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Legal Protection for Contracting Parties Against Unilateral Termination of Government Construction Contracts

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Abstract. *Unilateral termination in the implementation of government construction work contracts resulting in the position of the unilaterally terminated party who suffers a very weak loss, considering that there is no certainty regarding legal protection for the aggrieved party. In fact, the purpose of legal protection in contract law in particular is to restore the ownership or proprietary of the aggrieved party in the implementation of the agreement. This article aims to encourage the strengthening of regulations by reconstructing regulations regarding unilateral termination of government construction work contracts. Secondly, this article also examines the legal consequences of government construction work contracts that are unilaterally terminated, and how it affects both service users and service providers. The research method used is normative juridical research. The results of the study show that the unilateral termination clause regulated in the Law and in the Civil Code contains null and void conditions and overrides Article 1266 and Article 1267 of the Civil Code does not provide legal certainty and legal protection for the parties who enter into the contract, due to the reasons for the termination of the contract are not contained in the contract and do not meet the proper nullity requirements. The legal consequences of unilateral termination for both service users and service providers give rise to legal obligations that must be fulfilled by both parties.*

Keywords: *Consequences; Protection; Unilateral Termination.*

1. Introduction

This article examines regulatory strengthening through the reconstruction of legal protection arrangements for the parties affected by the unilateral termination of government construction contracts. Government construction contracts, commonly referred to as contracts with a public dimension, are contractual documents composed of multiple interrelated components, including technical work specifications, legal provisions, contract administration, financial expenditures, banking involvement, contract-related taxation, and matters associated with socio-economic conditions. All of these components are interconnected and collectively determine contract performance, meaning that the success or failure of a construction project depends on how these elements are managed and implemented.(Yasin, 2003)

Government construction contracts constitute business contracts, even though their substantive content incorporates elements of public law. On the one hand, the legal relationship arises from a contractual agreement; on the other hand, the substance of the contract is heavily imbued with provisions governing the public interest in the procurement of goods and services.(Thalib & Labdul, 2019) The execution of such contracts is carried out by the government acting as a private legal subject, as permitted under the principle of freedom of contract.(Kuahaty, 2011) Consequently, the resulting contract is classified as a civil law contract rather than an administrative contract. As a civil contract entered into by the government, both public law norms and private law norms apply concurrently, reflecting the government's position as a public legal subject. Legal acts within such contracts are therefore not limited to private law acts, but also encompass related aspects of public law.(Riskawati, 2022)

In Indonesia, the normative framework governing construction contracts is found in the Civil Code (KUH Perdata), which embodies principles such as freedom of contract, good faith, and pacta sunt servanda. Additional normative foundations are provided in Law Number 2 of 2007 on Construction Services (UUJK) and its implementing regulations. Within the paradigm of contract law, termination by one party is not inherently a discretionary act; rather, it must be based on contractual consent and/or clear legal grounds and must be carried out in accordance with agreed procedures. Previous studies indicate that unilateral termination by service users—such as regional governments acting as procuring entities—against service providers is frequently contested in terms of its validity, particularly when it deviates from contractual provisions or disregards the dispute resolution mechanisms chosen by the parties.(Suryaningsih & Yunanto, 2021) Normatively, the substance of government construction contracts must also ensure legal certainty. Legal certainty is achieved only when statutory regulations governing contracts clearly, explicitly, and logically define legal acts. Such clarity minimizes multiple interpretations, ensures normative coherence, avoids harm to any party, and provides reliable guidance for society.

In principle, the formation and implementation of contracts are grounded in the principles of freedom of contract, pacta sunt servanda, good faith, and Article 1320 of the Civil Code (KUH Perdata). However, in practice, situations may arise in which one party fails to perform its contractual obligations, thereby prompting the other party to terminate the contract even before the expiration of the contractual term. One of the most critical risks in this context is the unilateral termination of construction contracts which, if carried out without valid legal grounds or outside the procedures stipulated in the contract and statutory regulations, may result in significant economic losses, delays in public service delivery, and the escalation of disputes.(Liu et al., 2017) In practice, unilateral termination often occurs due to *wanprestasi* (breach of contract), changes in government policy, force majeure, or imbalances in contractual clauses that disproportionately favor one party.

In several cases, even when disputes have been resolved through arbitration and the arbitral awards are final and binding, the parties involved continue to file additional lawsuits, thereby prolonging legal uncertainty. This phenomenon underscores the importance of effective legal protection for both parties—service users and service providers alike—so that termination is not exercised arbitrarily, but rather as a responsible, proportionate, and legally measured corrective mechanism.

