
Legal Obligations of Contractors in Construction Projects: Analyzing the Conflict of Legal Compliance, Contract Performance, and Quality Assurance in Construction Services in Indonesia

Anggi Ismail Sidik

Universitas Muhammadiyah Purwokerto

ARTICLE INFO

Article history:

DOI:

[10.30595/pssh.v14i.1044](https://doi.org/10.30595/pssh.v14i.1044)

Submitted:

June 08, 2023

Accepted:

September 29, 2023

Published:

November 16, 2023

Keywords:

Construction Quality,
Contractor Obligations, Law
Number 2 of 2017,
Construction Services,
Juridical-Empirical Research

ABSTRACT

Construction quality is a crucial aspect of the construction industry in Indonesia, as it directly affects the safety, durability, and functionality of built structures. This research proposal aims to examine the obligations of contractors in ensuring construction quality in Indonesia, specifically focusing on the provisions outlined in Law Number 2 of 2017 on Construction Services. This research aims to investigate the obligations of contractors in guaranteeing construction quality in Indonesia, with a specific focus on the provisions outlined in Law Number 2 of 2017 on Construction Services. The objective of the study is to analyze the legal obligations imposed on contractors and examine their practical implementation in ensuring construction quality. The research employs a juridical-empirical research method, combining legal analysis of the relevant legal provisions with empirical data collection through interviews and document analysis. The research findings will contribute to an improved understanding of the responsibilities and roles of contractors in upholding construction quality, identify any gaps in the existing legal framework, and provide insights for potential enhancements in the enforcement mechanisms to strengthen construction quality management practices in Indonesia.

This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).



Corresponding Author:

Anggi Ismail Sidik

Faculty of Law, Universitas Muhammadiyah Purwokerto

Jl. KH. Ahmad Dahlan, Kembaran, Banyumas, Jawa Tengah 53182, Indonesia

I. INTRODUCTION

Indonesia is a country that is developing rapidly in various fields, one of which is the infrastructure development sector. As a sector that continues to grow, the construction sector has an important role in realizing the vision and mission of national development. However, the high demand for high-quality infrastructure in Indonesia is often inversely proportional to the quality of the resulting construction. Several cases of construction project failure occurred as a result of a lack of attention to construction quality. Therefore, research on the responsibilities of construction service contractors in guaranteeing the quality of construction in Indonesia is very important.

Contractors have an important role in ensuring adequate construction quality, as they are the ones responsible for planning, executing, and completing construction projects. Law Number 2 of 2017 concerning Construction Services stipulates that contractors are required to meet quality standards and technical specifications stipulated in contracts, laws, and regulations, as well as applicable national or international standards.

In carrying out their obligations, contractors are also required to involve adequate experts who have competence in construction engineering and project management. By carrying out their obligations properly, contractors can ensure that construction projects can run properly and the results are in accordance with established quality standards, so that they can provide benefits to the community and avoid the potential for large financial losses for the project owner.

The contractor's responsibility to ensure the quality of construction in Indonesia is also in line with the government's efforts to improve the quality of infrastructure in Indonesia. The Indonesian government has made various efforts to improve the quality of construction, including in line with Law Number 2 of 2017 and quality assurance in the Indonesian National Standard (SNI) and providing certification to construction service providers. Therefore, a legal analysis regarding the responsibilities of construction service contractors in guaranteeing the quality of construction in Indonesia can also provide input for the government in improving regulations and policies relating to the construction service sector.

II. RESEARCH PROBLEMS

Based on the above, the following are the problem formulations that will be discussed in this paper, namely:

1. What is the law enforcement mechanism for contractors who violate their obligations to guarantee the quality of construction in Indonesia based on Law Number 2 of 2017 concerning Construction Services?
2. What is dynamics of implementation to ensure legal compliance, project contracts, and effective quality assurance in construction services in Indonesia in accordance with applicable legal regulations?

