

Describing The Principle Of Balance In The Implementation Of The Construction Work Contract

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| <p>Keywords : Principle of Balance; Employment contract; Construction</p> <p>How To Cite : Muhammad., Talib, M. C., Tome, A. H. (2019). Describing The Principle Of Balance In The Implementation Of The Construction Work Contract <i>Estudiante Law Journal</i>. Vol. 1 (3): 650-660</p> <p>DOI :</p> | <p>This paper aims to analyze the principle of balance in the implementation of construction work contracts and to describe the factors that influence the implementation of the principle of balance in construction contracts not being implemented . Type Research used _ by researcher in compile article this is type Study normative . As for approach used _ in writing this are , among others; Approach legislation (<i>Statue Approach</i>) and approach case (<i>case approach</i>). Analysis used _ in writing this is descriptive data analysis . Results in study this is , application principle balance in relationship _ industry service The construction contract has been clearly regulated in relation to the construction contract agreement, one of the strengthening principles in the construction contract lies in the principle of balance, which requires both parties to fulfill and carry out the agreement. Creditors have the power to demand achievements and if necessary, they can pay off achievements through the debtor's wealth. However, the debtor also bears the obligation to carry out the agreement in good faith. The factors that influence the implementation of the principle of balance in the construction contract as seen from the results of the decision (jurisprudence) include: The lack of knowledge of the parties regarding the principle of balance or the principle of construction contracts as regulated by Article 3 of Law Number 2 of 2017 concerning construction contract services, the existence of interests, the quality of the substance of the contract made, communication of the parties, the contract administration system, and the contents of the contract which is not in accordance with the implementation.</p> |

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INTRODUCTION

Background

Stepping on a long journey related The rise of the construction service industry in Indonesia began in the period 1945 to 1994, the construction service companies that existed at that time were Dutch companies and nationalized Dutch companies. There is no definitive development plan yet. The form of the contract only refers to the Dutch provisions, namely the general terms *Algemene voorwaarden (AV41)*. Until 1959 the construction which was commanded by President Soekarno known as "Mandataris Projects" such as Monas, West Irian Monument, Hotel Indonesia, Wisma Nusantara, Semanggi Bridge, Gelora Senayan Construction contracts did not yet exist. Construction contracts, started to be built even though the technological sophistication is not as sophisticated as today, but resulted in innovative developments such as the 29-storey Wisma Nusantara technology, the Semanggi Bridge with pre-stressed construction, Gelora Senayan, a stadium with a *temugelang* roof construction. The construction contract is still very simple. The work is directly appointed by the government without a tender, the form of a contract without a tender, is directly appointed by the government, the form of contract is generally *Cost Plus Fee*, until in 1966 the government banned *Cost Plus Fee*. Competition between service providers for these projects is almost non-existent, because the government directly appoints the service providers.

Besides play a role support various field development, service Construction also play a role for support grow and development of various industry goods and necessary services _ in maintenance Service Construction and by large support economy national. By because maintenance Service Construction should ensure order and certainty law.¹ Developments continued, until in the period 1998 to 2002, when the monetary crisis occurred, which caused so many problems related to construction claims, many construction contracts were legally flawed, weak or unfair/unequal. Finally, the government issued Law Number 18 of 1999 concerning Construction Services, which includes Chapter IV concerning Construction Works and Construction Work Contracts which are regulated in the third part of Article 22. However, in this article, although it regulates the principles and objectives as well as the basis, it has not include the principles of equality, freedom, sustainable development and environmental insight, then this is further regulated in Chapter II Article 2 of the Construction Services Law Number 2 of 2017.