From an international perspective, cross-country studies demonstrate that the termination of construction contracts—whether due to poor performance or considerations of public interest—can generate substantial impacts, including termination costs, additional claims for losses and lost profits, operational expenses, disruption of cash flows, and even the failure of public services. In projects utilizing public–private partnership schemes, early termination necessitates fair compensation commensurate with the risks assumed. Under compensation determination mechanisms employing a real options approach, the value of early termination is calculated by considering demand fluctuations, cash flows, investment returns, and risk allocation.(Sun et al., 2022) This perspective is particularly relevant for Indonesia, where many strategic infrastructure projects combine public and private funding and are therefore vulnerable to policy changes and market conditions.

The unilateral termination of construction contracts pursuant to Article 47 paragraph (1) letter (i) of the UUJK occurs as a consequence of the failure by one of the contracting parties to perform its contractual obligations. This means that unilateral termination in government construction contracts signifies the occurrence of *wanprestasi* by a party obligated to perform the agreed prestation as stipulated in the contract.(Sari et al., 2019) Based on Article 1267 of the Civil Code (KUH Perdata), the non-breaching party is entitled to demand performance of the contract and/or to seek contract cancellation accompanied by claims for damages, reimbursement of costs, and interest.

Article 1338 of the Civil Code (KUH Perdata) stipulates that "an agreement lawfully entered into cannot be revoked unilaterally, except with the mutual consent of the parties." Article 1266 of the Civil Code (KUH Perdata) further provides that unilateral termination without lawful grounds may be challenged as an unlawful act under Article 1365 of the Civil Code (KUH Perdata), as such termination not only contravenes the legal obligation to act in good faith in contract performance, but also violates legal norms and principles of fairness. These provisions imply that a contract terminated unilaterally on unlawful grounds does not afford legal protection to the parties when such termination results in losses to either or both parties. From an international standpoint, legal protection against unilateral termination of construction contracts is grounded in the standards governing construction contracts under FIDIC, which emphasize balanced risk allocation relating to design, physical obstructions, the volume of work, the amount and duration of contract securities, certification procedures, and payment terms. Such balance is also reflected in provisions regulating variation, payment, contractor's claims, and employer's claims.(Köksal, 2011)

This article aims to construct an argument for the necessity of reforming the regulatory framework governing legal protection for parties affected by the unilateral termination of government construction contracts and the resulting legal consequences. This discussion seeks to complement prior studies that have not specifically addressed the importance of regulating legal protection and legal consequences arising from unilateral termination of government construction contracts. The analysis begins with an examination of the legal framework governing protection against unilateral termination within the Indonesian legal system, supplemented by relevant legal cases involving unilateral termination. This discussion is intended to provide an overview of the applicable regulations contained in the Civil Code (KUH Perdata), the UUJK and its implementing regulations, as well as those embodied in construction contracts themselves. The subsequent section analyzes the legal consequences of unilateral termination of construction contracts and their relationship to legal protection.

2. Research Methods

This research employs a normative juridical method. Normative juridical research is a type of legal research conducted by examining positive legal norms that are in effect, including laws, legal principles, legal doctrines, and relevant court decisions concerning the issues under study. This approach is chosen because the primary focus of the research is to analyze the legal regulations and legal consequences of the unilateral termination of government construction contracts within the Indonesian legal system.

The research approaches used include a statutory approach, a conceptual approach, and a case approach. The statutory approach involves reviewing the legal provisions governing construction contracts and their termination, particularly the Civil Code (Kitab Undang-Undang Hukum Perdata), Law No. 2 of 2017 on Construction Services, and its implementing regulations, as well as relevant regulations regarding the procurement of goods and services by the government. The conceptual approach is employed to examine legal concepts such as legal protection, the principle of freedom of contract, the principle of pacta sunt servanda, good faith, *wanprestasi* (breach of contract), and contract termination. Meanwhile, the case approach is used to analyze court rulings related to the unilateral termination of government construction contracts to gain a concrete understanding of the application of the law.

The types and sources of legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations such as the Civil Code, the Construction Services Law, government regulations, presidential regulations, and final and binding court decisions. Secondary legal materials include legal literature such as textbooks, scholarly journals, research results, legal articles, and opinions of experts concerning contract law and construction services. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other sources that help clarify legal terms and concepts.

The technique of collecting legal materials is carried out through library research, which involves inventorying, examining, and reviewing various legal materials relevant to the research focus. All the legal materials obtained are then classified and systematized according to the main issues of the research.

Legal material analysis is conducted qualitatively using a descriptive-analytical method. The collected legal materials are analyzed by interpreting legal provisions, comparing one legal norm with another, and relating them to doctrines and relevant court decisions. The results of this analysis are used to draw conclusions deductively, from general legal provisions to specific conclusions regarding legal protection and the legal consequences of the unilateral termination of government construction contracts.