III. RESEARCH METHODS

The research title "*Legal Obligations of Contractors in Construction Projects: Analyzing the Conflict of Legal Compliance, Contract Performance, and Quality Assurance in Construction Services in Indonesia*" is an example of empirical juridical research. This study aims to analyze the obligations of contractors in guaranteeing the quality of construction in Indonesia based on Law Number 2 of 2017 concerning Construction Services.

The empirical juridical research method is a legal research method that combines legal aspects with empirical data collected from the field through observation, interviews, or questionnaires. This method is used to obtain a more comprehensive and detailed understanding of how the law is applied in practice, and its impact on society or related parties.

IV. RESULT AND DISCUSSION

A. Law enforcement against contractors violated the obligation to guarantee the quality of construction in Indonesia based on Law Number 2 of 2017 concerning Services Construction

The implementation of construction activities, which include planning, implementation, and supervision of buildings, really needs a reference/legal basis that functions as a guideline in its implementation. The legal basis referred to here is in the form of a written agreement between the project owner/assignor, called the service user, and the planning, executor, and supervisor consultant, which in Law Number 2 of 2017 concerning Construction Services is known as a construction service provider. This written agreement is known as the "construction contract" or "construction agreement," which in western countries is known as the construction contract or construction agreement.¹

Construction contracts happen when two parties who carry out the contract—the service user and the service provider/contractor—agree on a plan of action. However, in order to facilitate and guarantee the implementation of a construction contract, other parties are required, such as architects, supervisors, and other parties as determined by the needs of the contract's implementation and agreed upon by the parties at the time the construction contract was being drafted.

In matters relating to quality standards, the Law on Construction Services describes this in Article 59 Paragraph (1), namely: "In every implementation of Construction Services, Service users and Service Providers are required to meet Security, Safety, Health and Sustainability Standards." Further mentioned in Paragraph (3), Security, Safety, Health and Sustainability Standards include at least: material quality standards, equipment quality standards, occupational safety and health standards, standard procedures for carrying out construction services, quality standards for the results of the implementation of Construction Services, operating standards and maintenance, social protection guidelines for workers in the implementation of Construction Services in

¹ Nazarkhan Yasin, *Mengenal Kontrak Konstruksi Di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2003, h.1.

accordance with statutory provisions, and environmental management standards in accordance with statutory provisions. From this article it can be concluded that security, safety, health and sustainability quality standards are very important matters and must be considered by business actors in the implementation of construction services, every worker has the right to protection for his safety in carrying out work for the welfare of life and increasing national productivity.² In 2017, Indonesia passed Law No. 2 on Service Construction, which aims to regulate the construction sector in the country, including the roles and responsibilities of contractors in guaranteeing the quality of construction. However, there are some cases where law enforcement against contractors who violate this obligation is not carried out sufficiently. Here are some reasons behind this statement:

- a. **Poor Quality of Construction:** There are many cases in Indonesia where construction projects experience serious problems regarding the quality of construction. This could include structural failure, damage to buildings, or even accidents involving end users. Weak law enforcement against the contractors responsible for the construction meant that they did not receive the appropriate punishment and encouraged the bad practice to continue.
- b. **Non-compliance with Construction Standards:** Law Number 2 of 2017 concerning Construction Services also stipulates standards that must be met by contractors in carrying out construction work. However, there are cases where contractors do not comply with this standard, either due to negligence or irresponsible cost savings. In many cases, even when violations are proven, effective law enforcement is not in place to punish them.
- c. **Non-transparency in the Contractor Selection and Evaluation Process:** The contractor evaluation and selection process is an important step in ensuring construction quality. However, there are cases where contractors who are less qualified or do not meet the requirements are awarded construction contracts. This can happen because of corruption, nepotism, or non-transparency in the procurement process. Weak enforcement of these kinds of violations keeps unqualified contractors active in the construction sector.
- d. **Limited Law Enforcement Resources:** One of the factors contributing to weak law enforcement is the limited resources allocated to law enforcement in the construction sector. The lack of competent and trained personnel and the lack of necessary equipment and technology limit the ability of law enforcement to investigate and uncover violations.
- e. **Influence of Corruption:** Along with the source of problems with the quality of construction, such as budget cuts, planning that the execution is not appropriate, and corruption from the beginning of the auction to the implementation of the project.