Facing the era of universality (globalization), among others, with the 2003 AFTA, world actors are obliged to follow the rules of world relations, especially with the possibility of participating in international tenders, which use standards/systems and international construction contract formats such as FIDIC, SIA, JCT and so on.²

Matters contained in a construction contract generally contain technical, legal, administrative, financial/banking, taxation, socio-economic aspects, as an integral part of

¹ Gideon F. Sumual et al. 2021. *Setting Connection Work Between Users Services and Providers Service In Contract Work construct*. Lex Administration, Vol. 9. No. 2. page. 253

² Nazarkhan Yasin. 2014. *Contract Construction in Indonesia*. Jakarta: PT. grammar References Main. page 3.

what is known as a contract document, which must be managed carefully, because it will influence and determine performance of the contract. In addition to the technical and other aspects mentioned above, the legal aspect often encounters various problems. All contract documents, especially contracts/agreements, are legal products, as stated in Article 1338 of the Civil Code. If these aspects are not fulfilled, the implementation will result in default, as well as other legal consequences. Something agreement is something an event where a promise on someone else or where are the two people each other promise for doing something thing , which on incident the arise something connection Among those two people called _ with engagement .³

In fact, it rarely crosses our minds that in order to plan, implement and supervise these buildings, a written agreement between the Service User and the Service Provider is required, which contains the legal principles of agreement, which serves to place the position of the parties in the contract in a balanced manner. , professional and fair, while also paying attention to the workers that every power work have right for get protection on safety and health work , morals and decency and appropriate treatment _ with dignity and dignity as well as religious ⁴values .

Focusing on construction contracts, there are still construction contract problems in the form of confusion, misunderstandings, conflicts in interpreting the forms of construction contracts and the fulfillment of rights and obligations towards performance, even to the implementation of other construction contracts that are interrelated between technical, administrative and legal issues. , as in several legal events contained in the construction contract, then casuistically it becomes a matter of default and even acts against the law, as in the Court's decision No.43/PDT.G/2015/PN.Mdn as well as other legal agreement events encountered in a contractual relationship between a Service User and a Service Provider, even between the Main Service Provider and Sub-Service Providers.

This paper aims to analyze the principle of balance in the implementation of construction work contracts and to describe the factors that influence the implementation of the principle of balance in construction contracts not being implemented .

Formulation of the problem

Based on the description above, we formulate the problem as follows :

1. are the ideal legal principles of agreement in a Construction Work Contract?
2. What are the factors that influence the implementation of the principle of balance in the construction contract not being implemented?

Research methods

³ swing Nur Spirituality and Dian Agung Wicaksono . 2018. *Equality In Agreement Work and Ambiguity Consideration Law Court Constitution* . Journal Judicial . Vol. 11 No. 3. Pg . 272

⁴ Condro S. Riyadi , Mutia CH. Talib . 2020. *Guarantee Protection Law To Health And Safety Work To Workforce _ Construction* . Journal Legality . Vol. 1 3 No. 2. Pg . 83

Type Research used _ by researcher in compile article this is type Study normative . As for approach used _ in writing this are , among others; Approach legislation (*Statue Approach*) and approach case (*case approach*). Analysis used _ in writing this is descriptive data analysis with use qualitative approach to primary data and data secondary . Descriptive data analysis means that the researcher in analyzing intends to provide an overview or explanation of the subject and object of research as the results of the research carried out ⁵.

DISCUSSION

A. Ideal Contract Law Principles in Construction Work Contracts.

A contract or agreement is an agreement between two or more people about certain things that they agree to. General provisions regarding contracts are regulated in the Indonesian Civil Code. According to Article 1330 BW juncto, Article 47 of Law Number 1 of 1974 on Marriage, a person is said to be an adult, that is, he is 18 years old or has been married. If a minor wants to make an agreement, then it can be represented by a parent or guardian. Meanwhile, a person is said to be mentally healthy means that the person is not under pardon, as specified in Article 1330 juncto Article 433 BW. People with mental disabilities can be represented by a facilitator or curator. While a person who is not prohibited by law means that the person is not in a state of bankruptcy in accordance with the contents of Article 1330 BW juncto of the Bankruptcy Law. A particular thing relates to the object of the agreement, meaning that the object of the agreement must be clear, determinable and accountable in type and number, permitted by law and possible for the parties to do. A lawful reason, means that the agreement in question must be made based on good faith. As for some principles in contract law, among others:

a) The principle of consensualism

The principle of consensualism is often interpreted that an agreement is needed for an agreement to be born. This understanding is not correct because the purpose of the principle of consensualism is that the birth of the contract is at the time of the agreement. Thus, if an agreement is reached between the parties, a contract is born, even though the contract has not been executed at that time. This means that when an agreement is reached by the parties, it creates rights and obligations for them or it is also commonly called that the contract is obligatory, i.e. creates obligations for the parties to fulfill the contract.