3. Results and Discussion

3.1. Regulation of Legal Protection Regarding Unilateral Termination of Government Construction Contracts in the Indonesian Legal System

Legal protection is a fundamental aspect of law as it concerns the enforcement and restoration of civil rights for specific legal subjects. Its purpose is to guarantee that the rights of legal subjects are not violated and to restore balance when violations occur.(Riskawati, 2022) The restoration of rights due to breach of contract is based on the loss of expected benefits or actual losses suffered.(Asnawi, 2018) The concept of legal protection is rooted in the belief that law must provide security, justice, and certainty for every individual or legal entity involved in contractual relationships.(Syaidi, 2025)s

In the context of construction contracts, legal protection not only protects the party suffering from a breach due to contract termination but also ensures that the party terminating the contract has valid legal grounds, is balanced, and follows the procedures mutually agreed upon. This is in line with the principle of proportionality in contract law, meaning that unilateral contract termination should only be allowed if it is proportional to the degree of contract violation or the underlying condition.(Manurung, 2022) At the international level, legal protection in construction contracts is governed within the framework of contract governance, where contracts not only function as tools for personal relationships but also regulate the distribution of risks, obligations, and required solutions.(Liu et al., 2017)

The foundation for legal protection against termination of construction contracts is found in the Construction Services Law (UUJK), which requires the inclusion of contract termination clauses in every construction contract. This demonstrates preventive legal protection by regulating the dispute resolution mechanisms in case of *wanprestasi* (breach of contract). According to Government Regulation No. 22 of 2020 and its amendments, including Government Regulation No. 14 of 2021, the structure of contracts must include general and specific conditions, such as clauses on force majeure and contract termination. Furthermore, Presidential Regulation No. 16 of 2018 and its amendments outline the authority of the Project Implementation Unit (PPK) to terminate contracts if the service provider fails to fulfill their obligations, following a sequence of warnings, evaluations, and termination records.

Additionally, Article 1266 of the Civil Code (KUH Perdata) is a legal basis for terminating contracts due to *wanprestasi* by one of the parties. It stipulates that the debtor’s failure constitutes a condition for automatic annulment, which is assumed to be a standard clause in all contracts. However, this annulment is not automatic and must be preceded by a lawsuit in court, as specified in the contract's cancellation clause.

Article 1266 of the Civil Code (KUH Perdata) also contains provisions regarding the need for annulment when one party breaches the contract. This allows the other party to request cancellation by filing a petition with the court, even if the annulment condition is stated in the contract. These clauses are mandatory and cannot be disregarded by either party. In practice, the unilateral termination of a construction contract without clear legal grounds is often considered unlawful and can result in significant losses, thus requiring compensation.

The formulation of Article 1266 of the Civil Code (KUH Perdata) includes conditions that cannot be disregarded, meaning that the condition for automatic annulment cannot be interpreted otherwise by the parties. If it is stipulated otherwise that such conditions can be waived, then the clause regarding automatic annulment must be considered void. In cases of *wanprestasi* (breach of contract), a petition for annulment must be submitted to the court. The debtor's negligence is not an automatic condition for annulment; rather, it is the court's decision to annul the agreement.(Subekti, 2005) The court’s ruling is a determination, and the judge has the authority to assess the debtor’s *wanprestasi*. If, based on the judge's ruling, the debtor's *wanprestasi* is deemed minimal, and if the annulment of the contract could cause significant harm to the debtor, the judge is authorized to reject the petition for contract annulment.

Furthermore, Article 1267 of the Civil Code (KUH Perdata) stipulates that, "A party who breaches the contract or fails to fulfill the agreement may choose to compel the other party to perform the agreement if still possible, or may petition for the annulment of the agreement with compensation for costs, damages, interest, and expected benefits." This provision is intended to provide the involved parties with the opportunity to either fulfill the agreement or to demand the termination of the agreement while paying all related costs, losses, and anticipated profits.

From the perspective of Article 1338 of the Civil Code (KUH Perdata), which outlines the fundamental principles of contract law, such as the principle of freedom of contract, the principle of pacta sunt servanda (agreements must be kept), and the principle of good faith, although unilateral termination of the contract is allowed, such actions must still consider these three principles in assessing whether the unilateral termination is legitimate. The principle of freedom of contract grants both parties the liberty to create agreements, determine the terms, content, and conditions, select partners, choose the object of the agreement, define the formalities, and decide whether or not to adopt optional legal norms. However, freedom of contract rejects the practice of imposing fixed terms on contracts and also rejects the notion that an objectively just price exists for any objects that are unequally exchanged.(Chand, 1994)

This means that, based on the principle of freedom of contract, it is possible to include a unilateral termination clause in construction contracts, with the conditions and requirements for such a contract being based on the free will of the parties involved. In practice, however, the principle of freedom of contract is often imbalanced, as the bargaining power of the service user (the government) tends to be more dominant than that of the service provider. As a result, unilateral termination clauses tend to favor the service user.

