Construction Contract Design Based on the Principle of Balance as an Effort to Prevent Disputes

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Abstract
Law Number 2 of 2017 on Construction Services is an important foundation in regulating construction contracts in Indonesia, aiming to create a balance of rights and obligations between service providers and service users. The purpose of this study is to examine how the concept of equilibrium can help reduce conflicts in construction projects, which are frequently caused by unequal negotiating power and flaws in contracts. The research method used is normative juridical with the approach of legislation, legal doctrine, and construction contract analysis. The findings indicate that the use of the balance principle in construction agreements can lead to a fair allocation of responsibilities and privileges for both parties, preventing any form of unfair advantage and minimizing the chances of legal conflicts. Thus, the principle of balance is not only a legal principle, but also a preventive tool in the implementation of equitable construction contracts.

1. Introduction

One aspect of regulatory improvement in Indonesia is construction matters, which due to its complexity demands legal order. This complex issue relates to the function of legal subjects in the process of providing construction services (Soepomo et al., 2001). One of the things that we must pay attention to is the tendency of irregularities in terms of construction services or goods and services procurement projects in Indonesia.

The regulations governing construction services are multifaceted and unique. This multi-dimensional agreement is defined as a rule, or can serve as the basis for various relevant rules. To achieve national development goals and achieve various social, cultural, and economic goals, construction is one of the most

important activities. Progress has been made in the physical structure, including employers and work recipients.

These include laws on the environment, land, spatial planning, land transportation, intellectual property rights, labor, insurance, electricity, health, unfair business competition, and arbitration and alternative dispute resolution. Furthermore, diverse forms of rules that are connected in some way to the enforcement of the Construction Services Act are in effect. These rules act as a legal foundation for different facets of society (Indrawan & Munandar, 2022; Soepomo et al., 2001).

The Construction Services Law No. 2 of 2017 provides broad legal guidelines that govern construction activities, including planning, execution, and supervision. Services provided for implementing construction work include civil, mechanical, electrical, and environmental tasks. Supervision of construction work includes planning, implementation, and supervision in an integrated manner; planning, and carrying out work for the acceptance of the implementation of the finished acceptance or the implementation of the finished acceptance work; and quality control oversight, adherence to project deadlines, and the outcomes of building projects.

Construction contracts are typically associated with the provision of construction services and serve as the foundation for the execution of construction projects in Indonesia. The proper application of law in the settlement of disputes related to construction services is the main foundation of how Indonesian investigators, prosecutors, and judges apply legal provisions related to construction services.

Additionally, in Section 1, point 2, the term "construction activity" refers to a combination of planning, execution, and oversight tasks, which encompass architectural, structural, mechanical, electrical, and environmental control efforts. In particular, Presidential Regulation No. 80 of 2003, Guidelines for the Implementation of Government Procurement of Goods or Services, and Presidential Regulation No. 59 of 2010, Implementation of Construction Services, regulate the procurement of government goods or services (Salim et al., 2008).

The balance of the Construction Services Law must be upheld and the agreement should be applied in any disagreements that may arise. The view of customary law centered on *gotong-royong*, mutual aid, and kinship forms the foundation for the concept of balance. In addition, other conventional treaty principles, such as conventionalism, *pacta sunt servanda*, and freedom of contract, along with the universal and independent principle of parity, determine the validity of an agreement or

contract. In addition to having certain principles, the principle of balance must also always be oriented towards logical truth and reasonable truth. The acknowledgment of balance as a legal basis in Indonesian treaty law is rooted in the belief that it is a just and equitable principle developed from these reasons (Salim et al., 2008).

The principle of Readiness in the Construction Services Law No. 2 of 2017 Article 2 states that construction-related activities should be carried out in a manner that allows the most effective communication between the provider and the customer. This principle governs the responsibilities and entitlements of both parties participating in the agreement. Therefore, the parties can use the principle of balance as part of the development process to determine whether or not their rights and obligations have been shared equally, so that the construction service contract has equal reciprocity.

In terms of the performance of construction contracts involving service providers and users, the position is usually seen as weaker than that of users. This suggests that the service user holds more power than the service provider in this scenario. The service provider typically must carry out the contract designed by the service user, as the user tends to prioritize their own preferences over the provider's. Since service users have more power, they tend to disadvantage service providers. Service providers have a very weak bargaining position because the number of service providers is limited compared to the number of constructions projects or works. In order to avoid one party with significant negotiating power from overpowering the other party with less negotiating power, balance in position is essential in construction agreements.