The basis of Consecualism is found in Article 1320 of the Civil Code. The law of agreements regulated in the Civil Code is consensual in nature and based on, unless some agreements are exceptions from that principle, such as peace agreements, labor agreements, and transfer agreements. All agreements, which are exceptions, are not binding when not in writing.

b) Fundamentals of *Freedom of Contract*

The Principle of Freedom of Contract is one of the most important principles in contract law. It is based on Article 1338 paragraph (1) of the Civil Code that all agreements made legally apply as law to those who make them. Similarly, there are

⁵ Zainuddin Ali. 2016. *Method Study law* . Jakarta: Sinar Graphics . page . 183

those who base Article 1320 of the Civil Code that all agreements that explain the legal requirements of the agreement. The purpose of the principle of freedom of contract is, that the parties are free to enter into a contract and regulate the contents of the contract themselves, as long as they meet the following provisions:

1. Qualify as a contract
2. Not prohibited by law
3. As long as the contract is executed in good faith or in other words, the freedom gained by the parties still has its limitations, namely the law, public order, and decency.

c) Basis for Binding the Contract (*Pacta Sunt Vervanda*)

Everyone who makes a contract, he is bound to fulfill the contract because the contract contains promises that must be fulfilled and these promises bind the parties as binding by law. This can be seen in Article 1338 paragraph (1) of the Civil Code which stipulates that all agreements made legally apply as law for those who make them. The words act as law, have the meaning that their power is the same as the law, which means they have the power to compel to obey or obey what is stated in the contract.

d) The Principle of Good Faith (*Goede Trouw*)

According to Article 1338 paragraph (3) of the Civil Code, a contract must be executed in good faith (*goede trouw*). The formulation of Article 1338 paragraph (3) indicates that actually good faith is not a condition for the validity of a contract as stated in Article 1320 of the Civil Code. Good faith is required in terms of the terms of a contract, not in the making of a contract. This is because the element of good faith in terms of making a contract can already be covered by the lawful power of attorney from Article 1320.

Many Indonesian jurists consider good faith to be subjective. However, according to Prof. Wirjono Prodjodikoro in his book on the Principles of Covenant Law, mentions that Dutch jurists, including Hoofmann and Vollmar, consider that in addition to the subjective notion of good faith, there is also good faith that is objective, they mean nothing but propriety or *billikheid*, *redelijkheid*.

e) Basis of Equilibrium

A basis that requires both parties to fulfill and execute an agreement. Creditors have the power to demand performance and if required can follow the amortization of performance through the wealth of the debtor. However, the debtor also bears the obligation to execute the agreement in good faith.

With respect to the principles in above, in the construction work contract in accordance with Article 1233 of the Civil Code, it is stated that each engagement is born from agreements and laws. Contracts in *Indonesian* law originating from *Burgerlijk Wetboek (BW)* or the Civil Code is called *overeenkomst*, which when translated into Indonesian means an agreement. One of the reasons why an agreement by many people cannot always be equated with a contract is because the meaning of an agreement given by Article 1313 of the Civil Code does not contain the word agreement made in writing.

The definition of an agreement in Article 1313 of the Civil Code only mentions as an act where one or more people bind themselves to one or more people. A contract is a bond of agreement as outlined in a written agreement. This is important for the parties so that if in

the future there is a dispute regarding the contract itself, then the parties can submit the contract as a piece of evidence. According to Prof. Soebekti, an agreement is an event where one person promises to another person or where the two people promise each other to carry out something, from this event, a relationship arises between the two people which is called an engagement, thus, the agreement issues an engagement between the two people. the person who made it. In its form, the agreement is in the form of a series of words containing promises or promises that are spoken or written.