The principle of pacta sunt servanda states that every contract is binding as the law for those who make it. This means that a binding contract does not require an oath or other religious rituals. Every agreement made by the parties must be respected and applied according to the provisions outlined in the agreement.(Elfani & Azheri, 2023) In the context of construction contracts, this means that the parties involved must adhere to and carry out all responsibilities set forth in the contract. From the perspective of legal certainty, the parties must respect the substance of the contract, follow the terms agreed upon, and fulfill their respective obligations. Therefore, unilateral termination without clear legal grounds will create uncertainty and may be regarded as *wanprestasi* (breach of contract). Legal certainty also implies the existence of consistent procedural rules that ensure the procurement process is carried out professionally and is accountable.

The principle of good faith is related to how the contract is carried out. Every contract that has been agreed upon must be executed by all parties involved with integrity. The parties in the contract are required to consider reasonable interests and act in accordance with the norms of behavior established in society, as well as the legal regulations that govern both the formation and performance of the contract.

Unilateral termination of a construction contract is often debated from the perspective of good faith. The key question is whether the party terminating the contract does so to protect a legitimate legal interest, or if they are instead exploiting their dominant position as the service user. The principle of good faith serves as the basis for evaluating whether the termination is lawful. If the termination occurs without a reasonable cause, even if the contract contains a termination clause, the action remains unlawful. Termination that disregards the interests of the other party violates the principle of good faith.

In the case between the Jambi Provincial Education Office and CV Analis Konstruksi, the implementation of the contract provides an illustration of factual obstacles, such as permits, support, financing, and coordination, that affect the service provider's performance. Objective obstacles beyond the control of the service provider are considered *wanprestasi* (breach of contract) that justifies unilateral termination. Empirical research shows a strong relationship between the quality of project planning or support from the project owner and contractor performance. Before terminating the contract, the service user must objectively prove *wanprestasi* through supervision reports, meeting minutes, and demonstrate that no fault lies with the service user, such as delays in payments or changes in design. If the service user holds the dominant position, unilateral contract termination runs the risk of being considered unlawful and could lead to a compensation obligation.(Rista & Qodri, 2020)

Furthermore, based on the Supreme Court Decision No. 4/Yur/Pdt/2018, often used as a reference to determine the limits of government authority in terminating construction service contracts, it is emphasized that the government must prioritize legal certainty and the principle of proportionality. In other words, the government's right to unilaterally terminate a contract is not a free policy; it must adhere to the contract's provisions, provide evidence of significant violations, and include a compensation mechanism if the termination is not due to the service provider's fault. Therefore, unilateral termination of a construction contract, as permitted in the contract, must be clearly regulated, specifying each reason that justifies the termination. Consequently, *wanprestasi* may not be the only grounds for terminating a contract. The *wanprestasi* that serves as the basis for termination is only that which is explicitly stated in the contract.

In practice, there are differing opinions regarding the application of Articles 1266 and 1267 of the Civil Code (KUH Perdata) as the legal basis for contract termination. Some argue that these articles are non-waivable norms because they are mandatory, while others contend that these provisions are waivable as they merely provide guidance.(Hernoko & Sh, 2019)

Considering the aforementioned opinions, it can be accepted that if both parties choose to waive Articles 1266 and 1267 of the Civil Code (KUH Perdata), then, in the event of *wanprestasi* (breach of contract), the cancellation can be carried out without the need to file a petition for annulment and obtain a court ruling. Therefore, each party involved must explicitly declare that the rights governed by Articles 1266 and 1267 of the Civil Code (KUH Perdata) have been waived, and that these provisions are no longer valid.(Budiono, 2007) Contract provisions that can only be annulled by the court may only be waived by a valid cancellation clause. This clause is executed by not requiring the harmed party to petition the court for a ruling on the termination of the contract.(Rowan, 2012)

In other words, contract provisions that can only be annulled through court intervention may be disregarded if they contain a reasonable and appropriate cancellation clause. Such clauses are indeed suitable because they can minimize the losses arising from the failure to fulfill contractual obligations.

The inclusion of a termination clause in a construction contract that negates Articles 1266 and 1267 of the Civil Code (KUH Perdata), on one hand, does not provide legal protection to the party whose contract is terminated unilaterally. However, on the other hand, it offers protection to both parties if the clause within the contract contains the necessary legal grounds for annulment. This aligns with the earlier opinion that Articles 1266 and 1267 of the Civil Code (KUH Perdata) are mandatory provisions, where contract annulment can be declared invalid based on the cancellation conditions stipulated in the contract, but such annulment must be petitioned through the court. Furthermore, based on Article 1338 of the Civil Code (KUH Perdata), the provisions of Articles 1266 and 1267 can be waived due to the principle of freedom of contract. The parties are free to determine the content and terms of their binding agreement, as long as the contract contains clauses that align with the law, good social behavior norms, and public order, and these agreements are binding and cannot be undone unless agreed upon by both parties.

