pawestri, 2025). Article 36 of the 1945 Constitution of the Republic of Indonesia designates *Bahasa Indonesia* as the national language (Penasthika, 2019; Susanto et al., 2024; Suwarno, 2020). Moreover, Indonesian language in contractual documents is expected to employ standard Indonesian. This constitutional principle is subsequently implemented through Article 31(1) of Law No. 24 of 2009 concerning the National Flag, Language, State Emblem, and National Anthem, which mandates the use of *Bahasa Indonesia* in memoranda of understanding and agreements involving state institutions, government agencies, private legal entities, or Indonesian citizens (Amalia, 2018).

A significant legal controversy arises when courts incorrectly treat this administrative language requirement as an element of substantive contractual validity, particularly under the requirement of a lawful cause in international private contracts. This has produced what may be described as a form of "jurisprudential inconsistency" *(jurisprudential schizophrenia),* whereby commercial agreements worth millions of dollars, negotiated in good faith, and entered into with the full consent of the parties, may be declared null and void because they were not drafted in a bilingual format. The issue extends far beyond mere linguistic formalities; rather, it reflects a broader crisis in the orientation of Indonesian contract law in responding to economic globalisation. Indonesian courts appear to be caught between preserving linguistic nationalism as a symbol of sovereignty and protecting the legal certainty required for international commercial transactions. Consequently, contract law risks loss its function as a mechanism of commercial predictability and instead become a formalistic trap capable of invalidating agreements that the parties have voluntarily executed in good faith.

This extreme legal uncertainty is evident in the divergent judicial approaches adopted by Indonesian courts. On one hand, the Supreme Court No. 1572 K/Pdt/2015 concerning PT Bangun Karya Pratama Lestari v Nine AM Ltd, rigidly invalidated an international loan agreement because of drafted in English. This formalistic paradigm was subsequently reinforced in Central Jakarta District Court Decision No. 590/Pdt.G/2018 and Jakarta High Court Decision No. 575/Pdt/2020. On the other hand, the Supreme Court adopted a contrasting position in Decision No. 3415 K/Pdt/2021 concerning Reliance Coal Resources v Kokos Jiang, as well as in Amlapura District Court Decision No. 254/Pdt.G/2019/PN.Amp, both of which expressly recognised that contracts drafted in a foreign language remain valid and legally binding provided that the substantive requirements outlined in Article 1320 of the Indonesian Civil Code are fulfilled.

The legal uncertainty surrounding foreign-language contracts extends beyond the normative sphere and has begun to distort the very function of contracts as instruments for allocating commercial risk. In practice, contracts are intended to provide predictability regarding the legal consequences of parties' actions and obligations. However, inconsistent judicial decisions have

transformed contracts themselves into sources of uncertainty and legal risk. This development suggests that the issue of contractual language has evolved from a merely administrative concern into a structural problem within Indonesia's contract law framework.

The divergence in judicial decisions further reflects a fragmentation of the doctrine governing contractual validity in Indonesia. On the one hand, certain courts have treated the language used in a contract as a formal requirement that directly determines its validity. On the other hand, language has been regarded merely as an administrative mechanism that does not affect the substantive enforceability of an agreement. Such inconsistency has created a normative dualism that blurs the distinction between the legal requirements for a valid contract and matters related to contractual performance. As a consequence, the level of legal certainty available to parties engaged in international commercial transactions has been significantly diminished.

The absence of an explicit sanction under Article 31 of Law No. 24 of 2009 has further intensified this interpretative inconsistency. The of this provision has, in some instances, resulted in tensions with the principle of freedom of contract enshrined in Article 1338 of the Indonesian Civil Code, as well as with the requirements for contractual validity set forth in Article 1320. The principle of freedom of contract grants parties' broad autonomy to determine the content and terms of their agreements according to their mutual intentions. In an effort to address the resulting legal uncertainty, the Supreme Court issued Supreme Court Circular Letter No. 3 of 2023, which clarifies that the absence of an Indonesian-language translation does not automatically render a contract invalid.

The normative gap within Article 31 of Law No. 24 of 2009 has effectively granted judges considerable discretion in determining the legal consequences of foreign-language contracts. Under such circumstances, the court's function as institutions responsible for applying the law and *de facto* norm-creators through decisions that carry prescriptive effects. This phenomenon illustrates a form of judicial law-making in an area that ideally should be regulated expressly by the legislature, thereby generating structural uncertainty within the national contract law system.

The concept of legal certainty developed by Gustav Radbruch (2006b, 2006a) emphasises the importance of clarity, predictability, and security within the legal order. In its practical application, the law should provide clear, consistent, and foreseeable standards capable of guiding social conduct and resolving disputes. The objective is to minimise uncertainty and prevent conflict. Legal certainty also enhances public confidence in the legal system and contributes to its effectiveness. From Radbruch's (2006b, 2006a) perspective, legal certainty requires that legal norms be established as positive law, applied consistently, and must be obeyed.

Lawrence M. Friedman (1975) similarly argues that legal systems cannot be separated from their social, political, and economic environments. In the Indonesian context, the development of national law faces various challenges concerning legal substance, the structure of law enforcement, and legal culture within society (Waspiah, 2022). Law is not merely responsive to social change; it also serves as an instrument capable of shaping the direction and pace of that change. In this sense, law functions as a mechanism for regulating, guiding, and facilitating social transformation, including developments in the economic and commercial sectors. This perspective suggests that changes in contractual practice, including the increasing use of foreign languages in international commercial agreements, must be understood within the broader context of evolving social conditions and the demands of the global economy.

Friedman's (1975) legal system perspective further provides a useful framework for assessing the effectiveness of regulations concerning bilingual contracts in Indonesia through its three principal components: legal substance, legal structure, and legal culture. From the perspective of legal substance, Article 31 of Law No. 24 of 2009 continues to generate debate, particularly regarding the legal consequences of contracts that are not drafted in *Bahasa Indonesia*. From the perspective of legal structure, judicial practice reveals considerable variation in interpretation, indicating the absence of a uniform approach to the implementation of the provision. Last, from

the perspective of legal culture, however, international business practice overwhelmingly relies on English as the lingua franca of global commerce. Misalignment among these three elements may undermine the effectiveness of legal regulation in responding to contemporary social and economic realities.

Viewed through Friedman's (1975) framework, the tension surrounding foreign-language contracts reveals a broader systemic dysfunction within the Indonesian legal system. The substantive legal requirement mandating the use of *Bahasa Indonesia* is not fully aligned with international commercial practices, where English functions as the dominant language of cross-border transactions. At the same time, the judicial structure has failed to produce a consistent interpretative approach, while the legal culture of global commerce increasingly favours contractual flexibility and commercial pragmatism. This imbalance weakens the capacity of the law to regulate international transactions effectively and undermines the legal certainty that is essential for cross-border business activities.

Within the evolving framework of global contract governance, contractual language is no longer viewed as an expression of national identity. Instead, it increasingly functions as an instrument of economic efficiency and a mechanism for facilitating harmonised transactions across jurisdictions. Contemporary contract law in many jurisdictions has embraced a functionalist approach, whereby contracts are primarily regarded as vehicles for protecting commercial expectations and maintaining market stability. Consequently, state intervention in the parties' choice of contractual language is generally justified only where fundamental public interests are implicated, such as consumer protection or agreements involving public administration. In the context of international commercial contracts, excessively formalistic regulation may amount to regulatory overreach that undermines the attractiveness of a jurisdiction to foreign investors.

The literature on international business law highlights a continuing tension between state sovereignty and the forces of globalisation in the development of transnational commercial regulation. Globalisation has strengthened the role of transnational legal instruments and non-state actors in shaping increasingly harmonised standards for commercial transactions (Vang-Phu & Son, 2024). Such a condition has shifted the legal nature of contracts from a system predominantly rooted in national sovereignty towards a more functional and cross-jurisdictional legal regime.

Within this framework, transnational contract law places considerable emphasis on the principle of party autonomy. This grant contracting parties' broad discretion to determine the language of their agreement, the governing law, and the mechanism for dispute resolution. Such an approach is reflected in the UNIDROIT Principles of International Commercial Contracts (UPICC) and the United Nations Convention on Contracts for the International Sale of Goods (CISG), neither of which prescribes a particular language as a condition for contractual validity. The absence of linguistic requirements within these instruments demonstrates the broader movement towards normative harmonisation in international trade, prioritising transactional effectiveness over formalistic considerations.

This development further illustrates that contractual language is gradually losing its normative significance as a determinant of contractual validity. In contemporary commercial practice, language is largely regarded as a technical medium of communication that can be translated or adapted without altering the substance of the parties' agreement. Accordingly, national legal provisions that treat language as a determining factor in the contractual validity may create friction within the principles of the harmonisation in international commercial law.

Nevertheless, this transnational perspective intersects with Indonesia's domestic legal framework, which mandates the use of *Bahasa Indonesia* in contracts pursuant to Article 31 of Law No. 24 of 2009. Such provision reflects an approach grounded in legal sovereignty and national regulatory authority over the formal aspects of contractual relations. To a certain extent, however, this position diverges from the orientation of transnational legal regimes, which tend to prioritise flexibility and respect for the parties' agreement. Consequently, a normative tension

emerges between the demands of international commercial harmonisation and the mandatory nature of Indonesia's language regulation within contract law.

Establishing the novelty of the present study is essential for demonstrating the originality of the research and fulfilling academic standards of accountability. The novelty of this research is identified through a critical comparison between previous studies and the present analysis. The study originates from legal issues arising within the Indonesian context and draws upon a number of relevant scholarly references.

One of the principal studies is Bili Achmad et al.'s (2016) article, "*The Validity of Foreign-Language Contracts and Legal Certainty Regarding Their Legal Consequences Based on the Principle of Freedom of Contract under Law No. 24 of 2009 and the Ministry of Law and Human Rights Letter No. M.HH.UM.01.01-35: A Study of West Jakarta District Court Decision No. 451/Pdt.G/2012/PN.Jkt.Bar*." The study concluded that Law No. 24 of 2009 regards contracts that do not use the national language as legally defective, thereby creating the possibility that foreign-language contracts may be declared null and void. In contrast, the present study argues that contracts drafted in a foreign language should remain legally valid because language requirements do not form part of the substantive conditions for contractual validity, but instead constitute administrative formalities. Furthermore, this study contends that Article 31 of Law No. 24 of 2009 creates tension with the principle of freedom of contract and with Supreme Court Circular Letter No. 3 of 2023, resulting in normative disharmony and legal uncertainty.

Another relevant study is Frangki Boas Rajagukguk's (2023) article, "*The Annulment of Agreements Due to the Absence of Bahasa Indonesia: An Analysis of Decision No. 590/Pdt.G/2018/PN.Jkt.Pst*." Rajagukguk (2023) argues that the court's decision to annul the share purchase agreement was inappropriate, as Article 31 of Law No. 24 of 2009 does not prescribe any explicit sanction for non-compliance. He further contends that the language requirement should be understood as a formal rather than a substantive requirement, particularly because the agreement at issue had been concluded before the enactment of the statute. The novelty of the present study lies in its broader examination of judicial decisions that reveal conflicting approaches to the validity of foreign-language contracts in Indonesia. Specifically, this study analyses Supreme Court Decision No. 1572 K/Pdt/2015 and Supreme Court Decision No. 3395 K/Pdt/2019, both of which treated foreign-language contracts as null and void for violating Article 31 of Law No. 24 of 2009. These decisions are contrasted with Supreme Court Decision No. 3415 K/Pdt/2021 and Amlapura District Court Decision No. 254/Pdt.G/2019/PN.Amp, which affirmed that contracts may remain valid and binding despite the absence of *Bahasa Indonesia*. In addition, this study examines these decisions through the lens of the principle of freedom of contract and the interpretive guidance provided by Supreme Court Circular Letter No. 3 of 2023.