The Construction Services Law No. 2 of 2017 controls issues connected to parties' obligations, in this instance, service providers and service users. Specifically, service providers are accountable for submitting their work in a timely, economical, and suitable manner. The service provider must also be aware of the potential hazards associated with the functioning of the commitment mechanism for the products used in construction and guarantee that the products' functionality complies with applicable laws. Then, accountability for the outcomes of construction services can be accomplished through a guarantee mechanism, which includes a down payment guarantee, a performance bond, guarantees for the caliber of work results, guarantees for building failures, guarantees for failures in construction work, including worker insurance, insurance for equipment materials, and so forth.³

B. Dynamics of implementation to ensure legal compliance, project contracts, and effective quality assurance in construction services in Indonesia in accordance with applicable legal regulations

The history of Indonesian construction began even before the independence of the Unitary State of the Republic of Indonesia (NKRI). The ability of the Indonesian nation and people to engage in development activities need not be doubted, considering the many magnificent temples scattered in various regions of Indonesia. During the Dutch colonial era, the industrial sector began to switch to construction methods that were commonly adopted in Europe at that time. Some of these buildings are still standing straight and strong, especially in big cities in Indonesia such as Jakarta, Bandung, Medan, and Surabaya. Entering a period of political stability in 1965, the government began to improve the development program. Although shaken by the Asian economic crisis in 1998 and the global economic crisis in 2008, Indonesia's construction sector has been able to survive. Even the

² Nainggolan, Rotua, and Faizah Bafadhah. "Kewajiban Pelaku Usaha Dalam Menjamin Mutu Barang Dan Jasa Konstruksi Dalam Perspektif Perundang-Undangan." *Zaiken: Journal of Civil and Business Law* 2, no. 1 (2021): 144-163.

³ Rambey, G., & Isnain Damanik, R. F. (2021). *Akibat Hukum Penyedia Jasa Konstruksi Yang Melakukan Subkontrak Jasa Konstruksi* (Doctoral dissertation, UMSU), 58.

construction sector makes a significant contribution to the Indonesian economy, which is an average of 10% of the total value of Indonesia's GDP each year.⁴

Infrastructure development during the administration of President Joko Widodo was given great attention and experienced rapid development progress. Infrastructure development is intended to improve connectivity with the construction of toll roads which have reached 2,042 km, construction of 5,515 km of non-toll roads, construction and development of 54 airports, facilities and infrastructure for public services such as the provision of clean water, drainage, dams, schools, markets, health centers and hospitals.⁵ Infrastructure development cannot be separated from the role of construction services which play an important role in Indonesia's development. The contractor as a company in the field of construction services in carrying out their duties must also provide working facilities and tools to carry out construction work. Contractors in carrying out their work will need a partnership with other companies or business sectors to complete their work. A contractor who delegates part of his work to another company is referred to as the main contractor, while the recipient of the work is referred to as a sub-contractor.⁶

According to Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. In carrying out a cooperation agreement between companies or other people, a cooperation document is needed. For example, in construction contract documents, which must be handled properly and carefully because they contain legal aspects that will influence and determine whether the implementation of the contract is good or bad. Service providers and service users must be responsible if (a) building failure occurs, namely the condition of the building not functioning, either in whole or in part from a technical perspective, benefits and occupational health, or public safety as a result of the fault of the service provider and/or service user after final delivery of the construction work, (b) construction work failure, namely the condition that the results of the construction work, either in part or in whole, do not comply with the work specifications as agreed in the construction work contract, either in part or in whole as a result of the service user's or service provider's fault.

In the implementation of a construction project, the term building failure is also known. A construction project is considered a building failure after the expert appraiser says it did not meet safety, health, and sustainability standards. The intended security, safety, health, and sustainability standards include:

1. Material quality standards
2. Equipment quality standards
3. Occupational safety and health standards
4. Standard procedures for implementing construction services
5. Quality standards for the implementation of construction services
6. Standard operation and maintenance
7. Guidelines for social protection for workers in the implementation of construction services in accordance with statutory provisions
8. Standards for environmental management are in accordance with statutory provisions.