B. Factors Affecting Not Implementing the Application of the Legal Principles of Contract Agreements in the Construction Sector

Furthermore, by observing the literature through problems that reach the realm of law in cases of unlawful acts in the work relationship of fellow partners / contractors (Service Providers) and sub-contractors (Sub service providers) , the researcher explores a case in Case Decision No.43/PDT. G/2015/PN.Mdn between contractors, namely Service Providers and Sub-Service Providers. Case The position in the case is that Sunarto as the Plaintiff (Sub Construction Service Provider), has sued or sued Kadar Susanto, as the director of PT. Mumpuni, in this case as a Service Provider as Defendant I who received a Project package at the Sukoharjo Regional Hospital (as a Construction Service User) as Defendant II and the Regency Government (Sukoharjo Regency Government) as a Co-Defendant.

In this case, the Plaintiff sued Defendant I because Defendant I did not carry out the agreement that had been mutually agreed upon between the Plaintiff and Defendant I as stated in the cooperation agreement between the Plaintiff and Defendant I, resulting in material losses suffered by the Plaintiff.

That it started with Defendant I as Director of PT. Mumpuni (Service Provider) having won a project package from RSUD Sukoharjo (Pengguga Jasa) in the form of a construction work project for the Sukoharjo Hospital Inpatient Building, with a budget of Rp. 3,073,000,000 (Three Billion and seventy). three million rupiah), which is financed using the Sukoharjo Regency Government's APBD (Regional Revenue Budget) budget funds.

Whereas at the end of 2014 Mr. Tugiman offered construction work from Defendant I as a provider of construction services (contractor) to the Plaintiff as a Sub Construction Service Provider (Sub Contractor) for the construction of a Class III Inpatient Health Building at Sukoharjo Hospital Belonging to Defendant II as a Construction Service User. .

The legal event that occurred between the Plaintiff and Defendant I had a mutual agreement/agreement between the Plaintiff and Defendant I in terms of Project work at Sukoharjo Hospital where the Plaintiff as Sub Contractor worked on the project as mutually agreed in the cooperation agreement letter dated August 5, 2014 between Plaintiff and Defendant I.

Article 1320 of the Civil Code regulates that the validity of the agreement requires 4 conditions, namely:

1. Agree to bind themselves.
2. The ability to make an engagement.

3. A certain thing.
4. A lawful reason.

Article 1320 Paragraph (1) of the Civil Code, regulates in something agreement should there is agreement, understanding agreement is second split party (entrepreneur / leader) company and worker / laborer) in something agreement (agreement) work : writer), must have will free for tie self and will that should stated . Statement could done with firm or by quietly .⁶

Furthermore, the decision stated that in a legal event there was an agreement between the Plaintiff and Defendant I where Defendant I as a construction service provider who received a project package from Defendant II as a service user, had transferred the work to the Plaintiff (Sub Construction Service Provider) with several agreements. which have been mutually agreed upon, as stated in the letter of mutual agreement signed by the Plaintiff and Defendant I.

That the agreement made by the Plaintiff and Defendant I has met the requirements as stipulated in article 1320 of the Civil Code concerning the terms of a contract containing the principle of agreement.

Whereas with the agreement, the Plaintiff has started the work by bringing in workers who are borne by the Plaintiff, but after the passage of time after being in the middle of the work, Defendant I as the service provider who received the project package did not comply with the contents of the agreement that had been agreed and signed together. and instead took over the project work without the permission and knowledge of the Plaintiff, so that the Plaintiff took Defendant I and Defendant II to the Medan District Court.

That after the case was rolled out and examined at the Medan District Court and had gone through a trial with the stages of Reading the Claims, Answers, Replic and Duplications as well as proving both documentary evidence and witnesses by the litigating parties, the Panel of Judges who examined and tried The case gives the Decision as follows:

judge

In exception

- Rejecting the Exceptions of Defendants I, II and co-defendants in their entirety.

in the subject matter.