Construction projects are initiated by tender or auction, but developers can also select construction companies directly. Public tenders can be participated in by all construction companies or limited to service providers that meet the pre-qualification requirements. The construction services contract binds all project parties and sets out their rights and responsibilities. Before a construction services contract is drawn up, a tender is held. Contracts relating to construction services are basically the same as other contracts. In addition, the company providing construction services must bid to the service user in accordance with the contract.

If the construction service contract is centered around meeting responsibilities and duties, it will result in a just agreement. The agreed-upon terms within the contract demonstrate a balanced give-and-take between the parties involved. In a construction works contract, the principle of proportionality will greatly help the parties know whether their rights and obligations are shared proportionally. It also ensures that the business relationship will have proportionate reciprocity (Pratama et al., 2024).

The project owner (also known as the assignor) and the construction service provider

(also known as the contractor) are the two parties in a construction services contract. The person or entity in charge of the project is the one who has ownership of the project, delegates tasks to the service provider, and covers the expenses associated with the project. The assignor is referred to as the first party in the letter of contract and has the unilateral authority to take over the work in question, by writing to the contractor in the event of matters outside the contract stipulated in the law in the letter of work agreement (SPK) (Hardjowidoyo & Muhammad, 2006).

Construction service contracts, although made to the best of their ability by project owners and service providers, still have room for problems. This can be caused by many things, both internal and external. During its execution, there are always disputes, disagreements, and conflicts between parties, leading to legal disputes. The ideal condition for construction executors is that the construction contract with the service user is clearly detailed covering the entire scope of work. Construction executors usually assume that all information listed in the contract reflects the actual conditions. However, the condition of the work during implementation is often different from this assumption. Disagreements over legal matters within the realm of construction contracts can be detrimental for all involved, leading to increased expenses, wasted time, and a loss of productivity and motivation. If conflicts occur, conflict resolution should be undertaken to resolve them. These disputes will then develop into legal disputes, which in turn will lower the overall construction quality (Emirzon & Is, 2021).

Problems in contracts can arise if one party fails to fulfill an obligation or performance in accordance with the terms used, or if there is a disagreement about the meaning of the wording in the contract. Disputes regarding construction service contracts are preceded by administrative disputes that cannot be resolved before going to court. Legal disputes occur when the project owner and the construction service provider disagree about the rights and obligations set out in the contract.

2. Research Method

The research method used in this paper is a normative juridical method, which is an approach that emphasizes the study of laws and regulations, legal doctrines, as well as fundamental principles in contract law relevant to the drafting of construction service contracts. This approach was chosen because the research focus is on normative analysis of the principle of balance in construction contracts, as well as the role of this principle as a preventive measure in preventing the emergence of legal disputes. Data in this research was obtained from primary legal sources, such as Law Number 2 of 2017 concerning Construction Services, the Civil Code (especially Articles 1320 and

1338), and Government Regulation Number 14 of 2021, as well as international standards such as FIDIC. In addition, this research also uses secondary legal sources in the form of legal literature, scientific articles, and opinions of legal experts related to the principles of justice and balance in contracts. Legal source collection was conducted through library research, while analysis was performed using a normative qualitative approach, through juridical interpretation of legal provisions and limited comparison with contractual practices that have developed at the international level.

3. Results and Discussion

Construction contracts, as defined in Article 1 paragraph (5) of Law Number 02 of 2017, are detailed agreements that regulate the legal relationship between the party that owns a building and the party responsible for carrying out construction work. Construction work contracts are formed between individuals or companies that own property and contractors appointed to complete construction work.

According to Professor Hikmahanto Juwana, construction contracts, also known as commercial contracts, are written agreements between several parties involved in commercial activities. Professor Juwana defines business as an endeavor aimed at obtaining profit (Juwana, 2001).

Construction work contracts are generally conditional contracts that include:

a. Validity conditions, namely the conditions for the validity of an obligation
b. Time conditions, namely conditions that limit the contract period. This is due to the nature of projects that have completion deadlines.
c. Completeness conditions, namely conditions that must be fulfilled by one or both parties for the agreement to be valid, such as completeness of design, drawings, and guarantees (Bagus, 2013).

Article 2 of Law Number 18 of 1999 states that the contract principles applicable in construction work contracts used as the basis for organizing construction services include the principles of:

a. Justice: protecting the interests of each party fairly and not excessively so as to harm other parties;
b. Balance: the risk difference between service providers and service users must be proportional;
c. Equality: service users and service providers have the same rights and responsibilities (Bagus, 2013).

In short, construction is a building object consisting of structural parts. The shape and overall structure of the building structure, for example, highway development, span

development, and others are different models. Although often referred to as a single job, construction is actually one job that combines many other jobs. "Construction work activities" is another description often used for this term.

