

Conference Paper

Legal Relationship Between the Parties with a Construction Working Contract in The Indonesian Contract Legal System

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ABSTRACT

The purpose of this study is to analyze the legal relationship between the parties through the construction work contract of the Indonesian contract law system. The method used is normative juridical. The results of the research regarding unilateral termination can only be carried out by buyers who are considered too unilateral. Because in fact, there are still several obstacles, those are service users as buyers violating the contract and performance in the form of late payments. However, in this case, if an agreement to terminate the contract is not obtained from the service user, then the contractor cannot terminate the contract. Therefore, even though it is regulated in the Civil Code that unilateral termination of employment can only be carried out by the contractor, it is necessary to evaluate the unilateral termination arrangement in the existing building contract.

Keywords: Construction work contract, contract law system in Indonesia

Introduction

The preamble of the 1945 Constitution contains the objectives of national development, it is to protect the entire nation and the entire homeland of Indonesia; promote the general welfare; enrich the life of a nation; and participate in carrying out world order based on freedom, eternal peace, and social justice (DPR RI, 1945). To achieve the intended goals, it is necessary to set priorities in development planning at each stage, these priorities are contrary to history, the characteristics of the resources they have, and the challenges that they face.

It is more precisely, according to the Indonesian government's understanding of the welfare state, the main function of the government is not only to create security and order, but it also to promote social justice and organize public welfare which can be realized through development efforts, which are efforts to create and provide breakthroughs so that the goals formulated correctly can be achieved. Therefore, the development process needs to be well planned.

In general, Indonesian civil law provides the community with the widest possible opportunity to reach a collective agreement on all matters that are needed for the fulfillment of their needs. It is following Article 1338(1) of the Civil Code: "All agreements made legally are valid for the person agreeing.", One of the agreements that fulfill the expectations is a contract agreement or construction work contract that fulfills the basic provisions of the agreement that has been regulated.

The form of service to the community by the government is in the form of facilities and infrastructure which are construction facilities. Taliziduhu Ndraha stated that "the government has the authority to process these services through the government relations, even though there are foreign nationals or anyone who is legally (*legal*) in the territory of the Indonesian state is also entitled to certain services (Ndraha, 2011).

Government Regulation of the Republic of Indonesia in 2015, No. 38 Article 1 Number 5, is concerning "Government Cooperation with Business Entities in the provision of infrastructure" states the provision of infrastructure is an activity that aims to build or improve the ability of

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physical infrastructure facilities which includes construction work as part of construction services.

According to Permana and Asmara (2010), that “fulfilling the need for reliable construction has an impact on lower production costs”. Meanwhile, according to Gregory, “The system can be in the form of basic facilities or structures, equipment, installations that are built and needed for the smooth functioning of the social system and the community's economic system (Mankiw, 2003).

In the “Construction Services Law” (UUJK) article 1 paragraph 1, it has been established on February 2, 2017, stated that “the main basic construction services are construction planning consulting services, construction project implementation services, and construction project supervision services.”. Likewise with the formulation of construction projects. In addition, the provisions in Article 1 paragraph 2 are also determined; a construction project is all or part of a series of planned and executed activities, and it includes construction, civil, mechanical, electrical, and/or environmental engineering.

Indonesia is facing the phenomenon of equitable development with the theme “Construction from outside.” The administration of President Joko Widodo and Vice President Yusuf Kalla are actively building infrastructure projects in remote areas. His big dream is to provide a network in various regions to resolve economic differences across the country (Tempo, 2015). The dream is written in PP RI No. 58 Th. 2017 concerning Amendments to the Presidential Regulation of the Republic of Indonesia Th. 2016 concerning the Acceleration of Implementation of National Strategic Programs containing as many as 245 (PPSN) there are even additional 2 programs, namely the aircraft industry and electricity programs (KPPPIP, 2018).

According to Nanik Trihastuti: “The fact is that the financing of construction services faces serious challenges in terms of financial feasibility, in remote and rural areas justice cannot be achieved because the funds owned by the government are still not sufficient for investment costs. In addition to the existence of architectural services with characteristics that are difficult to predict because of their uniqueness, their resources will also fluctuate along with changes in various parties, interests, and natural conditions. it means that construction services are an industry that cannot be separated from problems and risks” (Trihastuti, 2013).

In the “Construction Services Law” (UUJK) article 1 paragraph 1, it has appointed on February 2, 2017, it was stated that “the main basic construction services are construction planning consulting services, construction project implementation services, and construction project supervision services. As well as the formulation of construction projects. In addition, the provisions in Article 1 paragraph 2 are also determined; a construction project is all or part of a series of activities planned and implemented and includes construction, civil, mechanical, electrical, and/or environmental engineering.