Building failure, namely the condition of the building not functioning, either in whole or in part from a technical perspective, benefits and occupational health, and or public safety as a result of the fault of the Service Provider and/or Service User after the final handover of the construction work. The construction work contract must at least include a description. about:

- a. The parties, clearly stating the identity of the parties;
- b. Job formulation, which contains a clear and detailed description of the scope of work, the value of the work and the time limit for implementation;
- c. Period of coverage and/or maintenance, which contains about number, classification and qualifications of experts to carry out construction work;
- d. Experts, which contain provisions regarding the number, classification and qualifications of experts to carry out construction work;
- e. Rights and obligations, which contain the rights of service users to obtain the results of construction work and its obligations to comply with the terms and conditions agreed upon as well as the rights of the service provider as well as the obligation to carry out construction work;

⁴ Ibid, h, 1.

⁵ "Pembangunan Infrastruktur Masif Di Era Kabinet Indonesia Maju," Kementerian Komunikasi dan Informatika, 2022, https://www.kominfo.go.id/content/detail/44406/pembangunan-infrastruktur-masif-di-erakabinet-indonesia-maju/0/berita_satker.

⁶ Mitha Miranda Sari, "Kedudukan Dan Tanggung Jawab Hukum Pihak Sub Kontraktor Pada Perjanjian Pengadaan Barang/Jasa Pemerintah," *Jurnal Ilmiah Ilmu Hukum Kenotariatan Repertorium* 4, no. 2 (2015): 5.

- f. Method of payment, which contains provisions regarding obligations service users in making payments for the work construction;
- g. Default, which contains provisions regarding responsibility in the event that one of the parties does not carry out the obligation as agreed;
- h. Dispute resolution, which contains provisions regarding procedures for settling disputes due to disagreements;
- i. Termination of the construction work contract, which contains provisions regarding the termination of the construction work contract that arises as a result the fulfillment of the obligations of one of the parties;
- j. Force majeure, which contains provisions regarding events that occur outside the will and ability of the parties that cause harm to one of the parties; service providers and/or service users for building failures;
- k. Protection of workers which contains provisions regarding the obligations of the parties in the implementation of occupational safety and health and social security;
- l. Environmental aspects, which contain the obligations of the parties in fulfilling environmental provisions (Article 22 paragraph 2 of Government Regulation Number 20 of 2009).

Contracts in construction work relations are carried out based on the principle of fair competition through the selection of service providers by way of a limited public auction. Engagement is a process that is taken by service users and service providers on an equal footing in reaching an agreement to implement construction work. In each stage of the process, fair and harmonious rights and obligations of each party are determined, accompanied by sanctions.⁷

V. CONCLUSION

In the context of construction projects in Indonesia, the legal obligations of contractors play an important role in maintaining legal compliance, contract performance, and quality assurance in construction services. In this article, an analysis has been carried out of the conflicts that may arise between legal compliance, contract performance, and quality assurance based on applicable legal regulations. Strategies and steps that can be taken by contractors include an in-depth understanding of applicable legal regulations, the implementation of an adequate management system, the selection of reliable subcontractors, strict supervision of the quality of work, and good communication with all related parties. Overall, awareness of the contractor's legal obligations and the ability to fulfill them is a crucial factor in maintaining the success of construction projects in Indonesia. By understanding the conflicts that may occur and implementing appropriate strategies, contractors can achieve effective legal compliance, good contract performance, and optimal quality assurance in construction services.

In controlling quality standards, there are two main activity components in the implementation of construction, namely quality control (QA), Aspects of quality control that are considered in the implementation of construction include: equipment used, method of transporting materials to work sites, material storage, material testing that will be used, including laboratory equipment, routine laboratory testing during implementation, field tests, administration, and forms. Meanwhile, quantity control is carried out by checking the materials placed, moved, or installed by the construction service provider. The consultant will process materials based on: measurement results that meet the payment tolerance limits, calculation method, work location, type of work, and date of completion of work. After the work meets the requirements both in quality and quantity, quantity measurements can be made so that the volume of work is accurately measured and approved by the consultant.