Article 1 number 8 of the Construction Services Law as one form of work agreement, the agreement must be made in accordance with the provisions of Article 1320 of the Civil Code which states that an agreement is valid if it meets four conditions, namely agreement of the parties, capacity to make agreements, the existence of a specific subject matter, and a lawful reason for making the agreement. The four elements mentioned in Article 1320 of the Civil Code in legal doctrine are classified into subjective elements, namely the first two elements related to the subjects (parties) making the agreement, and objective elements, namely elements directly related to the object of the agreement made. Objective elements include the existence of the subject matter being agreed upon, as well as the basic reason for that subject matter in the form of obligations or performance agreed to be carried out, which may not be prohibited or permitted by law. Subjective elements include the element of free agreement of the parties, as well as the capacity of the parties.

Construction work contracts are comprehensive documents that regulate legal interactions between clients and service providers during the construction process. In the Civil Code, particularly in Book Three on Obligations in Section Six on Work Contracting, terms like contract agreements are used to refer to construction work contracts (Widjaja & Muljadi, 2005).

Indonesian contract law provisions emphasize the importance of balance between parties in construction agreements through the application of several fundamental legal principles. The principle of freedom of contract as stated in Article 1338 of the Civil Code provides flexibility for parties to determine the content and terms of agreements independently, as long as they do not conflict with law, public order, and morality. In the context of construction contracts, this flexibility is vital given the complexity and high variability of project needs (Anggraini et al., 2024). However, this freedom is not absolute as it is limited by legal and ethical norms to avoid exploitation that harms one party and ensure justice in contractual relationships (Muskibah & Hidayah, 2020).

Additionally, the principle of good faith also affirmed in Article 1338 paragraph (3) of the Civil Code serves as a moral foundation that directs parties to carry out their obligations with honesty and loyalty. In construction contract practice, this principle fosters mutual trust and cooperation, which in turn helps prevent and resolve disputes (Hasbi et al., 2018). The principle of balance or equilibrium also becomes an important pillar in ensuring that the rights and obligations of parties are in fair

proportion. However, in reality, power imbalances are often found, especially between project owners and contractors, which can lead to exploitative contractual practices. To address this, the use of standard contracts such as FIDIC becomes an option, although its implementation in Indonesia still faces various structural and legal challenges (Utomo et al., 2016).

On the other hand, Article 1320 of the Civil Code affirms the validity requirements of agreements, namely agreement of the parties, legal capacity, specific object, and lawful cause. If one of these elements is not fulfilled, the agreement can be considered null and void, which has implications for the loss of binding force of the agreement. This is prone to trigger disputes, especially in construction contracts that are complex and involve many parties and interests. Therefore, consistent enforcement of contract law principles and regulatory reform are important to create a fair and sustainable construction agreement climate in Indonesia.

Law Number 2 of 2017 emphasizes the importance of the principle of equality and balance of rights and obligations of parties in the implementation of construction service contracts. This is explicitly reflected in Article 39 which requires that construction work contracts must be put in writing and prepared to reflect the principle of balance between service users and service providers. Furthermore, Article 44 of the same law regulates that in case of disputes between parties, resolution must first be attempted through deliberation or other dispute resolution forums as agreed in the contract clauses. This provision affirms the legislator's preference for non-litigative dispute resolution, to maintain project continuity and avoid lengthy and costly legal processes.

Government Regulation Number 14 of 2021 strengthens the technical foundation of construction service organization by providing guidelines on construction work implementation standards, business classification, competency certification, and other administrative and technical requirements. This regulation also affirms that construction service contracts must contain clauses that are fair, transparent, and do not burden one party unilaterally. In Article 1 of this regulation, it is explained that construction work includes a series of activities covering planning, implementation, and supervision stages, and involves various disciplines such as architecture, civil engineering, and environmental aspects. Service users are defined as individuals or legal entities that require construction services, while service providers are business actors who offer and carry out construction services as part of their business activities.

Furthermore, the provisions in Articles 1604 to 1615 of the Civil Code Book Three on Obligations, Section Six on Work Contracting, also provide general legal basis regarding civil relations in construction work. Although the term "contractor" is used

in the Civil Code, in contemporary practice the term "contractor" is more commonly used in the business and construction world. The use of this term reflects the development of legal terminology that is more adaptive to modern business practices.