Unlike previous studies, which has tended to stop at a normative validity of foreign-language contracts, this research situates the issue within a broader structural conflict involving contractual freedom, legal certainty, and state regulatory intervention. Accordingly, the analysis extends beyond questions of contractual validity to consider the wider legal and economic implications arising from inconsistent judicial interpretations concerning contractual language.

This study seeks to achieve several objectives. First, it examines the legal meaning and application of language requirements in contracts under Indonesian contract law. Second, it analyses the relationship between the principle of freedom of contract and Article 31 of Law No. 24 of 2009. Third, it undertakes a comparative assessment of judicial reasoning in Indonesian cases involving foreign-language contracts. Finally, it explores relevant legal practices and approaches adopted in selected foreign jurisdictions, particularly the Netherlands, Malaysia, and Singapore.

In light of the foregoing discussion, this study addresses the following research questions: (1) What constitutes the proper use of language in contracts under Indonesian contract law? (2) How does the principle of freedom of contract interact with Article 31 of Law No. 24 of 2009? (3) Why have Indonesian courts adopted differing judicial approaches in adjudicating disputes involving

foreign-language contracts? and (4) What lessons can be drawn from the legal systems of the Netherlands, Malaysia, and Singapore regarding the regulation of contractual language?

This study employs a doctrinal legal research method supported by four complementary approaches: statutory, conceptual, case-based, and comparative approaches. Normative legal research is used to examine and analyse existing legal norms and doctrines as the primary basis for answering the research questions.

The statutory approach involves an examination of relevant legislation governing the issues under discussion, particularly the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) and Law No. 24 of 2009 concerning the National Flag, Language, State Emblem, and National Anthem. The case approach focuses on judicial decisions that illustrate divergent interpretations of the legal consequences of foreign-language contracts, namely Supreme Court Decision No. 3415 K/Pdt/2021, Amlapura District Court Decision No. 254/Pdt.G/2019/PN.Amp, Supreme Court Decision No. 1572 K/Pdt/2015, Central Jakarta District Court Decision No. 590/Pdt.G/2018, and Jakarta High Court Decision No. 575/Pdt/2020.

The conceptual approach is used to examine the theoretical foundations underlying the issue, including Radbruch's (2006b, 2006a) theory of legal certainty, the doctrine of party autonomy, and principles associated with the Economic Analysis of Law (Posner, 2011). Meanwhile, the comparative approach is employed to analyse and compare the regulation of contractual language in selected foreign jurisdictions, namely the Netherlands, Malaysia, and Singapore, and to evaluate their relevance to the Indonesian legal framework.

B. Discussion

1. Contractual Language, Legal Certainty, and Justice

Within legal philosophy, the relationship between legal certainty and substantive legal correctness or justice constitutes one of the most enduring debates concerning the nature and function of law. This discussion reflects the broader question of whether law should primarily be understood as a system of normative rules or as an instrument for achieving justice within society. The interaction between these values has been explored through several influential theoretical frameworks, including the Radbruch (2006a) Formula, which emerged as a response to situations of extreme injustice; the special case thesis, which conceptualises legal reasoning as a particular form of practical reasoning; and theories of judicial development of law, which emphasise the creative role of judges in shaping legal norms through adjudication (Alexy, 2004, 2015).

In the modern contract law, the tension between legal certainty and justice is not merely theoretical; it also arises in judicial practice when judges are confronted with formalistic character (Hillman, 2012; Kimel, 2003). This phenomenon illustrates that legal certainty does not invariably lead to substantively just outcomes, particularly evident when contractual rules are interpreted and enforced through a strictly textual approach without adequate consideration of the social context, commercial realities, and economic objectives underlying the contractual relationship. Under such circumstances, rigid adherence to formal legal requirements may undermine the very purposes that contract law seeks to achieve, namely the protection of legitimate expectations, commercial stability, and equitable dealings between contracting parties (Mitchell, 2013; Morgan, 2013).

In Gustav Radbruch's (2006a) legal philosophy, the tension between justice and positive law is generally resolved by giving priority to positive law to preserve the stability and certainty of the legal system. Legal certainty, in this context, reflects the importance of predictability—the capacity of the law to provide reliable guidance for human conduct and legal decision-making. Nevertheless, Radbruch (2006a) did not regard legal certainty as an absolute value. Through the formulation of the Radbruch Formula, he recognised that positive law may forfeit its authority in exceptional circumstances where injustice reaches an intolerable or extreme degree. Accordingly,

legal certainty occupies a central position within Radbruch's theory, but its operation remains constrained by the overriding demands of substantive justice (Savić, 2023).

From Radbruch's (2006a) perspective, legal certainty constitutes a fundamental legal value requiring clarity, systematic, and norm consistency so that legal norms can provide both predictability and stability in their application. Within the tradition of legal positivism, particularly in the works of Austin (1995) and Kelsen (2005), legal certainty is reinforced through clearly structured hierarchies of norms, precise legal rules, and a conceptual separation between law and morality, all of which contribute to the objectivity of the legal system. However, developments in modern jurisprudence reveal a more nuanced understanding of legal certainty. Radbruch's (2006a) later thought demonstrates that legal certainty cannot be entirely detached from considerations of value and justice, as law must also remain responsive to substantive moral demands. Consequently, legal certainty serves not merely as a formal guarantee of legal order but also as a mechanism for balancing normative validity with ethical correction within the legal system (Kurniawan & Ezzerouali, 2024).

Within this framework, predictability principle should not be understood as the law's capacity to generate normative certainty. Rather, it forms part of a broader jurisprudential debate concerning the relationship between legal certainty and justice in Radbruchian thought. Contemporary legal-philosophical scholarship has developed this debate through discussions surrounding the minimum content of justice, including the intellectual dialogue between H.L.A. Hart (1979) and scholars influenced by the Radbruchian tradition. These discussions extend beyond questions of the formal validity of positive law and address the limits of legal authority when legal systems fail to satisfy fundamental standards of justice. Such debates demonstrate that predictability, while indispensable to legal certainty, cannot be regarded as an unconditional value; it continually exists in tension with the competing demands of substantive justice (Ott & Stewart, 2023). In this sense, legal certainty may be understood as the legal rules ability in predicting, enabling legal subjects to anticipate which norms govern their conduct and how those norms are likely to be interpreted and enforced in practice (Mochtar, 2015).

In international contract law, the element of predictability is becoming increasingly important, as parties base their business decisions on the assumption that contractual obligations enforceability (Cordero-Moss, 2024). When legal interpretations of contractual language become inconsistent, the contract's function as a risk mitigation tool is undermined (Gilson et al., 2014; Gray, 2023). This demonstrates that legal certainty extends beyond the existence of legal norms themselves and encompasses the consistency and stability of judicial interpretation. In the absence of interpretative coherence, parties may encounter uncertainty regarding the legal consequences of their agreements, thereby undermining the predictability that is essential for cross-border commercial transactions.

The dimension of consistency occupies a significant place within Radbruch's legal philosophy and extends beyond the traditional debate concerning the relationship between legal certainty and justice. It also encompasses the broader question of coherence between the validity of positive law and the demands of moral legitimacy. Contemporary scholarship suggests that the Radbruch Formula may be understood as a normative mechanism designed to preserve the internal consistency of the legal system in exceptional circumstances, particularly where positive law fundamentally conflicts with principles of justice (Bix, 2011). Within democratic constitutional states, the application of the formula is not merely intended to remedy instances of extreme injustice; it also serves to maintain coherence between constitutional values and judicial enforcement. Related discussions have further developed through the principle of subsidiarity, which emphasises that judicial correction of unjust laws should be undertaken in a manner that balances local legal authority with broader moral standards. Such an approach seeks to prevent both judicial arbitrariness and legal uncertainty. Accordingly, consistency in Radbruch's (2006a)

thought may be understood as an effort to preserve the integrity of the legal system through the alignment of positive legal norms, principles of justice, and judicial mechanisms of correction.

Viewed from this perspective, legal certainty is not only as a technical requirement associated with the formulation and application of legal rules. Rather, it constitutes a structural condition that enables law to function effectively within society. Radbruch's conception of legal certainty may therefore be further elaborated through three interrelated elements: predictability, consistency, and legal protection as the instrument to ensure that the law is capable of providing reliable guidance, stability, and protection for all legal subjects (Sumarsih, 2025).

Legal protection in the perspective of legal uncertainty may be regarded as a logical consequence of legal certainty. It reflects the assurance that legal rights and obligations can be identified with sufficient clarity and anticipated with reasonable confidence. In this sense, legal protection extends beyond formal safeguards and encompasses certainty regarding the legal position of parties within a legal relationship, including contractual relationships. It ensures that agreements provide a clear determination of the parties' legal status, rights, and obligations, thereby minimising uncertainty in the application of the law. From the perspective of legal certainty, legal protection also includes procedural guarantees afforded to legal subjects during judicial proceedings, such as the right to be heard, the right to present a defence, and protection against retroactive application of the law (Bryant, 2004). Nevertheless, within Radbruch's (2006a) framework, such protection is not without limits –cannot be invoked to preserve legal norms that manifestly fail to satisfy minimum standards of justice or that embody extreme injustice.

In relation to bilingual and foreign-language contracts, legal protection encompasses the legitimate expectation of contracting parties that an agreement will not be invalidated on the basis of linguistic formalities (Brutti, 2022). Consequently, legal protection is directed not only towards safeguarding the substantive rights and obligations embodied in a contract but also towards preserving the stability and continuity of the contract as a legally binding instrument. A legal system that allows contractual validity to depend upon uncertain or inconsistent interpretations of language requirements risks undermining the confidence upon which commercial transactions depend.

Within contract law, particularly in matters concerning the language of agreements, the concepts of legal certainty, predictability, and legal protection assume particular significance because language serves as the primary medium through which contractual rights and obligations are articulated and interpreted. Ambiguity or inconsistency arising from linguistic issues may weaken predictability by preventing parties from accurately assessing the meaning and legal consequences of their agreement. From a Radbruchian perspective, this illustrates that legal certainty should not be confined to formal compliance with legal requirements. Rather, it must also ensure that legal relationships produce outcomes that are reasonably foreseeable and capable of guiding behaviour. Accordingly, in the context of foreign-language contracts, legal protection extends beyond the preservation of substantive contractual rights and includes assurances that linguistic considerations will not become a source of legal uncertainty or undermine agreements that have been validly concluded through mutual consent.

A complementary perspective from Richard A. Posner's (2011) Economic Analysis of Law. Posner (2011) conceptualises this approach as a positive and descriptive method of understanding legal rules and institutions through empirical patterns of human behaviour. As such, it occupies an important place within contemporary legal scholarship and has significantly influenced both legal theory and critiques of traditional jurisprudence, notwithstanding ongoing debates concerning its scope and limitations (Michelman, 1979). Within Posner's (2011) framework, adjudication is not viewed as a process determined exclusively by hierarchical legal norms. Judicial decision-making may also be influenced by external considerations, including economic reasoning and insights derived from the social sciences. This perspective is particularly relevant in situations where legal

rules do not provide clear answers to the dispute before the court, thereby creating a degree of judicial discretion (Małecka, 2017).