REFERENCES

- Abdulkadir Muhammad, *Hukum Perusahaan Indonesia* (PT. Citra Aditya Bhakti 2010) 598.
- Cahyono, Joko. "Analisis Yuridis Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi." *Khazanah Multidisiplin* 3.1 (2022): 104-116. Timothy, A., Wiryawan, I. W., & Purwanti, N. P. *PERTANGGUNGJAWABAN HUKUM BAGI PENYEDIA JASA KONSTRUKSI DAN PENGGUNA JASA KONSTRUKSI DALAM GAGAL BANGUNAN*.
- Ir. H. Nazarkhan Yasin. 2014. "Kontrak Konstruksi di Indonesia Edisi kedua". Jakarta: PT. Gramedia Pustaka Utama.
- Japar, Sugiarto Raharjo. "Prinsip-Prinsip Kontrak Konstruksi Indonesia." *Mimbar Yustitia* 2.2 (2018): 191-213. PUTRI, Rita Ristyanda. "PERLINDUNGAN KONSUMEN PENGGUNA JASA KONSTRUKSI TERHADAP TERJADINYA KEGAGALAN BANGUNAN YANG DILAKUKAN OLEH PENYEDIA JASA KONSTRUKSI." *UNEJ:Jember*.

⁷ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia* (PT. Citra Aditya Bhakti 2010) 598.

- Mitha Miranda Sari, "Kedudukan Dan Tanggung Jawab Hukum Pihak Sub Kontraktor Pada Perjanjian Pengadaan Barang/Jasa Pemerintah," *Jurnal Ilmiah Ilmu Hukum Kenotariatan Repertorium* 4, no. 2 (2015): 5.
- Nainggolan, Rotua, and Faizah Bafadhal. "Kewajiban Pelaku Usaha Dalam Menjamin Mutu Barang Dan Jasa Konstruksi Dalam Perspektif Perundang-Undangan." *Zaaken: Journal of Civil and Business Law* 2.1 (2021): 144-163.
- Nazarkhan Yasin, *Mengenal Kontrak Konstruksi Di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2003.
- Rambey, G., & Isnain Damanik, R. F. (2021). *Akibat Hukum Penyedia Jasa Konstruksi Yang Melakukan Subkontrak Jasa Konstruksi* (Doctoral dissertation, UMSU), 58.
- Rengkung, Filiberto JD. "Tanggung Jawab Hukum Terhadap Penyedia Barang Dan Jasa Dalam Pelaksanaan Jasa Konstruksi Berdasarkan Undang Undang Nomor 2 Tahun 2017 Tentang Jasa Konstruksi." *LEX CRIMEN* 6.9 (2017).
- Wijaya, N. Budi Arianto, M. SH, and S. H. Vanessha Dasenta Demokracia. *ASPEK HUKUM JASA KONSTRUKSI* (Berdasarkan UU No 2 Tahun 2017 Tentang Jasa Konstruksi, PP No 22 Tahun 2020 Tentang Jasa Konstruksi, dan sudah disesuaikan dengan perubahan yang ada pada UU No 11 Tahun 2020 Tentang Cipta Kerja). Penerbit Andi, 2021.
- "<https://www.rs-lawyer.id/hukum-konstruksi/#:~:text=Hukum%20konstruksi%20adalah%20seluruh%20perangkat,bersifat%20perdata%20maupun%20publik%2Fadministrative>"(2021). Diakses pada 11 Mei, 2023.
- [https://trainingeltasa.com/aspek-hukum-dan-kasus-hukum-proyek-konstruksi/\(2020\)](https://trainingeltasa.com/aspek-hukum-dan-kasus-hukum-proyek-konstruksi/(2020)). Diakses pada 11 Mei 2023.