Additionally, in Article 12 of the Government Regulation on Construction Services, it is mentioned that development actors are classified into three main categories, namely development organizing organizations, development implementing organizations, and development managing organizations. These three entities have integrated responsibilities in the implementation of construction projects as a whole, from planning, procurement, implementation, to project handover stages. Therefore, the existing regulatory framework not only regulates legal-formal aspects in construction work contracts, but also creates a legal system that guarantees professionalism, legal protection, and efficiency in the implementation of infrastructure projects in Indonesia.

International principles and best practices in construction contracts, as established by FIDIC (International Federation of Consulting Engineers), have provided important guidance in realizing balance between the rights and obligations of parties. FIDIC emphasizes the importance of fair risk allocation between the owner and contractor, thus preventing unilateral dominance and potential disputes in project implementation. However, the implementation of this principle in Indonesia is greatly influenced by the negotiation process and contract clause formulation. In reality, many clauses are still found that impose risks disproportionately on one party, particularly contractors. Such clauses not only contradict the principle of justice, but can also be legally nullified based on Article 1320 of the Civil Code if they do not meet the validity requirements of agreements, such as the presence of coercion or objects that do not comply with law. In this context, the role of courts becomes important as protectors of contractual justice. Judges can nullify clauses deemed excessive or unreasonably harmful by using the principles of equity and good faith. Thus, the principles of justice and balance in construction contracts depend not only on international standards, but also on the quality of negotiations and legal protection mechanisms available at the national level.

Imbalance of negotiating power in construction projects is a major source of potential legal conflict. This imbalance generally arises due to asymmetry of information, resources, and power between the parties involved, such as project owners, main contractors, subcontractors, and government agencies. One concrete form of this imbalance is in the context of public infrastructure projects, where there is a significant difference between central agents who design policies and implementing agents in the field. When central agents do not have sufficient technical expertise to evaluate project feasibility, this can cause expectation bias and over-promising, which ultimately leads

to legal conflict when actual results do not match expectations (Utomo et al., 2016).

Furthermore, existing legal structures are often not sufficiently sensitive to bargaining power dynamics. Small entities or subcontractors are often in weak positions when negotiating contracts with large contractors or project owners. When the judicial system uses heuristic approaches that simplify factual conditions, this imbalance is not fairly reflected in legal decisions. As a result, disproportionate contract provisions can become the basis for lawsuits on grounds of contractual injustice or violation of substantial justice principles.

Power imbalance also affects the way conflicts are resolved. In many cases, dominant parties can force settlements that benefit them through unequal negotiations or forcing interpretations of contracts. Both direct power (such as capital control) and indirect power (such as political influence or access to legal information) contribute to unfair outcomes, which then become the basis for legal disputes regarding contract implementation or compensation.

However, there is also a view that this imbalance is not always destructive. In some cases, power gaps can become catalysts for developing more innovative and collaborative negotiation strategies. Parties, in efforts to reduce imbalance, can create more transparent and fair negotiation mechanisms, such as using neutral third parties in mediation or forming equal contract standards. Thus, although negotiating power imbalance is a potential trigger for legal conflict, it can also open space for reform in contractual practices in the construction sector.

Legal solutions aimed at minimizing conflicts due to defective or unbalanced contracts must be based on the principle of balance. Imbalance in construction contracts generally arises due to differences in bargaining position, information, and economic power between parties, which has the potential to cause disputes during contract implementation. Therefore, contract design that prioritizes the principle of balance becomes an essential preventive instrument to suppress conflict potential.

One legal solution that can be applied is the formation of a legal protection regime that focuses on substantive justice in contractual relationships, especially to protect parties whose positions are legally and economically weaker. This concept can be analogized with the consumer protection regime that has developed in contract law in general, where legal regulations actively protect vulnerable parties from contractual clauses that are harmful or exploitative (Albadawi, 2024). In the context of construction contracts, this protection can be realized through regulation of fair, clear, and transparent standard contract clauses, such as those contained in the FIDIC international contract standard, which is known to prioritize the balance of rights and obligations of parties.

Additionally, judicial intervention plays an important role in identifying and eliminating clauses that are unilateral or unfair in construction contracts. Courts have the authority to make interpretations oriented to the principle of good faith, and if clauses are found that cause significant imbalance, such clauses can be nullified or adjusted to meet contractual justice standards (Țirlea, 2022). This judicial approach is a very important corrective mechanism to prevent the emergence of wider legal conflicts.

Furthermore, the application of normative and flexible judicial sanctions can be used as an effective legal instrument to address contract defects. This approach avoids wholesale contract cancellation, but rather offers proportional improvements to restore the balance of contractual relationships (Țirlea, 2022). This model is in line with modern contract law principles, as reflected in the European Contract Law Principles, which focus on maintaining balance and substantive justice in contract implementation.