In such discretion exists, economic considerations may serve as one of several justificatory tools available to judges in evaluating competing legal outcomes. Nevertheless, empirical studies indicate that economic considerations are not the dominant factor in the losing party's decision to appeal; consequently; the assumptions regarding Economic Analysis of Law – which emphasise economic rationality in litigation – should be applied cautiously and within their specific institutional and social contexts (Barclay, 1997).

Posner (2011) has consistently distinguished his pragmatic approach from postmodern legal thought, arguing that pragmatism should not be equated with postmodernism. In doing so, he situates Economic Analysis of Law within a framework that remains sceptical of excessive relativism in legal theory while maintaining a practical focus on the consequences of legal rules and judicial decisions (Krecké, 2003).As one of the leading figures of the Law and Economics movement, Posner (2011) conceptualises law through an economic lens that emphasises efficiency, wealth maximisation, and the promotion of social welfare. This approach encourages a more flexible method of legal interpretation, allowing courts to consider market-based principles and economic consequences in the process of legal reasoning and adjudication (Scheuerman, 1999).

From Posner's (2011) perspective, an effective legal system becomes one that promotes economic efficiency and minimises unnecessary transaction costs. Legal rules should facilitate voluntary exchanges, reduce uncertainty, and enable parties to organise their affairs with confidence. Conversely, where legal regulations generate uncertainty, increase litigation costs, or discourage economically beneficial transactions, they fail to achieve socially efficient outcomes. In this regard, language requirements that potentially render international contracts invalid may be viewed as a form of legal inefficiency, as they increase transaction costs and commercial risks for business actors engaged in cross-border commerce.

Within the sphere of international contracting, uncertainty arising from divergent interpretations of contractual language can significantly increase transaction costs. Such costs may include litigation expenses, the need for contract renegotiation, delays in commercial performance, and the risk of unilateral challenges to contractual validity. These consequences are inconsistent with the central objectives of Economic Analysis of Law, which concerns the legal system as a mechanism for reducing transactional frictions and facilitating efficient market exchanges. Where legal rules themselves become a source of uncertainty, the law ceases to function as a means of reducing economic risk and instead creates additional costs for commercial actors.

Alongside economic efficiency, the principle of party autonomy occupies a central position in contemporary private international law. Modern developments demonstrate that party autonomy is no longer confined to contractual matters but may extend to broader legal relationships, provided that the parties expressly agree upon such arrangements through valid choice-of-law clauses. Nevertheless, it is important to bear in mind that there are limitations arising from the need to protect parties who are economically weaker or have a weaker bargaining position; consequently, the freedom of the parties is not absolute but is subject to the principles of public order and substantive justice (Symeonides, 2025).

At its core, the doctrine of party autonomy grants contracting parties the freedom to determine the content, structure, and legal effects of the agreements that govern their relationship. However, such freedom does not automatically guarantee legal certainty. In practice, contractual autonomy may be undermined where contractual provisions are drafted in language that is ambiguous or susceptible to multiple interpretations. Linguistic uncertainty can produce conflicting interpretations of the parties' intentions, thereby diminishing the effectiveness of contractual freedom itself. For this reason, contractual interpretation requires an approach capable of balancing respect for the parties' intentions with the need to preserve legal certainty in the performance and enforcement of agreements (Dickson, 2018).

Importantly, the scope of party autonomy in modern contract law extends beyond the freedom to select the governing law or determine contractual content. It also encompasses the freedom to choose the language through which contractual intentions are expressed. Contractual language functions as a medium through which parties communicate, allocate risks, and define their respective rights and obligations. Restrictions on the parties' choice of language should generally be justified only where they serve fundamental public interests, such as consumer protection, public policy, or other overriding societal concerns, rather than purely administrative objectives (Réaume, 2000).

Within the Indonesian legal context, however, limitations on the parties' freedom to determine the language of their contracts have not always been accompanied by clear and predictable legal consequences. The absence of explicit sanctions and the existence of conflicting judicial interpretations have created considerable uncertainty regarding the legal effect of non-compliance with language requirements. This situation grants courts a broad scope for interpretation and may, in practice, reduce the effectiveness of party autonomy. Where linguistic formalities are treated as factors capable of determining contractual validity, the parties' freedom to structure their legal relationship risks becoming constrained not by substantive considerations of justice or public policy, but by formal requirements whose legal consequences remain uncertain. Such a development raises important concerns regarding legal certainty, contractual freedom, and the overall efficiency of the legal framework governing international commercial transactions.

Party autonomy is widely recognised as one of the most fundamental principles of private international law governing contractual relationships in both global and comparative contexts (Mills, 2018, 2019). The principle is also regarded as a cornerstone of international commercial arbitration. In its broadest sense, party autonomy refers to the freedom of parties to select the legal regime that will govern their relationship throughout the arbitral process. Nevertheless, academic literature suggests that the operation of party autonomy at the post-award stage, particularly in relation to judicial review of arbitral awards, remains comparatively underexplored. Consequently, contemporary scholarship has focused on the limits of party autonomy in relation to the authority of national courts to review arbitral decisions. This discourse further examines whether parties may modify or restrict mechanisms of judicial supervision, while also considering the differing approaches adopted across jurisdictions and the legal policies underlying those approaches (Scherer, 2016).

Party autonomy in civil law grants the parties the authority to regulate the formation, content, performance, and dispute resolution mechanisms of their agreements. This authority extends to defining the scope of disputes, selecting methods of dispute settlement, and determining the evidentiary and defensive instruments. However, party autonomy is not absolute. Its exercise is constrained by procedural law, judicial authority, and considerations of public policy. The principle applies primarily to the disposition of private rights, whereas control over judicial proceedings remains vested in the courts as an aspect of judicial activity. Accordingly, a distinction exists between the parties' authority over the substantive aspects of their legal relationship and the court's authority to supervise the administration of justice (Bocharova, 2016).

Party autonomy is likewise a central principle of international contract law, granting parties the freedom to determine the content, performance, and governing law of their agreements. The principle aims to promote legal certainty and predictability in cross-border contractual relationships. However, its application is subject to limitations designed to protect weaker parties, particularly consumers and employees. In such circumstances, the law restricts contractual freedom through judicial oversight and the application of protective legal rules intended to protect vulnerable parties. Consequently, party autonomy operates within a framework to balance contractual freedom with legal protection (Alrashid, 2025).

The challenges associated with party autonomy are particularly evident in electronic consumer contracts, where consumers frequently occupy a weaker bargaining position (Becher, 2008; Tang,

2007). In many cases, consumers lack a meaningful opportunity to negotiate contractual terms and may encounter difficulties in understanding complex contractual clauses. Such circumstances diminish the level of legal protection available to consumers, particularly in relation to the choice-of-law provisions. These limitations reflect an imbalance of bargaining power between the contracting parties. As a result, scholars have observed a gradual shift from the traditional concept of party autonomy towards what has been described as "one-sided autonomy" within the practice of electronic consumer contracting (Ali & Hernoko, 2020; Hillman & Rachlinski, 2002).

More broadly, party autonomy remains a fundamental principle of modern contract law, encompassing the freedom of parties to determine the content, form, governing law, and even the language of their agreements. Restrictions upon this principle are generally justifiable only where they serve essential public interests. In the context of international private contracts, the choice of contractual language should fall within the sphere of party autonomy and should not constitute a basis for invalidating an otherwise valid legal relationship.

2. The Appropriate Use of Language in Contracts under Contract Law

When a legal act takes the form of a contract, certain requirements must be satisfied for that contract to be legally valid. These requirements are set out in Article 1320 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) (Hartono & Prananingtyas, 2024). Compliance with these requirements is necessary for a contract to create legally binding obligations. In addition, contractual language should be drafted in a clear and straightforward manner in order to facilitate understanding and minimise the risk of misunderstanding between the parties.

The validity requirements for the validity of a contract, as set out in Article 1320 of the Civil Code, essentially focus on the substantive elements of the legal relationship, namely the existence of an agreement, the legal capacity of the parties, a specific subject matter, and a lawful cause. These four elements do not place language as the primary element determining the validity of a contract. Therefore, the use of language in a contract, in principle, serves merely as a medium to express the parties' intentions so that they may be clearly understood and avoid multiple interpretations.

In modern contract law, language is regarded as a medium of interpretation to record the intentions of the parties in written form. Consequently, language cannot be classified as a substantive element of a contract's validity, but rather as a technical instrument that facilitates the establishment of proof in the event of a dispute. However, in Indonesian legal practice, there is a tendency to treat language as a normative element that influences the validity of a contract. This approach creates a tension between administrative formalities and contractual substance, which ultimately leads to uncertainty in international trade practice. In international trade practice, the use of a foreign language is, in fact, a practical necessity because the parties come from different legal systems and national backgrounds. English, for instance, has emerged as the dominant language in global business contracts because it is considered more effective in bridging cross-border commercial communication. Therefore, if national law places excessive restrictions on the use of certain languages in international private contracts, this situation has the potential to hinder the efficiency of business transactions and impose additional administrative burdens on the parties.

The use of a foreign language in a contract is not a matter of great urgency. The principles contained in a contract or agreement merely govern the legal subject and legal object (Ristiyana et al., 2021). The terms of a contract or agreement only address legal and procedural matters. Essentially, the principle of freedom of contract grants the parties autonomy to determine the content and form of the contract according to their needs, provided it does not conflict with the law, public order, and morality. This freedom also encompasses the freedom to choose the language used in the contract, particularly in international business relations which require flexibility in communication. Therefore, rigid restrictions on language choice may be viewed as a form of excessive intervention in the private sphere of the parties.

The language applicable for contracts are regulated under Article 31 of Law No. 24 of 2009 in conjunction with Article 26(1) and (2) of Presidential Regulation No. 63 of 2019 (hereinafter Presidential Regulation No. 63 of 2019). These provisions have generated considerable debate due to their apparent tension with the contractual principle of freedom of contract. Although Presidential Regulation No. 63 of 2019 was introduced in part to address issues arising from Article 31, it has not resolved the underlying legal uncertainty because its provisions concerning contractual language largely replicate the wording of Article 31 of Law No. 24 of 2009 (Fasya & Lubis, 2024). As a result, the statutory and regulatory framework governing contractual language continues to generate uncertainty regarding its legal implications.

This problem is further complicated by the absence of clear provisions specifying the legal consequences of failing to comply with the obligation to use *Bahasa Indonesia*. The lack of an express sanction has produced divergent interpretations within judicial practice. Some courts have maintained that contracts remain valid notwithstanding non-compliance, whereas others have concluded that such contracts are void by operation of law. This divergence illustrates a significant degree of legal uncertainty that may adversely affect parties engaged in commercial transactions.

Article 31 of Law No. 24 of 2009 is considered ineffective if implemented in society because it does not provide legal certainty regarding the sanctions applicable to violations of language requirements. The absence of a clearly defined enforcement mechanism has contributed to uncertainty within commercial practice and weakened the practical authority of the provision. This uncertainty is particularly concerning for business actors and foreign investors, who typically require a legal system that is stable, predictable, and capable of providing reliable protection for commercial expectations. In modern business practice, legal certainty is closely correlated to investment protection and the continuity of commercial relationships. Where contractual validity may be challenged solely based on linguistic formalities, confidence in the legal system may be undermined.