Based on the provisions for automatic annulment outlined in the General Terms and Conditions (*Syarat Umum Kontrak* - SSUK) for construction work, the authority of the Project Implementing Officer (*Pejabat Pembuat Komitmen* - PPK) to terminate the contract in writing applies under the following circumstances:

1. The service provider fails to complete the work by the end of the project timeline and the required goods/services;
2. Based on the PPK's evaluation, even with an extension of 50 days after the project completion period, the service provider is still unable to complete the work; or after the 50-day extension, the service provider is still unable to finish the work;
3. The service provider neglects or fails to fulfill the obligation to make timely repairs;
4. The execution of the work is not initiated by the service provider;
5. Work stoppage lasting 26 days without approval from the work supervisor;
6. The service provider goes bankrupt;
7. Within the contract period, the service provider is unable to rectify quality defects;
8. The performance guarantee for the work is not imposed on the service provider;
9. The service provider is proven to have engaged in Corruption, Collusion, and Nepotism (KKN), fraud, and/or deception during the procurement process, as determined by the relevant authorities;
10. Reports regarding errors in mechanisms, alleged KKN, and/or violations of fair competition have been decided by the relevant institution.

If the contract is terminated due to the service provider's fault, the following actions will apply:

1. The performance guarantee will be cashed for work packages above two hundred million rupiah;
2. The remaining advance payment, if any, will be refunded;
3. A penalty for delays will be paid according to the losses incurred;
4. Payment of penalties equal to the losses suffered by the PPK;
5. The service provider will be blacklisted.

The PPK's obligation is to pay the construction contractor based on the completed work that has been handed over to the PPK until the end of the contract term, and to deduct any penalties that the service provider is required to bear. The service provider or construction contractor must hand over all completed work to the PPK, and it will subsequently become the property of the PPK.

Regarding the annulment of the contract termination conditions by the service provider in the SSUK, it is stipulated that:

1. The service provider may waive Articles 1266 and 1267 of the Civil Code (KUH Perdata) as grounds for terminating the agreement by submitting a written request to the PPK, if the PPK does not issue the Surat Perintah Pembayaran (SPP) for the payment of the agreed installment of the invoiced work in the SSKK (work performance plan);
2. Termination of the employment relationship by the service provider results in the PPK having to pay the service provider in installments based on the work performance achieved and accepted by the PPK, after which the service provider will hand over all completed work to the KDP (Project Management), and it will subsequently become the property of the PPK.

Upon reviewing the cancellation conditions outlined in the General Terms and Conditions (Syarat Umum Kontrak - SSUK) for construction work, there appears to be an imbalance between the cancellation conditions set for the service provider and those for the service user, in this case, the PPK (Project Implementing Officer)/Government. The cancellation conditions for the PPK/Government include *wanprestasi* (breach of contract), the service provider's bankruptcy, proven corruption, collusion, and nepotism (KKN), followed by sanctions against the provider, such as the liquidation of the performance guarantee, the refund of the remaining advance payment, delay penalties, and blacklisting. However, the cancellation conditions for the service user (the government or PPK) in cases where the PPK fails to issue the Surat Perintah Pembayaran (SPP) for the payment of completed work, do not include any provisions for sanctions against the PPK, whether in the form of fines or other penalties.

Thus, it can be concluded that the contract termination clause that negates Articles 1266 and 1267 of the Civil Code (KUH Perdata) in construction contracts does not fully protect the legal interests of the parties involved. This is because the waiver of these articles is not accompanied by the necessary legal grounds for annulment. The appropriate legal grounds for annulment should provide a balanced guarantee for both parties and should be based on a belief that upholds the expected standards of truth and fairness. If this balance is not achieved, the parties involved may fail to adhere to what has been mutually agreed upon in the contract.

From the perspective of contract theory, which concerns the rights and performance of the parties involved, a unilateral termination clause must align with the provisions of Articles 1266 and 1267 of the Civil Code (KUH Perdata). This is because these articles already provide the necessary procedure to ensure the fulfillment of the rights and performance of both parties, thereby protecting their primary interests under the law. In other words, unilateral termination can only occur if the contract includes a clause addressing possible events that may arise during the execution of the contract. Thus, if the service provider fails to fulfill their obligation to complete the work within the specified timeframe, unilateral termination cannot be applied, as the service provider has the right to complete the work in accordance with the applicable provisions and face the sanctions stipulated in the contract.(Kristianto & Gracia, 2021)

In contrast to Indonesia, common law countries such as the UK regulate the right of the party suffering harm to terminate the contract in the event of a severe breach of contract by their partner.(Stone & Devenney, 2019) In the UK, this issue is governed by the Repudiatory Breach Doctrine, which allows for the termination of the contract due to a major breach by the creditor.(Peel, n.d.)