Disputes that arise during construction projects are often the result of conflicts in working relationships between parties involved in construction contracts. Construction disputes arise as a result of construction demands or claims that are not fulfilled or served that must be resolved according to the choices/agreements of the parties as stated in the construction contract.

Imperfections in construction contracts can be one of the important factors in the emergence of disputes. Poor contract quality will affect how parties interpret it. However, if examined more deeply, contract quality entirely depends on the quality of people involved in formulating negotiation results into Construction Contracts.

Viewed from the characteristics of case resolution or construction service disputes, they can be resolved through 2 (two) ways, namely resolution through courts and outside courts. If a dispute occurs, the parties must make a written agreement signed by both parties if they choose dispute resolution through arbitration. If the parties cannot make a written agreement, then the agreement must be made in a notarial deed. District courts do not have the authority to resolve disputes that occur between parties who have made arbitration agreements. If the parties have agreed to resolve disputes through arbitration, then they cannot resolve them in district courts. District courts must reject all forms of involvement in dispute resolution that has been resolved through arbitration.

Legal principles are said to be the legal basis of agreements; a principle can provide a picture of the background that becomes the legal basis of agreements. The presence of principles is also used to interpret several rules that are in harmony with several principles that form the basis of the intended rules. In addition, principles can

interpret several rules that are not yet complete (Prasnowo & Badriyah, 2019). While balance comes from the word balanced. The word balance refers to the understanding of load distribution of the same state on both parties. Balance is defined as an equal state because the position of an element is not dominant. Balance known in an agreement is said to be something that requires parties to implement and fulfill what has been agreed upon.

Therefore, in accordance with the Construction Services Law, the main idea is to maintain balance by ensuring that construction services are provided in a way that considers the capacity of service providers and their workload. When selecting service providers, service users need to comply with this principle to ensure the selection of the most appropriate providers and also to create fair work opportunities for these providers. The concept of balance is known as the concept of sustainable parity. This concept mandates parity between the rights and responsibilities of individuals involved in contracts.

In selecting service providers, it is important to assess their feasibility in terms of capability, capacity, and effectiveness. The principle of balance can refer to the justification for the existence of a contract and can be used as a reason to challenge the validity of a contract and can be used as a basic condition for the validity of an agreement (Budiono, 2011).

Therefore, both service providers selected by service users and the service users themselves have a performance that must be completed well according to what has been agreed upon. Performance is something that must be fulfilled in an agreement because the fulfillment of that performance can be said to be the essence of the agreement (Sinaga & Zaluchu, 2018).

For that reasons, it is very important to prioritize a sense of justice in construction contracts so that all parties involved feel equally satisfied with the results. By effectively utilizing the concept of balance, particularly through the capacity of service providers in managing their tasks, the success of construction work can be achieved and the implementation of construction service provider order can be realized.

The existence of the principle of balance in construction contracts plays an important role in achieving goals and becomes a crucial aspect that must be considered, especially for clients who use services. The concept of balance is about ensuring that service providers are able to handle workload and work effectively. By carefully selecting service providers, the goal is to ensure successful completion of construction projects, so as to maintain organization in the provision of construction services. With good construction work contract creation and good construction work contract quality, it is hoped that there will be no breach of contract disputes among the parties.

4. Conclusion

In the absence of a clear dispute resolution clause in the construction contract, the parties are required to establish the procedure for resolving disputes through a formal written agreement. Law Number 2 of 2017 outlines the steps involved in the process of dispute resolution: The opposing sides begin by discussing the issue in order to come to an agreement. If they are unable to reach an agreement, the dispute resolution process is determined by the terms of the construction contract. When the contract specifies the dispute resolution process, it typically involves mediation, conciliation, and arbitration. In cases where the contract does not mention the dispute resolution process, the parties involved must decide on the appropriate method of settlement.

The principle of balance in the construction work contract plays a crucial role in ensuring the fulfillment of obligations and is an essential consideration, especially for service users. This principle is necessary to maintain a balance between the service provider's capabilities, workload, and performance. Through careful selection of service providers, the success of construction work can be achieved, thereby fostering order in the implementation of construction services. The implications of this research indicate that the application of the principle of balance in construction contracts can prevent disputes by ensuring fair distribution of rights and obligations between parties. This principle encourages the formulation of clear and non-litigative dispute resolution clauses, as well as serves as the basis for legal protection for parties in weaker positions. Thus, the results of this research can serve as a reference for practitioners and policymakers in designing fair and sustainable contracts in the construction sector.

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