Difficulties become especially apparent when parties seek to conclude international agreements in a foreign language. Article 31 states the use of *Bahasa Indonesia* in memoranda of understanding and contractual agreements (Tunggono & Dwiyatmi, 2024). Such a requirement of course appears to conflict with the principle of freedom of contract, under which parties are generally entitled to determine the terms and structure of their contractual arrangements, including the language in which those arrangements are expressed. This autonomy encompasses the freedom to determine the content, form, subject matter, object, and communicative instruments employed in negotiating and drafting commercial agreements.

Moreover, the adoption of bilingual contracts does not necessarily eliminate interpretative difficulties. Differences in legal terminology between languages may generate conflicting interpretations of contractual provisions (Al-Tarawneh & Al-Badawi, 2024). For this reason, international contracts commonly designate a governing language that prevails in the event of inconsistency between language versions. This practice demonstrates that what is ultimately most important is not the mandatory use of a particular language but rather ensuring that the parties share a common and reliable understanding of their agreement.

The existence of Article 31 of Law No. 24 of 2009 has therefore contributed to normative disharmony within the legal framework governing contractual language. In principle, contracts should be permissible even if they are not in Indonesian, as the parties involved have the right to determine the content of the contract – including the language –in accordance with the principle of freedom of contract. This normative tension reflects a broader conflict between legal formalism and the practical demands of contemporary commercial activity. On the one hand, the state seeks to promote *Bahasa Indonesia* as a symbol of national sovereignty (Foulcher, 2000). On the other hand, international private contracts require efficiency and flexibility in selecting the most effective means of communication. The imbalance between these two interests ultimately give rise to uncertainty in the application of Indonesian contract law.

A fundamental error within certain strands of Indonesian judicial practice lies in the tendency to equate the administrative obligation to use *Bahasa Indonesia* with the substantive requirements for contractual validity. From a doctrinal perspective, these matters belong to distinct legal regimes. Language serves as a vehicle for expressing the parties' intentions, whereas contractual validity rests upon substantive elements such as mutual consent and a lawful legal purpose. When linguistic formalities are treated as grounds for invalidating a contract, contract law risks losing its primary function as a mechanism for protecting legitimate expectations and ensuring stability in private legal relationships.

If such a formalistic approach continues to prevail, Indonesian contract law may struggle to keep pace with jurisdictions that have adopted more adaptive responses to the realities of global commerce. Jurisdictions such as the Netherlands, Malaysia, and Singapore generally regard contracts as economic instruments whose stability and effectiveness should be preserved. Consequently, the orientation of modern contract law should focus primarily on protecting the substance of contractual agreements, the principle of good faith, and the certainty of private legal relationships, rather than prioritising compliance with technical administrative requirements that bear little relation to the parties' substantive rights and obligations.

3. The Principle of Freedom of Contract in Relation to Article 31 of Law No. 24 of 2009

The validity of a contract under Indonesian law is contingent upon compliance with requirements stipulated in Article 1320 of the Indonesian Civil Code (Sugiastuti & Purnamasari, 2023). Failure to satisfy these requirements may result in the contract being declared invalid. The element of mutual consent signifies that all parties agree to the contents of the contract (Anggraeny & Al-Fatih, 2020). An agreement formed through pressure, coercion, or threats is considered legally defective and may therefore be invalidated.

Legal capacity in contractual relations means that the parties to the agreement must have reached the age of majority and possess legal competence, namely being over the age of twenty-one or being married. Individuals below the age of twenty-one who are married may nevertheless be deemed legally competent. Furthermore, individuals placed under guardianship or legal supervision do not meet the requirement of legal capacity.

A specific subject matter constitutes one of the validity requirements of a contract, meaning that the object of the agreement must be clearly identifiable, objectively determinable, and capable of rational determination. The quantity of goods forming the subject matter of the contract must be ascertainable. Failure to satisfy this requirement may render the contract void by operation of law.

A lawful cause (*causa*) means that the agreement must not contravene statutory law, public order, or morality. If it conflicts with any of these elements, the contract is deemed void by operation of law. In civil law doctrine, however, does not interpret lawful cause in terms of formal compliance with legislation; it also encompasses the economic and social objectives underlying the agreement. Consequently, the validity of a contract cannot be assessed exclusively through a textual approach but must also consider the context and purpose of the contractual arrangement. This perspective demonstrates that contract law is inherently dynamic and capable of adapting to the evolving needs of society, particularly within increasingly complex commercial activities.

Legal principles constitute the foundational basis upon which legal rules are constructed and interpreted. They provide guidance regarding the direction and objectives of the law, and legal rules ultimately derive their legitimacy from these underlying principles. Contract law recognises five principal doctrines: freedom of contract, commensalism, *pacta sunt servanda,* good faith, and personality. In the development of modern private law, these principles are no longer viewed merely as abstract concepts; rather, as interpretative instruments that guide judicial reasoning in the resolution of contractual disputes (Priyono et al., 2025). Legal principles serve to reconcile the demands of legal certainty with the requirements of substantive justice, ensuring that contractual

agreements are not only formally valid but also worthy of legal protection. Among this principle, freedom of contract occupies a central position as it provides the primary justification for the creation of private legal relationships without excessive state intervention. When the state begins to regulate the technical formation of contracts through rigid administrative requirements, the potential arises for conflict between the parties' private autonomy and the regulatory interests of the state.

The principle of freedom of contract embodies the autonomy of contracting parties in determining the terms of their legal relationship. Article 1338 of the Indonesian Civil Code provides that a contract validly concluded by the parties shall bind them as law. This principal grants parties' broad discretion to negotiate and determine the various aspects of their agreement, provided that it does not contravene statutory law, public policy, or morality. Accordingly, the principle imposes few restrictions upon contractual freedom so long as those fundamental limitations are respected.

Within the modern legal development context, however, freedom of contract is no longer regarded as an absolute principle. Its exercise has increasingly been subject to limitations imposed by mandatory legal rules designed to balance individual autonomy with broader public interests. As a result, while parties retain considerable freedom in determining the content of their agreements, that freedom must operate within the boundaries established by law. In practice, these limitations often become controversial when administrative requirements—such as the obligation to use *Bahasa Indonesia* in contracts—are treated as equivalent to the substantive requirements for contractual validity. Such an approach creates tension between the principle of freedom of contract and the regulatory intervention of the state.

From a theoretical perspective, freedom of contract emerged from classical liberal thought, which regarded individuals as autonomous legal subjects capable of determining their own interests and arranging their affairs accordingly. Under this conception, the role of the state was largely confined to maintaining public order and enforcing agreements rather than intervening in the substantive content of private contractual relationships. Nevertheless, modern legal systems have increasingly recognised the limitation od contractual freedom to protect social interests, vulnerable parties, and preserve economic stability. The critical question, therefore, concerns the extent to which state intervention may be justified without undermining the essential autonomy of contracting parties. In the context of Article 31 of Law No. 24 of 2009, the regulation of contractual language raises particular concerns because language is not a substantive element that determines the formation of a contractual relationship.

The principle of consensualism provides that a contract becomes legally effective upon the achievement of mutual agreement between the parties. A contract is generally considered into the existence and to be legally binding once the parties' intentions have converged, without the need for additional formalities unless expressly required by law. The existence of mutual consent is sufficient to create a valid legal relationship and reflects the notion that the essence of contract law lies in the free and genuine agreement of the parties. Consequently, where consent is given voluntarily and without any defect of intention, the fundamental requirements for the formation of a contract are satisfied. The principle of consensualism is embodied in Article 1320(1) of the Indonesian Civil Code (Hajati, 2019; Kagramanto & Serfiyani, 2019).

The principle of *pacta sunt servanda* provides that agreements lawfully concluded by the parties acquire binding force equivalent to law between them (Imelda & Sholikah, 2026). In practical terms, this means that contractual obligations must be performed and the rights arising from the agreement must be respected. The principle is codified in Article 1338(1) of the Indonesian Civil Code. *Pacta sunt servanda* is closely associated with legal certainty because economic activity depends upon confidence that contractual commitments will be honoured and enforced. The validity of a contract can be easily challenged based on administrative formalities unrelated to the substance of the parties' agreement, thus the role of contract law as a mechanism

for transactional stability is weakened. In the context of international commerce, certainty regarding the enforceability of contracts becomes a crucial factor influencing investor confidence in a particular legal system. Excessively formalistic approaches to contractual language therefore risk reducing legal predictability and increasing commercial risk.

The principle of good faith requires contracts for honestly and fairly conditions, without improper motives or conduct capable of causing harm to the other party (Uçaryılmaz, 2020). It obliges contracting parties to act with honesty, reasonableness, and due regard for the rights and obligations established by their agreement. In contemporary contract law, good faith is also understood as a mechanism for preserving trust and ensuring stability within contractual relationships, thereby preventing outcomes that may operate unfairly against one of the parties (Heredia, 2018). This principle is expressly recognised in Article 1338(3) of the Indonesian Civil Code.

A doctrinal conflict arises when Article 31(1) of Law No. 24 of 2009 intrudes into the sphere of private contractual relations by imposing a mandatory requirement that agreements be drafted in *Bahasa Indonesia* (Pertiwi, 2018). The provision is further complicated by the absence of any clear legal sanction for non-compliance, thereby generating uncertainty and undermining legal predictability. This reflects a broader disharmony between private law norms and administrative regulations rooted in public law objectives. Within an ideal contractual framework, state intervention should not interfere with the substance of the parties' agreement unless justified by compelling public interests of an imperative nature. The issue also highlights shortcomings in the harmonisation of legislation, particularly where administrative rules encroach upon areas of private law that traditionally afford parties a significant degree of autonomy. From the perspective of normative hierarchy, legal rules should operate in accordance with their respective functions and objectives – where administrative requirements overlap with substantive principles of contract law, the result is often legal uncertainty capable of destabilising contractual relationships.

The use of "mandatory" term within Article 31 carries significant interpretative implications, as legislative drafting conventions generally correlated in such terminology with binding legal obligations. The principal difficulty, however, lies in the legislature's failure to specify either the applicable sanctions or the legal consequences of non-compliance. This normative gap has created considerable scope for judicial discretion, allowing courts to interpret the provision according to differing legal paradigms. As a consequence, judicial decisions have produced inconsistent outcomes. In some cases, foreign-language contracts have been upheld as legally valid, while in others, they have been declared void by operation of law. These divergent approaches demonstrate that the core difficulty associated with Article 31 does not arise from the obligation to use *Bahasa Indonesia*, but rather from the ambiguity of its normative construction and the absence of clearly defined limits on its application.

Such state intervention contributes to legal disorientation by blurring the distinction between administrative formalities and substantive requirements for contractual validity. Under Article 1320 of the Indonesian Civil Code, the contract validity depends upon the fulfilment of substantive elements, namely mutual consent, legal capacity, certainty of subject matter, and a lawful cause. Language, by contrast, functions primarily as a communicative medium through which the parties' intentions are expressed and recorded. It serves as evidentiary tool for identifying true contractual intent upon entering the agreement. Within contract law doctrine, administrative formalities generally operate as mechanisms for ensuring procedural order rather than as constituent elements of contractual validity. As a result, when a breach of an administrative requirement is elevated to a ground for invalidating a contract, the focus of the law shifts from protecting substantive rights and expectations to enforcing procedural formalism. Such an approach risks yielding inequitable outcomes, particularly when agreements concluded and performed in good faith are rendered ineffective based on technical linguistic deficiencies. This formalistic orientation sits uneasily with

the objectives of modern contract law, which prioritise the protection of legitimate expectations and preserve certainty in private legal relationships.