Unilateral termination of construction contracts is often linked to the negligence of either the service user or the service provider in fulfilling their contractual obligations. From a drafting perspective, before including a termination clause, it is essential to formulate provisions regarding the failure of the service provider within the contract. Therefore, it is crucial for government procurement contracts, particularly those involving service providers as legal subjects, to allow them the opportunity to raise objections or provide input before the government makes a decision. This approach is intended to prevent conflicts or disputes from arising.(Ramadhani et al., 2024)

3.2 Legal Consequences for the Parties Due to the Unilateral Termination of Government Construction Contracts

In theory, Article 1320 of the Civil Code (KUH Perdata) outlines the requirements for a contract to be valid, which includes both subjective and objective conditions. The subjective conditions involve the agreement between the parties involved and their legal capacity. The objective conditions include the subject matter of the agreement and the lawful cause for the agreement. The contract must meet both subjective and objective conditions. If the subjective conditions are not fulfilled, the contract may be annulled. A contract may be annulled due to defects in the agreement, such as coercion, error, fraud, abuse of circumstances, or if one of the parties is legally incapable of forming a contract. If the objective conditions are not met, the contract is void ab initio. A contract is void ab initio if it lacks a clear subject matter or if the object of the contract cannot be determined and has an unlawful cause.(Winisuddha, 2021)

The unilateral termination of a contract often leads to disputes between the parties. The discussion of the legal consequences of the unilateral termination of a construction contract is viewed from the perspectives of both the service user and the service provider as follows:

a. Legal Consequences for the Service User/Government
   1) Obligation to Pay for Completed Work

The legal basis governing the government's obligation to pay for completed work is found in Article 1338(1) of the Civil Code (KUH Perdata). This article states that "All agreements made lawfully are binding as law for the parties who made them." Therefore, a valid construction contract binds the government, even if the contract is terminated. The work performed by the service provider must still be paid for. Additionally, Article 1243 of the Civil Code (KUH Perdata) governs compensation for *wanprestasi* (breach of contract). If the contract termination is not due to the service provider's fault, the government is still obligated to pay for the work completed.

Furthermore, in Presidential Regulation No. 12/2021 in conjunction with Presidential Regulation No. 46/2025 concerning Government Procurement of Goods/Services, Article 78(3) clarifies that if the contract is terminated, payment must still be made for the work that has been completed and accepted by the Project Implementing Officer (PPK).

The government's obligation to pay for completed work is not merely contractual but also a public duty. This is because the government acts on behalf of the state, and its expenditures are sourced from public funds. As a result, the government cannot simply stop payments just because the contract is terminated. In general, contract termination does not eliminate the employer's obligation to pay for the value of the work that has already been completed.

2) Compensation

Compensation is another legal consequence of the unilateral termination of a government construction contract, where the government is required to provide compensation to the service provider. The government is responsible for the losses experienced by the service provider if the contract is terminated without valid grounds, such as arbitrary termination without notice or without a valid reason, such as *wanprestasi* (breach of contract). Compensation can only be granted if the harmed party can prove the actual loss, including costs incurred and lost profits. Additionally, there must be a causal link between the contract termination and the losses, as well as evidence of fault or negligence on the part of the terminating party.

The Supreme Court Decision No. 1574 K/Pdt/2011 explains that contract termination without valid reasons creates an obligation to fulfill compensation. In line with this ruling, the service provider may claim compensation by providing evidence of losses through progress reports and material payment receipts.

3) Risk of State Loss

Construction is the process of transforming prepared resources and funds into buildings or infrastructure that meet the intended objectives. Currently, many construction projects undertaken by service providers face issues, such as substandard materials or work volumes that do not meet expectations. Law No. 2 of 2017 does not impose criminal sanctions for errors made by service providers. Service providers can face sanctions ranging from written warnings to compensation if a construction project fails.(Simamora et al., 2023) In construction work, deviations in material quality or volume that do not meet the required standards often result in losses to the state.(Pradina, 2021) Such non-compliance with specified standards in construction projects is often regarded as an act of corruption, without considering the civil resolution through contracts.(Fadlan, 2022)
For example, Supreme Court Decision No. 610 K/Pdt/2021 ruled that the Sikka Regency Government must pay compensation of IDR 27.9 billion to the service provider, who had unilaterally terminated the contract without valid grounds. This decision resulted in a loss to the state, as the responsibility to fulfill the payment fell on the government. The decision indicates that the regional government, as the defendant, is obliged to pay from the regional budget if the decision becomes final and binding. If the payment is not properly documented and audited, it could be considered a loss to the state in audit or oversight findings.