- Accept and grant the Plaintiff's claim in part.
- Declare that according to the law the actions of Defendant I which were without rights and against the law unilaterally without notification and without the consent of the plaintiffs had taken over the construction work (project) whose position was still within the rights and authority (authority) of the plaintiff, thus creating

⁶ Ahmad Hunaeni Zulkarnaen . 2018. *Configuration Politics and Character Law In Formulation Agreement Work Individuals and Covenants Work Together* . Journal Law Justitia's pulpit . Vol.4. Number 1. page . 95.

cooperation between the plaintiff and the defendant I stopped, is an act against the law (Onrechtmatige daad)

- Stating that according to the law the agreement on the value of construction work (project value) between Defendant I as a provider of construction services (contractor) and the plaintiff as a sub-construction service provider (sub-contractor) as stated and signed in a letter (draft) of agreement on project value dated August 1, 2014 it is a legal defect.
- Stating that according to the law the letter (draft) of agreement on the project value dated August 1, 2014 between Defendant I as a provider of construction services (contractor) and the plaintiff as a sub-provider of construction services (sub-contractor) is invalid, void, has no legal force and is no longer valid.
- Stating that according to the law the construction work contract between Defendant I as a provider of construction services (contractor) and the Plaintiff as a sub-contractor of construction services as stated in the cooperation agreement letter dated August 5, 2014 is legally flawed.
- Stating that according to the law the cooperation agreement letter dated August 5, 2014 between Defendant I as the provider of construction services (contractor) and the Plaintiff as Sub-Provider of Construction Services (Sub-Contractor) is invalid, null and void and has no legal force and is no longer valid.
- Stating that according to the law all material losses suffered and borne by the Plaintiffs amounted to Rp.410.615.125.00 (four hundred ten million six hundred fifteen thousand one hundred and twenty five rupiahs)
- Sentencing Defendant I to pay the Plaintiff all material losses in the amount of Rp.410.615.125.00 (four hundred ten million six hundred fifteen thousand one hundred two recovered five rupiah)
- Rejecting the lawsuit other than and the rest
- Sentencing Defendant I to pay the cost of this case in the amount of Rp. 1,559,000,000 (one million five hundred and fifty nine thousand rupiah)

Analysis of the Application of the Law of Equilibrium in the Decision that, the principle of Equilibrium is a principle that requires both parties to fulfill and implement the agreement. Creditors have the power to demand performance and if required can follow the amortization of performance through the wealth of the debtor. However, the debtor also bears the obligation to execute the agreement in good faith.

Law civil , on the truth is governing law _ interest Among inhabitant one individual _ with inhabitant individual other .⁷ Arrangement connection work Among user service and provider service in contract work construction for give certainty law about right and obligation to _ fulfilled by the parties in accordance with contract work construction and as well as management service must construction _ implemented in accordance with contract work construction , because something agreement will apply tie for the parties who make it .

That in this case it does not show that there is a balanced situation between the rights and obligations of both parties, where the first party (Defendant I) as the provider of construction services (contractor) without the approval of the second party as the sub-

⁷ Point Quarter Click . 2006. *Introduction Law Civil Code in Indonesia* . Jakarta. Print First . page . 2

construction service provider (sub-contractor) without rights and against the Law unilaterally without notification and without the consent of the second party (Plaintiff) has taken over the Construction Work (project) whose position is still within the rights and authority (authority) of the plaintiff, thus causing the collaboration between the Plaintiff and Defendant I to stop, where it very detrimental to the Plaintiff.

According to Pranoto and Itok Dwi Kurniawan ⁸that the formation of a fair contract is the formation of a contract based on a proportional exchange of rights and obligations that can be observed in the agreed contract clauses, so that a proportional business relationship will also be created. Agus Yuda Hernoko further stated that the proportional principle or balance principle does not concern the balance of results, but emphasizes the proportional distribution of rights and obligations of the parties.