According to Mariam Budiardjo, “construction service users who cooperate with construction service providers through a mechanism determined by the government, it can sign an agreement based on public law. The agreement is oriented to the public interest and the contents of the agreement are determined by the government following the general provisions of the construction contractor agreement” (Budiardjo, 1994).

Some parties may override the agreement in the contract due to unclear rules, or interpretation of the contract, plans, execution of construction contracts, and errors in project supervision, that is resulting in construction damage or even construction damage. Therefore, legal certainty is a basic factor that is included in the contents of the contract which has been clearly formulated and considered expressly and regulated in the provisions of the legislation.

Problem formulation

Following the background of the problem that has been stated, several formulations of the problem can be formulated, is “how is the legal relationship between the parties and the existence of a construction work contract in the Indonesian contract law system?”

Material and Methods

Based on Soetrisno "Research in science requires a systematic procedure and also the logical and the systematic thinking. Efforts or ways to obtain scientific truth. From this point of view, it can be explained that a systematic method or procedure is needed to solve a research problem".

The writing in this study uses the normative method of legal issues, it is conceptualizing the law into a norm, the principle of using the legal method, which is also given a descriptive explanation based on legal rules and problems in the literature. Finding the choice of law problem becomes the object of the problem.

Results and Discussion

Construction work contract

Construction Work Contract, which is an agreement document containing the rules of the legal relationship between service users and service providers in the implementation of construction services.¹ Regarding the arrangement, the construction work contract has been regulated in Article 1604 to Article 1617 of the Civil Code and also specifically regulated by Law No. 18 in 1999 which has been changed to Law No. 2 in 2017 that is regarding the Construction Services and other implementing regulations (Sulistiyono & Rustamaji, 2009).

The participants in the construction work contract are:²

a. Assignor (*bouwheer*)

The assignor is an individual, legal entity, private sector, government agency, or private agency. It is the assignor who has the power to buy buildings according to the contract and what is contained in the contract and the terms. At the time of purchasing public works is carried out by government agencies, the authorized agency usually appoints directors, following the duties or work agreements of the Public Works office to appoint directors.

b. Contractor (*contractor*)

Contractor is an individual or legal entity, government or private selected to carry out the construction work following the bestek.

c. Planner (*Architect*)

Architects are individuals or legal entities that have expertise in planning, supervising, estimating building prices, advising, preparing, and implementing projects in the field of development engineering.

d. Board of Directors (Supervisor)

The Board of Directors is responsible for supervising the contractor or the contractor's work performance. The supervisor instructs to purchase the project, inspects the materials during the construction process, and finally evaluates the inpatient project. At the time of the auction, announcements of future auctions are carried out, an explanation of the work plan and requirements (RKS) of the purchase contract, and an explanatory statement is made, and the bid is maintained and the bid is made. Evaluate and determine potential winners and the number of minutes of auction results.

Construction dispute resolution

The settlement of a construction dispute that occurs during the contractual implementation phase can be done in two ways, those are by litigation (through the court) and non-litigation (through outside the court). Concession dispute for judicial settlement through two main regulations, they are Law of 2017 No. 2 that is concerning Construction Services (UUJK) and the Law of 1999 no. 30, it is about "Arbitration and Alternative Dispute Resolution, which regulates non-litigation dispute resolution".³ Article 88 of the UUJK explains that disputes that occur during the

¹ Presiden RI.

² F.X. Djumaldji (2), Op. Cit, hlm. 7

³ Sulistijo Sidarto Mulyo dan Budi Santoso, Op. Cit, hlm. 45

construction work contract are resolved according to the basic principles of discussion to reach a consensus. If the discussion does not reach a consensus, the parties take steps to resolve the dispute as stated in the contract. In general, the types of dispute resolution, include; mediation, consultation, and arbitration.⁴

Government construction contract

The government construction work contract consists of several stages, they are planning, implementation, supervision, and payment. The planning stage begins with the preparation of *draft* a contract that contains a plan and description of the space to be worked on by budget users representing the government who then appoints a commitment making official (PPK) take care of all matters related to the implementation of the contract such as specifications of goods and services, prices, draft contracts with partners, implementation and tasks other.

The selection of service providers using a tender system, that is in the public tender system, the government as the employer provides an opportunity for every construction service to participate as a tender participant. Whereas in a limited tender, the selection of service providers is only limited to service providers who have fulfilled the aspects set by the government, it is usually for projects that are difficult and high-tech and have experience in projects within a certain period. In public tenders, each construction service provides a bid guarantee, it is a requirement to service users, as collateral to assist the construction service provider to cover the costs incurred in completing the work obligations in the procurement contract and to prevent the service provider's actions from violating the procurement procedures stipulated by the legislation term. The bid guarantee can be in the form of price specifications that are offered, the specifications of materials and project descriptions/designs, human resource capabilities, availability of facilities and funds owned by each construction service as well as other aspects that are assessed in the bid guarantee, it is called the qualification stage. It is different for a limited tender, where a bid guarantee is not a condition for choosing a service provider.