4) Administrative and Criminal Liability

A unilateral termination by the service user can be challenged in civil court by the service provider. Additionally, such actions may lead to administrative and criminal liability.(Tarigan, 2024) Administrative responsibility arises when an official violates public administration regulations, governance principles such as transparency and accountability, or causes financial losses to the state. Administrative sanctions may also include administrative fines. The forms of responsibility include administrative review, disciplinary sanctions against the official, recovery of state losses through administrative or financial mechanisms, and/or lawsuits for unlawful actions in the field of administrative law.

Termination of a contract as an administrative action is not always considered a criminal act. However, if the termination is carried out due to abuse of authority for the benefit of a particular party, collusion, or corruption, the official involved may face criminal sanctions under the Criminal Code and the Corruption Crime Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.

b. Legal Consequences for the Service Provider

1) Financial Losses

The unilateral termination of a contract not only leads to administrative, civil, and criminal issues but also results in financial losses that must be borne by the service provider. These losses may include operational costs already incurred, purchased materials, worker wages, opportunity costs, lost expected profits, capital expenses, labor, and materials already used. Financial losses resulting from unilateral termination could amount to over 30% of the contract value if there is no clear compensation mechanism in place.(Coleman et al., 2025)

In civil law, the principle of pacta sunt servanda, as stated in Article 1338 of the Civil Code (KUH Perdata), requires both parties to perform their agreements in good faith and honesty. Unilateral termination without valid reasons contradicts this principle. The service provider may file a *wanprestasi* (breach of contract) lawsuit or pursue arbitration according to the terms of the contract.

In Supreme Court Decision No. 927 K/Pdt/2023, the construction service provider, PT. Arnelindo Atbay, sued the unilateral termination of the contract by the government-owned company PT PLN Persero. The Supreme Court ruled in favor of the service provider, confirming that the termination without valid grounds was an unlawful act and caused financial harm to the service provider. This ruling also emphasized the importance of including dispute resolution clauses in construction contracts as protection for the service provider's rights.

In civil law doctrine, the principle of pacta sunt servanda, as mentioned in Article 1338 of the Civil Code (KUH Perdata), binds both parties to perform the agreement in good faith. Unilateral termination without valid reasons is contrary to this principle. The legal remedy available to the service provider is through a *wanprestasi* lawsuit or arbitration, as stipulated in the contract. In Supreme Court Decision No. 927 K/Pdt/2023, the construction service provider, PT. Arnelindo Atbay, filed a suit against the unilateral contract termination by the state-owned enterprise (PT PLN Persero). The Supreme Court upheld the service provider’s claim, stating that the unilateral termination without valid grounds was an unlawful act and had financially harmed the service provider. This decision further underscores the importance of including dispute resolution clauses in construction contracts to safeguard the service provider’s rights.

2) Blacklisting

Unilateral termination of a contract by the service user can have significant legal consequences for the service provider. One of the most severe consequences is that the service provider may be blacklisted. Being blacklisted is an administrative sanction that prohibits the service provider from participating in government procurement processes for a certain period. The impact is not only financial but also affects the reputation and business continuity of the service provider. Placing a service provider on the blacklist without following the proper procedure constitutes a violation of the principles of legal certainty and fairness in the procurement process.(Onica, 2024)

The regulation governing blacklisting is outlined in Regulation LKPP No. 17 of 2018 on Blacklist Sanctions. This regulation states that a service provider can be blacklisted if proven to have committed work delays, fraud, or criminal acts during the execution of the contract. Blacklisting a service provider is one of the grounds for unilateral termination of the contract.(Suryaningsih & Yunanto, 2021) However, the process of blacklisting must be carried out in accordance with the correct legal procedure, such as having an inspection report, evidence of work delays, and an official decision from the authorized official. If the procedure is not followed properly, the service provider can file an administrative lawsuit (through the State Administrative Court - PTUN) or a civil lawsuit (to claim compensation). Therefore, blacklisting without a valid procedure can lead to legal uncertainty and injustice.

Several court decisions highlight the important role of the judiciary in protecting the service provider’s rights from improper blacklisting. For example, State Administrative Court Decision No. 237/G/2024/PTUN.Jkt annulled the blacklisting decision because the procedure used was not in accordance with the regulations. Meanwhile, State Administrative Court Decision No. 159/G/2020/PTUN-JKT accepted the lawsuit concerning the blacklisting sanction imposed on the service provider.