The enactment of Presidential Regulation No. 63 of 2019 did provide more contribution to resolve these difficulties, as its provisions concerning contractual language largely reproduced the rigid approach adopted by the parent legislation. The resulting uncertainty has been exacerbated by the phenomenon of strategic default, whereby debtors acting in bad faith seek to exploit the absence of an Indonesian-language version of a contract as a procedural mechanism for avoiding contractual obligations or repayment liabilities. This development illustrates a broader regulatory failure to distinguish clearly between the symbolic function of *Bahasa Indonesia* as an expression of national identity and the practical function of contracts as instruments of private economic exchange. In the sphere of public law, the promotion of *Bahasa Indonesia* undoubtedly serves an important sovereign purpose. In international private contracting, however, the parties' primary concerns are effective communication, commercial certainty, and transactional efficiency. When symbolic regulatory objectives are extended too far into the realm of international business, the law risks losing its practical utility as a framework for facilitating economic activity and investment.Recognising the potential adverse consequences of this form of hyper-formalism for Indonesia's investment climate, the Supreme Court issued Supreme Court Circular Letter No. 3 of 2023, which clarifies that the absence of an Indonesian-language text does not automatically render a contract void by operation of law. Instead, invalidity must be proven. Nevertheless, examined through Hans Kelsen's (2005) theory of normative hierarchy (*Stufenbaulehre*), this judicial intervention gives rise to a new form of normative tension. Although a Supreme Court Circular occupies a lower position than legislation within the hierarchy of legal norms, the Supreme Court issued Supreme Court Circular Letter No. 3 of 2023 in practical terms, has significantly diminished the mandatory effect of Article 31 of Law No. 24 of 2009. The coexistence of a statutory provision imposing a mandatory obligation and a judicial directive that effectively relaxes that obligation illustrates a deeper structural inconsistency within Indonesia's legal framework. This regulatory dualism reveals a systemic difficulty in developing a coherent and predictable body of contract law capable of satisfying the demands of legal certainty as conceptualised by Gustav Radbruch (2006a).

The issuance of the Supreme Court Circular Letter indirectly demonstrates that the judiciary has started to recognise the adverse consequences of an excessively formalistic approach for commercial transactions and investment activities. This situation highlights a lack of synchronisation. Judicial policy is further insufficient to resolve the underlying normative problem embedded within the legislation itself. As long as Article 31 of Law No. 24 of 2009 retains its mandatory formulation without clearly defining either the scope of its application or the legal consequences of non-compliance, the potential for doctrinal inconsistency will continue to arise in judicial practice. This situation highlights a lack of synchronisation between legislative policy and the practical demands of modern contract law, which increasingly require legal certainty, transactional efficiency, and commercial predictability.

Although the Supreme Court issued Supreme Court Circular Letter No. 3 of 2023 seeks to correct judicial approaches that have placed excessive emphasis on formal requirements, its existence raises several questions concerning the hierarchy of legal norms within the Indonesian legal system. This illustrates that legal uncertainty cannot be effectively addressed through judicial policy; rather, it requires a more comprehensive process of legislative harmonisation. For this reason, future reform of Indonesian contract law should focus on reconstructing the legal understanding of language within contractual relationships. Language ought to be regarded primarily as an administrative instrument and a means of communication rather than as a factor determining the very existence or validity of a contractual relationship. Such a reformulation would enable Indonesian contract law to evolve towards a framework that is more adaptive, pragmatic, and responsive to the realities of global commerce. In this way, the protection of *Bahasa*

Indonesia as an expression of national identity could be maintained without compromising legal certainty, economic efficiency, or the principle of freedom from contract in international business transactions.

4. Divergent Judicial Approach to Foreign-Language Contracts in Indonesia

Contractual relationships commonly originate from differing interests pursued by the parties. These interests are typically reconciled through communication and negotiation, the outcome of which is the formation of mutually accepted objectives and obligations. The convergence of these interests ultimately produces an agreement that establishes a legally binding relationship between the parties (Chrystofer et al., 2017). Once a contract has been concluded, each party assumes obligations that are expected to be performed in accordance with the terms agreed upon.

In practice, contractual disputes frequently arise when one of the parties fails to fulfil its obligations. Such situations often generate conflicts that may result in financial or commercial losses for the aggrieved party, who may subsequently seek compensation or other legal remedies. Disputes of this nature are commonly resolved through judicial proceedings, with courts determining the rights and obligations of the parties through formal judgments.

Indonesian courts have adjudicated a wide range of contractual disputes, including those involving agreements drafted in foreign languages. Some courts have upheld the validity and enforceability of foreign-language contracts, whereas others have declared such agreements void by operation of law on the basis that they were not executed in *Bahasa Indonesia*. To illustrate these differing judicial approaches, the following table presents several significant cases.

Table 1.
Judgment in a Contract Case Conducted in a Foreign Language

Case Number	Position of the Parties	Judicial Approach
Supreme Court No. 1572 K/Pdt/2015	PT Bangun Karya Pratama Lestari (IDN) vs. Nine AM Ltd (USA)	Rigid Formalistic (Hyper-legalism)
High Court of Jakarta Decision No. 575/Pdt/2020	Kokos Jiang (IDN) vs. Reliance Coal Resources Pvt Ltd (SGP)	Rigid Formalistic (Hyper-legalism)
Supreme Court No. 3415 K/Pdt/2021	Reliance Coal Resources Pvt Ltd (SGP) vs. Kokos Jiang (IDN)	Substantive Pragmatic (Investment-friendly)
Amlapura District Court Decision No. 254/Pdt.G/2019/PN.Amp	Alexander William Ford (Foreign National) vs. Man Lee Ford Cheung (Foreign National)	Substantive Pragmatic (Investment-friendly)

Source: author's analysis results

A particularly strong critique may be directed at Supreme Court Decision No. 1572 K/Pdt/2015. The reasoning adopted by the Judex Juris in equating a breach of an administrative language requirement with an "unlawful cause" under Article 1337 of the Indonesian Civil Code represents a highly problematic judicial construction. Traditionally, the concept of an unlawful cause relates to the substance of a legal transaction whose object or purpose is prohibited by law – such as agreements involving human trafficking or the trade of illicit goods, which aim to categorise the absence of an Indonesian-language version of a contract as an unlawful cause constitutes a significant distortion of established contract law doctrine. Based on a theoretical standpoint, this formalistic approach reflects a reductionist understanding of contracts, whereby the essence of contractual relationships as products of the parties' free will is subordinated to administrative compliance. Such reasoning shifts the focus of contract law away from the substantive nature of the parties' legal relationship and towards procedural formalities that bear little connection to the actual content of their agreement. However, contemporary contract law

generally regards the validity of a contract as deriving primarily from consensus ad idem rather than from external formal requirements unrelated to the substance of the parties' bargain.

The Supreme Court's approach in Decision No. 1572 K/Pdt/2015 also exhibits characteristics commonly associated with judicial overreach. Rather than merely interpreting an existing legal norm, the Court effectively created a new legal consequence that had not been expressly prescribed by the legislature. Article 31 of Law No. 24 of 2009 requires the use of *Bahasa Indonesia* in agreements involving Indonesian parties; it does not stipulate that non-compliance results in the contract being void by operation of law. Consequently, by deriving the sanction of absolute nullity through its interpretation of Article 1337 of the Indonesian Civil Code, the Court extended the scope of the statutory provision beyond the intention of the legislature. This form of expansive interpretation may be characterised as ultra-interpretation, whereby judicial reasoning exceeds the normative boundaries established by legislation. This approach is considered problematic because it enlarges the scope of judicial subjectivity in determining the validity of private contractual arrangements.

Moreover, this excessively formalistic approach contradicts with contemporary developments in contract law, which increasingly prioritise the protection of commercial expectations and the promotion of economic efficiency. In international commerce, the use of English is not intended to diminish national identity but rather to facilitate communication across jurisdictions by serving as the lingua franca of global business. Treating contractual language as a determinant of a contract's legal existence, therefore suggests that Indonesian contract law remains influenced by a rigid form of legal nationalism. It is insufficiently responsive to the practical realities of modern commercial transactions. If such an approach continues to prevail, courts risk becoming institutions that undermine commercial certainty rather than safeguarding the stability of private legal relationships.

The decision further illustrates a pronounced tendency towards judicial formalism. The Court placed greater emphasis on textual compliance than the substantive legal relationship established by the parties. Such an approach diverges from the trajectory of modern contract law, which increasingly favours substantive fairness and commercial reasonableness. Within international commercial practice, the use of a foreign language is commonplace and serves the practical objective of promoting efficient communication among business actors operating across different jurisdictions. Accordingly, the use of English language cannot automatically be regarded as contrary to public policy or indicative of an unlawful cause. When courts elevate linguistic formalities to a decisive ground for invalidating contracts, they effectively transform contract law from a mechanism designed to facilitate trade into an instrument that restricts economic activity. Such a development risks undermining the very objectives of legal certainty, commercial reliability, and economic efficiency that contract law is intended to serve.

This approach also illustrates how the Court disproportionately expanded the meaning of an "unlawful cause" beyond its traditional doctrinal boundaries. If every breach of an administrative requirement is to be treated as a violation of the requirement of a lawful cause, contract law will risk evolving into a hyper-formalistic regime that is unnecessarily restrictive of private autonomy. As a result, contracts would no longer be assessed based on the substantive exchange of intentions and obligations between the parties, but rather on their compliance with state-imposed administrative formalities.

The reasoning adopted by the Supreme Court in Decision No. 1572 K/Pdt/2015 further reflects a form of excessive judicial formalism that pays insufficient regard to the economic realities of modern contractual relationships. The Court appears to have treated the contract primarily as an administrative instrument subject to strict normative requirements, rather than as a commercial arrangement that had been recognised and performed by the parties over an extended period of time. Yet actual performance of contractual obligations constitutes compelling evidence of consensus ad idem and mutual recognition of the contract's binding force. When a court invalidates

an agreement that has been voluntarily performed for years only because of a linguistic deficiency, it undermines the certainty of commercial transactions and the legitimate expectations that contract law is intended to protect.

More significantly, the legal construction adopted in the decision creates the potential for moral hazard in international commercial practice. A debtor, who has previously enjoyed the economic benefits of a contractual arrangement, may opportunistically invoke a language-related technicality to evade payment obligations. This phenomenon illustrates the formalistic approach can facilitate the strategic misuse of legal rules by parties acting in bad faith. In such circumstances, contract law ceases to function as a mechanism for protecting trust and reliance and instead becomes an instrument through which contractual responsibility may be avoided. The result is particularly problematic, where confidence in the enforceability of agreements constitutes a fundamental prerequisite for economic activity.

Criticism of the decision should also focus on the Court's apparent failure to distinguish between mandatory administrative regulations and rules governing the substantive validity of contracts. Article 31 of Law No. 24 of 2009 is, in essence, an administrative provision intended to promote and preserve the use of *Bahasa Indonesia* within certain legal and governmental contexts. It was never formulated as a constituent requirement for contractual validity comparable to those contained in Article 1320 of the Indonesian Civil Code. By transforming an administrative obligation into a basis for absolute nullity, the Court effectively created a legal consequence that lacks a clear legislative foundation. Such judicial reasoning extends the reach of the statutory provision beyond its intended purpose and blurs the distinction between regulatory compliance and contractual validity.