The process of selecting service providers continues with the submission of bid documents from each partner contractor which is evaluated by the procurement service unit (ULP), based on the knockout method, value system, and cost assessment system.⁵

The partner or contractor who wins the tender is officially announced by the service user. After the announcement of the tender winner, the government is the service user. He/She provides an opportunity for partners who fail to provide objections and appeals. If there is no objection or appeal within the specified time, then it is proceeding to the stage of contract preparation and contract signing.⁶

Before drafting the contract, the service user must first disburse the guarantee of the selected service provider's offer. In the next process, the user and the service provider discuss the contract documents regarding the content, terms, achievement of objectives, and others to be included in the contract following the agreement of the parties. After the preparation of the contract is complete, the contractor as the service provider and the budget user as the service user is signed or it can be represented by the power of attorney (KPA) acting on behalf of the government.

At the stage of contract implementation immediately after signing the contract, the contractor is given an advance payment and the issuance of a starting work order (SPK). To guarantee the implementation of the contract, the contractor is also required to submit performance guarantees to service users or budget users during the implementation stage, PPK is obliged to supervise and report every implementation process to budget users. Payment of contractor services is made in several terms, this is following the agreement in the contract by the budget user.

⁴ *Ibid*, hlm. 46

⁵ *Ibid*, hlm. 71

⁶ *Ibid*, hlm. 116 - 117

After the entire work is completed, the contractor submits the results of the work to the work receiving officer, for then it is done a re-examination and assessment of the works result following the time, type, number, place, function, and experts and labor used in the process of contract execution.⁷

Expiration of construction work contract

The termination of the construction work contract was caused by:

- a. The work has been completed by the contractor after the maintenance period. In the stage of the first submission and the second submission, it is distinguished by:
 - 1) The first submission includes the submission of physical work after the work is one hundred percent completed;
 - 2) The second submission includes the submission of the work after the maintenance period is complete⁸

- b. Contract Cancellation

According to Article 1611 of the Civil Code, it is explained that “the party who bought the contract may terminate the contract even though the work has started as long as it provides full compensation to the contractor for all costs that have been incurred”.

- c. Death of Contractor

Based on Article 1612 of the Civil Code it is explained: “work stops with the death of the contractor. Here the party who buys out is obliged to pay for the work that has been completed, it is including the materials that have been provided”. Likewise, the contractor’s heirs cannot continue the work without the contractor’s permission, so that the contractor does not end. Thus, the heirs of the one who bought out must cancel or continue after an agreement has been reached between the two parties. The contractor/contractor is a legal entity, when the contractor dies, the contracting agreement will not end because the work can be continued by other members of the legal entity.

- d. Bankruptcy

If it is declared bankrupt by the service user who is unable to pay, there will be a default, even from the bankrupt contractor/contractor so that he is unable to carry out his achievements by providing evidence in the form of a letter/deed containing information that the user or service provider or contractor is in a state of bankruptcy. And it is issued by the authorized official for this matter, they are a notary, appraisal, and others.⁹

- e. Termination of Contract

Termination of the contract is caused by a default that is done by the user or service provider.

- 1) Service users who terminate the contract (Mudjisantosa, 2014):
 - a) The service provider is unable to complete the work, even though the work execution time has ended and allowed additional time so that the work is completed;
 - b) The failure of the service provider to do the work hand over is because there are aspects that are not fulfilled in terms of progress and job specifications and other aspects;
 - c) Negligence of service providers when they are carrying out work even though they have been given repeated warnings by service users;
 - d) Bankruptcy conditions are experienced by service providers;
 - e) Evidence shown to service providers for fraudulent acts, falsified contract execution processes based on judges' decisions with permanent legal force;

⁷ *Ibid*, hlm. 31

⁸ F. X Djumaldji (1), Op. Ci,t, hlm. 20

⁹ *Ibid*, hlm. 21

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- f) If there is a complaint regarding the deviation of the procedure and it is declared correct by the agency that has the authority.
 - 2) A service provider who terminates the contract:
 - a) If the service user is unable to pay the installment bill following the agreement in the contents of the contract;
 - b) Failure of service users is to comply with the final decision in dispute resolution.¹⁰
 - c) Bankruptcy conditions are experienced by service users;
 - d) Service users go too far to regulate and avoid the work of service providers (Fuady, 2005).

Unilateral termination of construction work contract

In general, unilateral termination in a contract is a way of canceling the contract due to default from one of the parties. Seen from Article 1338 of the Civil Code which contains the principles of contracts, where is in paragraph (2), it is stated that “the agreements cannot be withdrawn, other than it is because of an agreement from both parties, or for reasons that have been regulated by the law”.