3) Payment of Fines or Penalties

In construction contracts and other service agreements, clauses regarding fines or penalties are often included. These clauses are inserted into the contract to protect the employer's interests if the service provider fails to fulfill their obligations or terminates the contract without valid reasons. The purpose of these clauses is to prevent breaches, compensate for damages that are difficult to prove, and allocate contractual risks. The service provider may be required to pay a fine as specified in the contract, often as a percentage of the contract value. If the contract does not contain a penalty clause, the harmed party may seek compensation based on Article 1243 of the Civil Code (KUH Perdata), which includes costs, losses, and interest.

The difference between penalties and compensation is that penalties are predetermined in the contract, so there is no need to prove actual damage. In contrast, compensation requires proof that the harmed party has indeed suffered loss. However, the amount of the penalty is still limited. Based on court practice, judges have the authority to reduce the amount of the penalty if it is deemed excessive or disproportionate (Article 1249 of the Civil Code (KUH Perdata)). This is in line with the principle of fairness in contracts.

In construction contracts, the payment of fines for the service provider may occur when the service provider halts work without valid reasons or fails to complete the work according to the schedule, resulting in delay penalties. The mechanisms for contract termination and the imposition of delay penalties are regulated under the Construction Services Law and various regulations such as Law No. 2 of 2017 on Construction Services, Presidential Regulation No. 16 of 2018 in conjunction with Presidential Regulation No. 12 of 2021 and Presidential Regulation No. 46 of 2025 on Government Procurement of Goods/Services. For example, a contractor company may unilaterally terminate the contract due to financial difficulties without providing valid reasons. As a result, the company is obligated to pay a penalty as stipulated in the contract, such as 5% of the contract value.

4) Liability for Defective Work

According to Article 1, number 11 of Government Regulation No. 29 of 2000 on the Provision of Construction Services, construction work includes all building activities whose results must meet the specifications agreed upon. A job is considered substandard if its quality does not align with the provisions in the contract documents, technical drawings, and general and specific terms of the contract, as outlined in Regulation of the Government Procurement Policy Agency (LKPP) No. 12 of 2021 on the Implementation Guidelines for Government Procurement Contracts. Substandard work may result from errors in design, execution, or the use of materials that do not meet the required standards. The service provider is obligated to carry out the work in accordance with the contract, technical standards, and applicable laws and regulations.

Based on Article 27(1) of the Construction Services Law (UUJK), the service provider is responsible for building failures caused by errors in planning, execution, or supervision. The responsibility for work that does not meet the standards is also regulated in the General Terms and Conditions (Syarat Umum Kontrak - SUK), as stated in Minister of Public Works and Housing Regulation No. 14/PRT/M/2020 on Standards and Guidelines for the Procurement of Construction Services. Generally, the contractor is required to repair defects in the work during the maintenance period, which typically lasts 6 to 12 months after the work is completed and accepted.

The maintenance period is the period during which the service provider is responsible for repairing defects that arise, according to the agreed terms. This responsibility may include civil claims, such as compensation or recovery. Administrative responsibility may include sanctions such as blacklisting, while criminal liability applies if there is criminal conduct, such as corruption. If the contract ends due to *wanprestasi* (breach of contract), the provider is still responsible for defects arising from the completed work, including the obligation to repair or pay compensation, as long as this responsibility is not limited by a court decision or a civil settlement that alters the obligations. For latent defects, experts are required to determine the cause, and the service provider must repair them without additional costs.

In State Administrative Court Decision No. 92/B/2019/PT.TUN.JKT, the service provider was found negligent because the construction of a road did not meet quality standards and cracked during the maintenance period. The service user (local government) is entitled to demand repairs and delay the final payment. This case highlights the importance of the service provider's responsibility to ensure the quality of construction work and the obligation to repair defects during the maintenance period, in line with the principle of liability for defect in contract law.

4. Conclusion

The conclusion of this article is twofold. First, the legal framework for the protection of parties involved in unilateral termination of government construction contracts has not yet provided legal certainty, as there are differing opinions regarding the application of Articles 1266 and 1267 of the Civil Code (KUH Perdata) in construction contracts. This discrepancy arises between those who argue that these articles are mandatory and cannot be waived and those who believe that they are merely regulatory and can be waived by the parties. However, the analysis concludes that these articles cannot be waived by the parties unless the reasons for unilateral termination are explicitly stated in the construction contract and meet the proper legal grounds for annulment. The proper legal grounds for annulment must provide a balanced guarantee for both parties and must be based on an understanding that upholds the expected truth and fairness. Otherwise, parties may fail to adhere to the agreements made. Second, unilateral termination of government construction contracts has legal implications for both the service user and the service provider. The legal consequences for the service user include the obligation to pay for completed work, provide compensation, take responsibility for state losses, and potentially face administrative and criminal liability. Meanwhile, for the service provider, the consequences include financial losses, blacklisting, the payment of fines or penalties, and continued responsibility for defective work.

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