The decision also reveals a strongly textual form of legal positivism that provides insufficient weight to the broader social and economic functions of contract law. Contemporary contract law is concerned not merely with maintaining normative certainty but also with facilitating efficient transactions and supporting commercial stability. Contractual interpret globalised, therefore be undertaken within its broader commercial context, considering the parties' economic objectives, prevailing international business practices, and the need to maintain an attractive investment environment. When courts adhere rigidly to the literal wording of a statutory provision without considering its economic implications, contract law risks losing its practical relevance within an increasingly globalised marketplace.

On the other hand, the formalistic reasoning adopted in Decision No. 1572 K/Pdt/2015 appears inconsistent with developments in comparative contract law across several modern jurisdictions. Legal systems – such as those of the Netherlands, Singapore, and Malaysia – do not regard language as an essential element of contractual validity. Rather, language is generally viewed as a tool of interpretation and evidentiary clarification. The primary focus remains on the existence of mutual consent, the free will of the parties, and the actual performance of their legal obligations. Against this comparative backdrop, the Indonesian Supreme Court's decision to treat contractual language as a basis for invalidity illustrates a divergence level between domestic contract law and the prevailing principles governing international commercial transactions. Such divergence may ultimately weaken Indonesia's competitiveness as a jurisdiction for cross-border business and investment, particularly in an era in which legal certainty and commercial predictability are increasingly valued by market participants.

Ultimately, the judgment illustrates how an administrative formality can become a destructive instrument against the stability of private legal relationships when interpreted by the courts. Rather than promoting legal certainty, such an approach generates unpredictability in the business environment, as commercial actors can no longer be confident that agreements, that have been negotiated and performed, will continue to be upheld by the courts. In these circumstances, contract law loses its economic function as a mechanism for ensuring transactional security and protecting the commercial expectations of the parties.

Conversely, the reasoning adopted in Supreme Court Decision No. 3415 K/Pdt/2021 and District Court of Amlapura Decision No. 254/Pdt.G/2019/PN.Amp reflects a return to the fundamental principles of private law (Listiyani & Hermono, 2024). The courts correctly recognised that the execution of the agreement and the subsequent performance of payment obligations—such as those undertaken by Kokos Jiang until November 2011—constituted compelling evidence that the requirements of mutual consent and legal capacity had been fully satisfied. To disregard such genuine agreement solely based on an administrative language requirement would undermine substantive justice.

The pragmatic and substance-oriented approach adopted in Decision No. 3415 K/Pdt/2021 explains a shift from legal formalism towards commercial practicality. Rather than focusing exclusively on the administrative issue of the contract language, the court assessed the actual legal relationship established and performed by the parties. Considerations in the existence of payments, the performance of contractual obligations, the continuity of the business relationship, and the absence of objections to the foreign language use indicated that the agreement was formed through free consent and executed in good faith (Horwitz, 1974). Accordingly, the court viewed the primary function of contract law not as penalising administrative imperfections, but as safeguarding the stability and reliability of commercial transactions.

This approach is more closely aligned with the principle of modern contract law, regarding the protection of legitimate expectations as one of the central objectives of contractual regulation. In the context of international commerce, certainty regarding the enforceability of contracts is considerably more important than compliance with linguistic formalities of an administrative nature. Consequently, Decision No. 3415 K/Pdr/2021 may be regarded as a form of judicial correction to the hyper-formalistic tendencies evident in earlier judgments. The decision further reflects a growing judicial awareness of the realities of global commerce, where flexibility, efficiency, and legal predictability are essential to the resolution of cross-border contractual disputes.

Consistent with these developments, contemporary contract law scholarship has increasingly advocated a reconstruction of the principle of contract freedom so that it is understood not only in formal terms but also in substantive ones. As argued in recent studies, this reconstruction is pursued through a dialectical engagement between Article 1338 of the Indonesian Civil Code and the normative framework of *fiqh muamalah*, particularly in response to the growing use of electronic contracts, which often place one party in a weaker bargaining position due to the prevalence of standard-form clauses (Shoimah, 2026). Based on this perspective, freedom of contract is no longer conceived as an absolute liberty; rather, it should be directed towards achieving substantive justice and promoting *maslahah* (public benefit) within contractual relationships.

Accordingly, both Indonesian judicial practice and contemporary developments in contract theory reveal a gradual transition from a predominantly formalistic approach towards more substantive and oriented of justice and contractual fairness. This evolution further reinforces the argument that legal certainty in modern contract law cannot be separated from the protection of balanced bargaining positions and the observance of good faith in the performance of contractual obligations.

5. Lesson from Foreign Legal Systems (The Netherlands, Malaysia, Singapore)

Agreements in every country, particularly the Netherlands, Malaysia, Singapore, and Indonesia, are invariably governed by applicable provisions that regulate agreements within the territory of the respective state. Regarding the comparison of language use in contracts between the laws of the Netherlands, Malaysia, and Singapore, this comparison selects these three nations to understand the rules concerning language use across different legal systems. The following are the regulations regarding language requirements in these three countries.

a. The Netherlands

In the Netherlands, the contractual framework is governed by the *Burgerlijk Wetboek* (BW), or Dutch Civil Code. The law of obligations and contracts is primarily regulated under Book 6 and Book 7 of the BW. Book 6 governs the general law of obligations, including general rules concerning contractual duties and obligations, while Book 7 regulates specific types of agreements, including sale and purchase agreements. Notably, neither Book 6 nor Book 7 contains any provision requiring contracts to be drafted in the Dutch language. Consequently, Dutch civil law does not impose a mandatory national-language requirement for international private commercial contracts (Hartkamp, 2015; Wessels, 1994).

Under Article 3:39 of Book 3 of the BW, a legal act that fails to comply with a statutory formality expressly prescribed by law may be deemed null and void. For example, contracts concerning the transfer of immovable property, such as land or buildings, must generally be executed by notarial deed and registered with the cadastre. If these formal requirements are not fulfilled, the legal act may be void from the outset. On this basis, Article 3:39 of the BW indicates that nullity is imposed only where a legal act violates a formal requirement that is expressly and strictly required by law, such as the execution of a notarial deed and cadastral registration in relation to the transfer of immovable property (Hartkamp, 2015; Scheltema, 2004).

In the Netherlands, contract interpretation is strongly influenced by the well-known Haviltex doctrine. This doctrine provides that contractual interpretation should not be confined to the literal or grammatical meaning of the contractual wording, but must also take into account the surrounding circumstances of the case. The doctrine originated from the judgment of the Hoge Raad, or Dutch Supreme Court, in HR 13 March 1981, ECLI:NL:HR:1981:AG4158, NJ 1981/635 (Ermes & Langerwerf v Haviltex BV). The dispute concerned the return of a machine and resulted in the Hoge Raad setting aside the judgments of the lower courts, namely the Breda Rechtbank and the ’s-Hertogenbosch Hof (Zantinge, 2023).

In that judgment, the Hoge Raad held that contractual interpretation cannot be restricted to the literal linguistic meaning of the text. Instead, the contractual provisions must be interpreted in light of what the parties could reasonably have expected from one another in the circumstances of the case. The significance of the Haviltex judgment is that the words used in a contract are not the sole or decisive determinant of contractual meaning. It is also necessary to consider the parties’ intentions, their reasonable expectations, their knowledge, their bargaining positions, and other relevant circumstances. Therefore, under Dutch contract law, interpretation does not depend exclusively on the linguistic wording of the agreement, but requires a broader contextual assessment of the contractual relationship.

In the Dutch legal system, contract interpretation is not based solely on the grammatical meaning of the text. It also considers the context of the agreement, the parties’ intentions, established practices within the business relationship, and the principles of reasonableness and fairness. However, in commercial contracts concluded by professional parties, courts may still give substantial weight to the literal wording of the contract, particularly where the agreement is deemed to have been drafted through a mature negotiation process (Hendrikx et al., 2021).

The practical implication of the Haviltex doctrine is particularly relevant to agreements drafted in foreign languages or languages other than the national language. Under this doctrine, the judge focuses on interpreting the intention behind the formation of the agreement. This demonstrates that language is not treated as a formal requirement for contractual validity. Rather, the primary focus remains on the true intention of the contracting parties. The doctrine emphasises that the interpretation of contractual clauses should not be rigidly bound to the grammatical or literal meaning of the text, but should involve a deeper inquiry into the parties’ actual intentions, mutual expectations, bargaining positions, and the standards of

reasonableness and fairness. In this sense, language is viewed as a dynamic instrument for expressing contractual intention, rather than as a formal trap capable of invalidating a contract.

The Haviltex doctrine therefore shows that Dutch contract law prioritises the substantive legal relationship between the parties over linguistic formalism. In the Haviltex judgment, the Hoge Raad affirmed that contractual interpretation cannot rest solely on the literal meaning of the text, but must consider the reasonable expectations and intentions of the parties at the time the contractual relationship was formed (Low, 2010). Accordingly, judicial practice in the Netherlands demonstrates that contract interpretation is highly influenced by the context and concrete circumstances of each case. This approach confirms that Dutch contract law does not rest on textual rigidity, but instead prioritises a substantive assessment of the parties' legal relationship (Hondius, 2016).

Dutch contract law also relies heavily on the standards of reasonableness and fairness (Wissink, 2012). Therefore, when assessing the content and performance of a contract, the judge does not merely examine the contractual text, but also considers whether the substance of the agreement and the manner of its performance are fair and reasonable for both parties.

Under Dutch law, the doctrine of unforeseen changes in circumstances may also serve as a basis for contractual adjustment. Pursuant to Article 6:258 of the *Burgerlijk Wetboek*, the judiciary is empowered to modify or set aside a contract if continued performance would be unacceptable according to standards of reasonableness and fairness (Adiyanto, 2019). This provision demonstrates that Dutch contract law does not treat the principle of pacta sunt servanda as absolute. Instead, it integrates fairness, propriety, and the balance of the parties' interests into the performance of agreements. Thus, the legal orientation of Dutch contract law focuses more on the substance of the legal relationship and the protection of the parties' legitimate expectations than on mere administrative formalities or the use of a specific contractual language.

From the perspective of Dutch contract law, a contract is viewed as an instrument for fulfilling the interests and expectations of the parties, both economic and non-economic. Legal protection is therefore directed more toward the realisation of contractual objectives and legitimate expectations than toward mere compliance with specific administrative formalities. This indicates that Dutch contract law emphasises the substance of the legal relationship and the benefits intended by the parties rather than the linguistic form used in the contract (Beumers, 2021).

In the Netherlands, the language used in an agreement is generally not considered problematic as long as the parties understand its content. When a foreign-language contract is submitted before a court, it may be translated into Dutch to minimise misinterpretation and ensure that its contents can be properly understood. This differs from the Indonesian legal framework, where the use of the Indonesian language is formally required under Article 31 of Law No. 24 of 2009. Whereas Indonesian law adopts a more formal approach to contractual language, Dutch law adopts a more substantive approach by placing greater emphasis on the parties' intention and understanding rather than on the particular language used in the agreement.