Article 1266 of the Civil Code states that “there is an obligation to request the cancellation of the contract from the judge. So, the negligence/default from one of the parties is not a condition for cancellation, but the judge’s decision to cancel the contract. As for the legal theory regarding the unilateral cancellation/termination is called repudiation of an agreement to carry out a previously agreed contract. This repudiation is called the type of *repudiating anticipatory* which is rated differently from the implementation of the contract.

The juridical consequence from the emergence of contract repudiation, that it can provide concessions from the contract and give rights to the aggrieved party to be able to immediately claim compensation based on the contract.

The act of repudiation of a contract can be realized in the following ways:¹¹

- a) Repudiation firmly
It means that other parties express their wishes explicitly if they do not want to carry out the obligations that arise from a contract.
- b) Inclusive repudiation
The main criteria for an inclusive refusal are the refusal will logically demonstrate the action or intent and the refusal will not fulfill its contractual obligations.

Legal relations are between the parties with the construction contract in the construction contract legal system

Law in 1999 No. 18 is about The Construction Services and Alternative Provisions, and it is also Article 2 February 2017 that concerns Construction Services that consider the construction contract as the basis for the legal relationship between service users and service providers. In line with it, it is by implementing the “principles”, the principles in the contract law, that is the scope of freedom principle application of contract is as stated in the Article 1338 paragraph (1) of the Civil Code that applies for 2017. The Construction Services “Freedom” is one of the principles used in the implementation of construction services. Regarding freedom of contract, Johannes Gunawan stated that the principle of freedom of contract includes: “(1) Each person has the right to decide whether to agree; (2) The parties have the freedom to choose with whom to reach an agreement; (3) The parties are free to decide the form of the agreement; (4) The parties are free to decide the contents of the agreement”.

¹⁰ Ibid, hlm. 143

¹¹ Ibid, hlm. 107

In accordance with the scope of the freedom contract principle, the Article 46 (2) of the 2017 UUJK stipulates that construction contracts are drawn up according to the development of demand for forms of construction that is developing in Indonesia in accordance with legal regulations implemented.

The interesting thing is about the equality of status between service providers and service users. Regarding the absence of equality is between service providers and service users, the interpretation of the “Construction Services Law no. 18/1999” in the general chapter has acknowledged that this is an external factor that affects the state of the country’s construction services.

The UUJK on February 2, 2017, regulates equality between service providers and service users as a construction service operation. One of them is the principle of equality, which is the principle of equality between users and service providers that must be considered when carrying out construction service activities. As is stated in Article 3 letter B of the UUJK, the purpose of a construction service provider is to “create order in the operation of construction services to ensure that service users and service providers have the same status when exercising their rights and obligations, and subsequently comply with laws and regulations”.

Following the principle of equal use and the purpose of providing construction services, the “Construction Services Law” dated February 2, 2017, through Article 4 (1) (b) stipulates the obligations to the central government to ensure that the service users and the equal rights and the obligations among providers service. According to Article 5, paragraph 2B of the “Construction Services Law” to achieve the objectives of building services related to the stability of users and service providers the UUJK in 2017 No. 2 Article 3B, the explanation of Article 3B is one of these efforts, it is the application of “standard contract documents”.

As for standard contracts, this is not a new thing in the construction industry. There are several standard construction contracts are issued by several countries or professional associations, as in “*International Federation of Engineers Consultants (FIDIC), Join Contract Tribunal (JCT), American Institute of Architects (AIA), dan Singapore Institute of Architects (SIA)*”.

In addition, the two regulations on construction services also stipulate that at least it must be included in the construction contract. There is no significant difference between the two settings. The following points should be recorded in the “Construction Services Act” in February 2017 which contains:

1. There is a guarantee of payment by service users. In the Law on Construction Services of Number 18 in 1999, arrangements related to the ability to pay service users are regulated in UUJK No. 18 Article 15 in 1999 and it is not stated in UUJK Year no. 18 Article 22 paragraph (2) in 1999, which it regulates construction work.
2. Protection to third parties other than the parties and workers who include the obligations of the parties by causing losses or as the cause of accidents and/or death.
3. Guarantee the risk and be legally responsible for other parties during the construction process or due to construction damage.
4. Distinguish between a dispute resolution plan and a dispute resolution plan;
5. The rights and obligations of the parties to the dispute.

Conclusion

According to the description above, it can be concluded that: Regarding the unilateral termination, it can only be carried out by the buyer, which is considered too unilateral, because, in reality, there are still several obstacles. They are the service user as the buyer violates the contract and performance in the form of late payments. However, in this case, if an agreement to terminate the contract is not obtained from the service user, so the contractor cannot terminate the contract. Therefore, even though it is regulated in the Civil Code that the unilateral termination of employment can only be carried out by the contractor, it is necessary to evaluate the unilateral termination arrangement in the existing building contract.

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