Likewise, in this case the researcher argues that the case arose between the Plaintiff and Defendant I because Defendant I did not fulfill the contents of the agreement that had been agreed and signed jointly between the Plaintiff and Defendant I so that the Defendant's actions had caused losses to the Plaintiff in completing the Project. where the principle of contractual balance in this case is not fulfilled.

The researcher considers that the Judge in examining and deciding this case has studied and considered carefully the evidence of both parties, both written evidence and witnesses who clearly know the incident, so that the Panel of Judges in assessing the evidence of both parties is of the opinion that it turns out that Defendant I has been negligent. or did not carry out the contents of the agreement and it was also revealed that the Plaintiff in completing the project had used personal funds or loans from other people amounting to Rp.410.615.125.00 (four hundred ten million six hundred fifteen thousand one hundred and twenty five rupiahs) which was not paid/ returned by Defendant I, so that according to the researcher the application of law by the panel of judges in deciding the case is more likely to consider legal certainty.⁹

Based on the description above, the researchers found several factors that influence the non-implementation of the principles of balance in the contractual relationship of the construction service industry, namely:

- a. The lack of knowledge of some contractors on the principle of balance or the principle of construction contracts which have been regulated by Article 3 of Law Number 2 of 2017 concerning construction contract services.
- b. Contractors have an interest in the agreed upon funds/budget, which makes the principles in the construction contract not implemented properly.
- c. Lack of understanding of workers on contracts that makes some construction contract workers lose money in a construction project, the losses referred to are defaults.
- d. Lack of knowledge and understanding of the parties to the importance of contracts in the relationship between the parties in realizing common goals.

⁸ Barry Yusuf Labdul and Mutia Cherawaty Talib . 2020. *Contract Work Construction , Between Default , Acts Oppose Law and state Kahar During the Covid-19 Pandemic* . Goorntalo City : Ideas Publishing,

⁹ Decision case No.43/PDT.G/2015/ PN.Mdn Among fellow contractor that is Provider Service with Sub Provider services .

- e. The quality of the substance of the contract made does not reflect the principle of proportional interest of the parties.
- f. Communication between the parties is not good
- g. Poor contract administration and support system
- h. The contents of the contract are balanced, only the implementation is not right.

CLOSING

Application principle balance in relationship _ industry service construction contracts have clearly regulated the principles relating to construction contract agreements, one of the strengthening principles in construction contracts lies in the principle of balance, which requires both parties to fulfill and carry out the agreement. Creditors have the power to demand achievements and if necessary, they can pay off achievements through the debtor's wealth. However, the debtor also bears the obligation to carry out the agreement in good faith. This principle is also closely related to Article 3 of Law Number 2 of 2017 concerning construction services, several points in this article state that:

- Provide a direction for the growth and development of construction services to realize a strong, reliable, highly competitive business structure and quality construction service results.
- Realizing the orderliness of the implementation of construction services that ensures equality of service users and service providers in carrying out their rights and obligations, as well as increasing compliance in accordance with the provisions of laws and regulations.

The factors that influence the non-implementation of the application of the principle of balance in construction contracts as seen from the results of the decision (jurisprudence) include:

- a. lack of knowledge of the parties regarding the principle of balance or the principle of a construction contract which has been regulated by Article 3 of Law Number 2 of 2017 concerning construction contract services.
- b. The contractor's interest in the agreed upon funds/budget makes the principles in the construction contract not implemented properly .
- c. Lack of understanding of workers on contracts that makes some construction contract workers lose money in a construction project, the losses referred to are defaults.
- d. Lack of knowledge and understanding of the parties to the importance of contracts in the relationship between the parties in realizing common goals.
- e. The quality of the substance of the contract made does not reflect the principle of proportional interest of the parties.
- f. Communication between the parties is not good
- g. Poor contract administration and support system
- h. The contents of the contract are balanced, only the implementation is not right.

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