Based on the foregoing discussion, it can be understood that the Dutch contract law system tends to place substance, good faith, and the balance of the parties' interests at the centre of contractual performance and interpretation. The use of a particular language is not positioned as an absolute requirement for the validity of an agreement, provided that the parties understand the content and purpose of the contract. This approach reflects the flexibility of Dutch contract law, which prioritises the protection of the parties' interests and legitimate expectations over rigid administrative formalities.

b. Malaysia

In Malaysian contract law, the existence of *consensus ad idem,* or a meeting of minds, is a fundamental element in determining the validity of an agreement. This concept emphasises that parties must understand and agree upon the object and content of the contract in the same sense (same thing in the same sense) . Thus, the validity of a contractual relationship is assessed by the fulfilment of administrative formalities and a genuine understanding between the parties when forming the agreement. This approach shows that the Malaysian contract law system prioritises the substance of the agreement and the meeting of minds over the form or language used. Consequently, the use of English in commercial contracts and international transactions is fundamentally acceptable, provided the parties understand the content, rights, obligations, and legal consequences of the agreement. Furthermore, this approach reflects that legal protection in the Malaysian contract system is directed toward creating legal certainty and a balance of the parties' wills rather than making the use of a specific language an absolute requirement for validity.

In Malaysian contract practice, parties are generally granted the latitude to determine the distribution of rights, obligations, and contractual risks according to their agreement. However, such practice still considers the principles of freedoms and the balance of the parties' positions to prevent imbalances in the contractual relationship. This indicates that Malaysian contract law does not only freedom of contract, but also considers aspects of fairness in the performance and interpretation of contracts, particularly in business and international trade (Zulhafiz, 2015).

In the Malaysian legal system, the presence of free consent is a vital element in determining a contract's validity. The Contracts Act 1950 emphasises that contracts made based on the free agreement of the parties should, in principle, be respected and performed accordingly. This approach illustrates that Malaysian contract law focuses more on the substance of consent and the balance of the legal relationship than on specific formalities in contract formation. Conversely, some studies indicate that an imbalance in bargaining power can lead to clauses that disadvantage one party if not balanced with principles of fairness and reasonableness. Therefore, legal practice in Malaysia continues to consider propriety and the protection of parties in contract performance. This condition also shows that the use of a specific language is not a primary determinant of a contract's validity, provided the parties understand the terms and legal consequences agreed upon.

In commercial practice, Malaysian contract law also concern to the balance of the parties' positions, especially regarding the allocation of rights, duties, and risks. Some studies suggest that bargaining imbalances in business contracts can produce clauses that are overly burdensome if not countered by principles of fairness and reasonableness. Consequently, the Malaysian contract law system, influenced by the common law tradition, tends to provide space for courts to assess the substance of the relationship and the propriety of performance rather than being fixed on specific formalities. This approach further demonstrates that the language used is not a primary factor in determining validity, as long as there is mutual understanding of the legal consequences.

Contract law in Malaysia is primarily governed by the Contracts Act 1950, which sets out the general rules concerning the formation, performance, and validity of agreements. Notably, the Contracts Act 1950 does not contain any explicit statutory requirement that contracts must be drafted in the national language.

Within the Malaysian legal system, parties are fundamentally granted the freedom to determine the content, form, and mechanism of contract performance, provided it does not contravene the. This principle demonstrates that Malaysian contract law emphasises agreement, free will, and the intention of the parties rather than specific formalities in contract formation. Thus, contract validity is generally not determined by the language used, but by the fulfilment of contractual elements and the existence of a meeting of minds between the parties.

Consequently, the use of foreign languages, particularly English, remains common practice in commercial contracts and international transactions in Malaysia, provided there is a comprehensive mutual understanding of the terms. This approach shows that the Malaysian legal system tends to prioritise the substance of the legal relationship and transactional certainty over making a specific language a formal requirement for contract validity.

In the evolution of contract law in Malaysia, contracts are viewed not only as economic instruments but also as social instruments aimed at creating fair and balanced legal relationships between the parties. Therefore, Malaysian contract law is not only oriented toward market individualism or absolute freedom of contract, but has also begun to consider aspects of consumer welfarism and protection for parties with weaker bargaining positions. This indicates that the Malaysian contract law system places greater emphasis on the substance of consensus, the balance of the legal relationship, and the protection of the parties' interests than on making the use of a specific language a formal requirement for validity. Thus, the use of a foreign language in a contract remains permissible in principle, provided the parties comprehend the content and legal consequences of the agreement made.

Technological developments have also influenced contract law practice in Malaysia through the use of smart contracts based on digital technology and blockchain in modern business transactions. Nevertheless, the validity of smart contracts must still fulfil the contractual elements as regulated in the Contracts Act 1950, particularly regarding offer, acceptance, meeting of minds, and the capacity of the parties (Zain et al., 2019). This situation demonstrates that the Malaysian contract law system focuses more on the substance of the agreement and the parties' legal relationship than on the form, medium, or language used in the contract. Consequently, both conventional and digital contracts can be recognised as long as they meet the legal requirements of an agreement and reflect a consensus ad idem between the parties. This approach suggests that Malaysian contract law tends to be flexible and does not make the use of a specific language a primary formal requirement for validity.

Malaysia is a country whose legal system is influenced by the English common law tradition as a historical consequence of British colonialism. Therefore, the development of contract law in Malaysia is heavily influenced by common law principles and judicial precedents. In the common law system, court judgments and legal doctrines serve an important role in the development and interpretation of contract law. The rules in the Contracts Act 1950 do not mandate that the language used in a contract must be Malay. Generally, private contracts in Malaysia are frequently drafted in English or Malay.

As long as the parties possess legal capacity, give free consent, and understand the consequences of the agreement, the law in principle, respects the agreement without excessive intervention. To maintain the certainty and stability of commercial relationships, parties are fundamentally bound by the agreements they have accepted. Although Malaysian contract law upholds the principle of freedom of contract, its implementation remains limited by statutory provisions, morality, and public interest. These limitations include contracts that are illegal, immoral, contrary to public policy or agreements, and in conflict with statutory law (Shariff, 2025). Agreements are restricted when they relate to illegal matters. Accordingly, the use of a foreign language in Malaysian contracts remains permissible in principle, provided it does not contravene the law and the parties understand the content, rights, obligations, and legal consequences of the mutually agreed contract.

c. Singapore

The contract law system in Singapore is uncodified in a single specific statute; instead, it develops through common law principles derived from judicial jurisprudence and the influence of English law (A. B. Phang & Yihan, 2021; A. Phang & Goh, 2019). The framework contains no explicit regulation regarding the language requirements, granting contracting parties' total

autonomy over linguistic selection. In practice, English functions as the standard and default language for commercial agreements. Courts in resolving contractual disputes employ an objective approach by assessing the intention of the parties based on a reasonable interpretation by a neutral third party. The development of contract law in Singapore has been historically influenced by the English common law system, which serves as the primary foundation for the formation of contract doctrines and jurisprudence. This contractual system emphasises the interpretation of contract content based on the objective intent of the parties as well as the principle of impartiality in dispute resolution. This aligns Singapore closely with English commercial jurisdiction, prioritising commercial predictability and objective finality. hat adopts and adapts English legal principles in its legal development.

In the development of contract law in Singapore, courts apply an objective approach to determine the formation of an agreement – by considering whether there is a meeting of minds that can be reasonably understood by a neutral third party. In contract formation, the principles of offer and acceptance remain the foundational framework, yet their practical application can become complex, particularly in scenarios of ongoing negotiations. Nevertheless, under conditions of continuing negotiations, the application of this approach often encounters difficulties because a clear point between offer and acceptance is not always present. Consequently, Singapore law has shifted from rigid textualism toward evaluating the entire course conduct and communication between the parties in determining the existence of an agreement. This development demonstrates that Singaporean contract law serves as an indicator of agreement, but is not determinative if outweighed by objective contextual evidence.

In Singaporean contract law practice, which is influenced by the English common law tradition, courts focus not only on contractual formalities, but also on the substance of the parties' obligations in performing the agreement. This is reflected in the use of endeavours clauses to determine the standard of effort required by the parties in contract performance (Wong, 2019). This approach demonstrates that Singaporean contract law places greater emphasis on substantive performance of obligations and the commercial objectives of the parties rather than mere specific formalities within the contract.

In the evolution of contract law in Singapore, courts have also begun to consider the principle of good faith in contract performance, although its application is still developing within the common law tradition. The debate surrounding the doctrine of good faith is evident in the case of Ng Giap Hon v. Westcomb Securities Pte Ltd that Singaporean courts place greater emphasis on the balance between commercial certainty and fairness in the relationship between the parties (Liew, 2012). This approach shows that Singaporean contract law is not merely fixated on contractual formalities, but also pays attention to the substance of performing obligations, commercial objectives, and the good faith of the parties in executing the agreement. Thus, the utilisation of a specific language in a contract is not the primary factor determining the validity of an agreement, provided there is mutual understanding and a clear legal relationship between the parties.

The concept of contractual relationships in Singaporean practice has also evolved toward relational contracting, which emphasises the aspects of trust and cooperation between parties (Ling et al., 2015). This approach demonstrates that contractual practice in Singapore prioritises the quality of the legal relationship and the substantive performance of obligations over mere administrative formalities in the contract. Consequently, the validity of a contract in the Singaporean legal system is determined by the existence of an objective consensus that can be proven through the overall context of the parties' relationship.

In the development of contractual practice, there is a trend toward the implementation of collaborative contracting, concerning cooperation, trust, and commitment among the parties in contract execution (Zhang et al., 2020). This approach demonstrates that successful contract performance is determined not only by the formalistic aspects of the agreement but also by the

quality of the contractual relationship, such as mutual trust, openness, and an orientation toward win-win solutions. This indicates that law and practice in Singapore are increasingly moving toward substantive and relational contractual models, where the primary objective of the contract is the effectiveness of execution and the attainment of optimal commercial outcomes. Thus, the use of a specific language in a contract is not a primary determining factor for the validity of the agreement, as long as a clear understanding and commitment exist between the parties.

In term of construction contract practice, the process of forming a contractual relationship is determined not only at the contract signing stage but also through pre-contractual phases, such as the contractor selection process. Some studies show that determining the contractor involved in a project is conducted based on various multidimensional selection criteria, which are not limited to cost aspects only, but also encompass performance, technical capability, and occupational safety aspects (Singh & Tiong, 2006). This indicates that contract practice in the Singaporean construction industry prioritises an objective criteria-based approach and risk considerations to minimise the potential for project failure resulting from the selection of an inappropriate party. Thus, the contractual process in practice reflects that a legal relationship is formed by the formal aspects of the agreement and a substantive evaluation of the parties' capacity to fulfil contractual obligations. This approach demonstrates that in modern contract practice in Singapore, the aspects of substance, party capacity, and objective evaluation mechanisms have a more dominant role than pure formalities, including the form and language of the contract.

In the development of contractual practice, a trend toward collaborative contracting concerns the cooperation between the parties in project execution (Zhang et al., 2020). This approach aligns with the transformation of the construction industry, which encourages efficiency, trust, and better coordination among contractual parties. Nonetheless, several barriers remain in its implementation, including difficulties in changing organisational culture as well as ambiguities in contract objectives and clauses. This suggests that the clarity of substance and contract objectives in modern contract becomes a more important factor than mere formalistic aspects, including the form or contract language used. Consequently, contract law and practice in Singapore remain oriented toward the fulfilment of commercial intent and the mutual understanding of the parties within the contractual relationship.

A case was identified in Singapore concerning the interpretation of a written insurance contract between Zurich Insurance (Singapore) Pte Ltd and B-Gold Interior Design & Construction Pte Ltd. B-Gold Interior Design & Construction Pteat that the interpretation of a contract is conducted based on textual facts, context, and background (Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd [2008] SGCA 27). This judgment affirms that contract interpretation focuses more on proving the intention of the parties based on context rather than on linguistic aspects. The use of a foreign language in an agreement in this country is not something that can invalidate the agreement. The court assesses from the intention and matters that can be proven at trial regarding the agreement. In the landmark Singaporean case, *Zurich Insurance (Singapore) Pte Ltd v. B-Gold Interior Design & Construction Pte Ltd (2008),* the Court of Appeal affirmed that contract interpretation must look at the context and background of the parties' intentions holistically, where language is positioned purely as an evidentiary tool at trial, not an instrument for invalidating validity (Goh, 2013).

Thus, within the Singaporean contract law system, the validity and interpretation of contracts are determined by the alignment of the parties' objective intent – measured through context and the legal relationship formed, rather than by formal shapes, including the language used in the contract.

The following is a comparative table of contract law orientations regarding language use across the three countries.

Table 2.
Comparison of Contract Law Orientations toward Language Use in the Legal System of Indonesia, the Netherlands, Malaysia, and Singapore

Analysis Aspect	Indonesia	The Netherlands	Malaysia	Singapore
Regulatory Basis	Article 31 of Law No. 24 of 2009	*Burgerlijk Wetboek* (BW)	Contracts Act 1950	Common Law Contract
Obligation to Use *Bahasa Indonesia*	Mandatory use of *Bahasa Indonesia*	Not mandatory	Not mandatory	Not mandatory
Legal Consequences of Language Non-Compliance	May be deemed null and void through judicial interpretation	Does not affect the validity of the contract	Does not affect the validity of the contract	Does not affect the validity of the contract
Primary Judicial Consideration	Linguistic formalities	Parties' intentions and reasonable expectations	Freedom of contract and commercial practicality	Intention of the parties dan contextual interpretation
Legal System Approach	Legal Formalism	Substantive fairness	Contractual autonomy	Commercial pragmatism
Impact on Business Certainty	Creates legal uncertainty	Preserves transactional predictability	Support business flexibility	Promotes efficiency in international trade

Source: author's analysis results

The divergence between Indonesia and these other countries reflects a fundamental conflict in legal orientation. This condition ultimately demonstrates that regulatory reform regarding language use in contracts can no longer be understood narrowly as a mere administrative issue; rather, it must be positioned as part of a strategy to create a competitive and adaptive investment climate aligned with the needs of evolving international business practices, as it currently creates uncertainty in the execution of cross-border agreements.

Based on this comparison, Indonesia remains an outlier in the region by allowing linguistic non-compliance to potentially affecting the validity of international private contracts. Meanwhile, the Netherlands, Malaysia, and Singapore tend to view language merely as an instrument for communication and evidence, not as an essential element forming the validity of a contract. Such pragmatism fosters legal certainty and bolsters investor confidence by shielding commercial transactions from formalistic administrative interference.

The fundamental difference between Indonesia and the Netherlands, Malaysia, and Singapore lies in the orientation of their legal systems. These three countries view contracts as private economic instruments that must be protected to maintain transactional stability and business confidence. The state does not intervene excessively in the parties' choice of language as long as the substance of the contract does not violate the law. Conversely, Indonesia still maintains a legal formalism approach that places the state's administrative symbols at the core of private contract validity. As a result, Indonesian contract law becomes less adaptive to the dynamics of global trade and risks lowering national investment competitiveness compared to other countries in the Southeast Asian region.

None of the three countries mentioned above considers language an issue in agreements – creating a contrast with the rules for language use in agreements in Indonesia. Thus, the nature of law in Indonesia regarding language remains too rigid to be applied when compared to other countries. This difference in approach shows that Indonesia tends to adopt a more rigid model of legal formalism than the countries that are actually the historical roots of its own legal system. The Netherlands, as the primary source of the Indonesian Civil Code, does not place the national

language as a requirement for private contract validity, while Malaysia and Singapore prioritise the certainty of commercial transactions through a pragmatic approach. This condition reveals a tendency toward postcolonial legal nationalism in the Indonesian legal system, where national language symbols are positioned too far into the realm of the parties' private autonomy. This comparative contrast provides an important basis for situating the present study within the existing literature on foreign-language contracts in Indonesia, particularly in relation to the continuing debate over whether non-compliance with Article 31 of Law No. 24 of 2009 should affect contractual validity.

Previous research entitled "*Validity of Foreign Language Contracts and Certainty of Legal Consequences Based on the Principle of Freedom of Contract, According to Law No. 24 of 2009 and Ministry of Law and Human Rights Letter No. M.HH.UM.01.01-35: A Study of West Jakarta District Court Decision No. 451/Pdt.G/2012/PN.Jkt.Bar*," written by Achmad et al. (2016), concluded that Law No. 24 of 2009 may render contracts not drafted in the Indonesian language invalid. Consequently, foreign-language contracts may be declared null and void or subject to cancellation. The novelty of the present study lies in its argument that foreign-language agreements should remain valid because the use of language in a contract is not part of the statutory requirements for contractual validity, but rather constitutes a formal or administrative requirement. Furthermore, this study argues that Article 31 of Law No. 24 of 2009 creates tension with the principle of freedom of contract, particularly after the issuance of Supreme Court Circular Letter No. 3 of 2023, which has contributed to normative disharmony and legal uncertainty.

Another relevant study is "*Cancellation of Agreements Due to the Absence of the Indonesian Language: A Study of Decision No. 590/Pdt.G/2018/PN.Jkt.Pst*," written by Rajagukguk (2023). That study concluded that Decision No. 590/Pdt.G/2018/PN.Jkt.Pst, which cancelled a share purchase agreement, was inappropriate because Article 31 of Law No. 24 of 2009 does not expressly provide any sanction for non-compliance. The study further argued that the language requirement should be understood as a formal requirement, especially because the agreement in that dispute had been concluded before the enactment of the law. The novelty of the present research lies in its use of several judicial decisions to demonstrate the inconsistency of Indonesian courts in adjudicating foreign-language contract disputes. These include decisions declaring foreign-language contracts null and void for violating Article 31 of Law No. 24 of 2009, such as Decision No. 1572 K/Pdt/2015 and Decision No. 3395 K/Pdt/2019, as well as decisions affirming the validity of contracts despite the absence of the Indonesian language, such as Decision No. 3415 K/Pdt/2021 and Decision No. 254/Pdt.G/2019/PN.Amp. This study also links these judicial developments to the principle of freedom of contract, the issuance of Supreme Court Circular Letter No. 3 of 2023, and a comparative analysis of contractual language requirements in three jurisdictions: the Netherlands, Malaysia, and Singapore.

When examined through the lens of Economic Analysis of Law, the rigid application of Article 31 of Law No. 24 of 2009 may impose significant economic costs on Indonesia's legal and investment environment. The obligation to draft bilingual contracts may increase transaction costs, as international business actors are required to allocate additional resources for sworn translation, legal review, and compliance procedures. These requirements may slow down the execution of investment transactions and increase the risk of litigation where the validity of contracts is later challenged before the courts. Moreover, inconsistent judicial interpretation may reduce foreign investors' confidence, as the Indonesian legal system may be perceived as lacking predictability in the enforcement of international commercial contracts.

From the perspective of economic efficiency, uncertainty regarding contractual validity may encourage business actors to increase legal risk-mitigation costs. Foreign investors may also prefer jurisdictions that provide greater stability and predictability in determining the validity of international contracts. Therefore, the issue of language use in contracts should not be understood merely as a symbolic or administrative matter. Rather, it has broader implications for the

competitiveness of Indonesia's legal system in cross-border commercial transactions. This condition suggests that regulatory reform concerning contractual language requirements should be situated within a broader strategy to create a more predictable, competitive, and adaptive investment climate.

C. Conclusion

The use of language in contracts under Indonesian contract law should be understood primarily as a communicative and administrative instrument rather than as a substantive requirement for contractual validity. Article 1320 of the Indonesian Civil Code establishes four cumulative requirements for a valid contract, namely consent, legal capacity, a specific subject matter, and a lawful cause. None of these elements places contractual language as a determinant of validity. Therefore, treating the absence of *Bahasa Indonesia* in an international private contract as a ground for nullity risks distorting the doctrinal structure of Indonesian contract law.

The obligation to use *Bahasa Indonesia* under Article 31 of Law No. 24 of 2009 reflects an important constitutional and symbolic function in preserving the status of the national language. However, when this obligation is applied rigidly to international private contracts, it creates tension with the principle of freedom of contract, legal certainty, and commercial efficiency. The core legal issue does not lie in the recognition of *Bahasa Indonesia* as the national language, but in the uncertain legal consequences attached to non-compliance with the language requirement.

The absence of explicit sanctions under Article 31 has allowed Indonesian courts to adopt divergent approaches. Some judicial decisions have treated foreign-language contracts as void by associating non-compliance with the requirement of a lawful cause, while other decisions have upheld the validity of such contracts where the substantive requirements under Article 1320 of the Indonesian Civil Code were fulfilled. This inconsistency demonstrates that contractual language has been interpreted unevenly, sometimes as an administrative formality and sometimes as a determinant of contractual validity. Such divergence weakens predictability, consistency, and legal protection for parties involved in cross-border commercial transactions.

From the perspective of legal certainty, inconsistent judicial interpretation undermines the function of contracts as instruments for allocating risks and protecting legitimate expectations. Commercial actors require a legal framework that enables them to anticipate the consequences of their agreements with reasonable confidence. When contractual validity may depend on uncertain judicial interpretation of language requirements, contracts may no longer function as reliable tools for commercial planning. From the perspective of Economic Analysis of Law, this uncertainty may increase transaction costs, encourage strategic default, and reduce investor confidence in the Indonesian legal system.

The issuance of Supreme Court Circular Letter No. 3 of 2023 represents an important corrective step because it clarifies that the absence of an Indonesian-language version does not automatically render a contract void. Nevertheless, this circular cannot fully resolve the underlying normative disharmony because it occupies a lower position than legislation and does not amend the ambiguous formulation of Article 31 itself. As long as the statutory provision remains unclear regarding sanctions and legal consequences, the possibility of inconsistent judicial interpretation will continue to persist.

Comparative analysis of the Netherlands, Malaysia, and Singapore shows that these jurisdictions do not regard national language use as a condition for the validity of private commercial contracts. The Netherlands prioritises contextual interpretation, reasonable expectations, and fairness; Malaysia focuses on consensus ad idem, free consent, and commercial practicality; while Singapore emphasises objective intention, contextual interpretation, and transactional predictability. These comparative lessons indicate that Indonesia should move away from rigid linguistic formalism and adopt a more substantive and commercially responsive approach.

Regulatory reform is therefore necessary to clarify that non-compliance with Article 31 should not automatically invalidate a contract unless it can be proven that the language used caused misunderstanding, fraud, lack of consent, or violation of public order. Such reform would allow Indonesia to preserve *Bahasa Indonesia* as a symbol of national identity while maintaining legal certainty, freedom of contract, and the competitiveness of its investment climate in international commerce.

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