

## **Ideal Formulation of Legal Protection Against Unilateral Termination of Contract and Delay in Payment for Services by the Government Based on the Values of Justice**

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**Abstract.** *Government construction work contracts play a crucial role in infrastructure development and must ensure legal certainty and protection for service providers. However, in practice, unilateral termination of contracts by the government without proper procedures frequently occurs, as seen in the case of the contract termination between the Kediri City Government and PT SGU KSO. The purpose of this study is to analyze the regulations governing construction service providers in situations of unilateral contract termination and delayed payment by the government, which have not yet reflected principles of justice, and to examine the ideal formulation of legal protection against unilateral contract termination and delayed payment by the government based on the value of justice. The methodological approach used in this thesis is normative juridical research, with a descriptive-analytical research specification. The theories employed include the theory of justice and the theory of legal protection. The results of this study indicate that regulations governing construction service providers in government procurement contracts have not yet fully reflected the value of justice, as the relationship between the government as the service user and contractors as service providers remains imbalanced. The government holds a dominant position in drafting contract clauses, controlling project implementation, and determining sanctions, while contractors often have no room for negotiation and must accept standard clauses that are one-sided. Contractors are subjected to strict sanctions such as late penalties, unilateral contract termination, and blacklisting, yet when the government defaults, no equivalent sanction mechanism exists. This imbalance is evident in the Kediri and Pekanbaru cases, which demonstrate that current regulations are not equitable. The ideal formulation of legal protection for construction service providers requires the presence of fair norms that place the government and service providers on an equal footing, particularly regarding the risks of*

*unilateral contract termination and delayed payments. The government is obligated to uphold the principle of justice through contracts that protect the rights of service providers. In practice, many government contracts do not include penalty clauses for delayed payments or unilateral termination. As a result, construction service providers occupy a weak position because they lack certainty regarding compensation or remedies when the government neglects its obligations. Based on Satjipto Rahardjo's theory of legal protection, standard contractual clauses must be reformulated to include the government's obligation to pay penalties, compensation, or damages when it commits a breach of contract.*

**Keywords:** *Construction; Government; Justice; Services.*

## 1. Introduction

Infrastructure development is one of the main pillars in efforts to increase economic growth and public welfare in Indonesia. Adequate transportation not only facilitates the mobility of goods and services, but also becomes the foundation for the development of other sectors such as industry, tourism, and agriculture.<sup>1</sup>According to Statistics Indonesia (BPS) data, the number of construction companies in Indonesia is around 131,000, spread across 38 provinces. Each party has its own duties and roles in construction activities.<sup>2</sup>

The implementation of a Construction Work Contract involves a complex series of activities and carries high risks. This risk is the uncertainty of an event that could result in loss, thus creating a sense of insecurity.<sup>3</sup>In construction contracts, these risks can include delays in completion, failure to meet quality standards, cash flow issues, and other forms of default. One way to transfer these risks is to enter into a liability agreement by issuing a guarantee. Mariam Darus Badruzaman defines a guarantee as a security provided by a debtor and/or third party to a creditor to guarantee their obligations under a contract Obligation. The primary purpose of this guarantee agreement is to provide assurance that the debtor (Service Provider) will fulfill the obligations under the principal agreement, in order to provide legal certainty and double protection for the creditor (Service User). The

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<sup>1</sup>Shinta Ferlita, et. al., Analysis of National Development of Central and Regional Governments in Infrastructure Development in Indonesia. MISTER: Journal of Multidisciplinary Inquiry in Science, Technology and Educational Research, Vol. 1, No. 2, 2024, pp. 189-195.

<sup>2</sup>Central Statistics Agency, Number of Construction Companies in 2024, <https://www.bps.go.id/id/statistics-table/2/MjE2IzI=/banyaknya-perusahaan-konstruksi.html> accessed on September 20, 2025

<sup>3</sup>Reva Rival Fauzi, et. al., Risk Identification and Assessment in the Garut Cibatuan Station Construction Project. Construction Journal, Vol. 20, No. 1, 2022, pp. 51-61.

existence of this guarantee serves as a shield to prevent losses due to breach of promise or default by the Service Provider.<sup>4</sup>

In the implementation of government construction contracts, problems often arise, one of which is the government's unilateral termination of contracts with service providers. This unilateral termination has significant legal and economic consequences for service providers, including financial losses, reputational damage, and disruption to business operations.<sup>5</sup>

As in the case of involving the Kediri City Government and PT SGU KSO in 2024. This case began when the Kediri City Government, through the relevant work unit, entered into a work contract with PT SGU for the implementation of a regional strategic construction project. In the implementation of the project, the contractor had fulfilled most of its obligations according to the contract specifications and agreed schedule. However, in the middle of the project process, the local government, through the Commitment Making Officer (PPK), suddenly issued a letter terminating the work contract on administrative grounds and alleged work delays. This termination was carried out unilaterally without going through a mechanism to prove default and without providing the contractor with an opportunity to defend himself or improve the work progress.<sup>6</sup>

Following the announcement of the contract termination, PT SGU KSO attempted to file a written clarification and objection with the Kediri City Government. The contractor considered the contract termination to be inconsistent with legal provisions, specifically Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, which requires clarification, evaluation, and documentation before termination can be carried out. However, the clarification was not responded to adequately, and the government remained adamant in upholding its decision. As a result, project activities were halted and caused material losses for the contractor, who had incurred significant operational costs.

The government's unilateral termination of a contract without going through a mechanism to prove default and without providing the contractor with any opportunity for clarification constitutes a violation of the principles of justice and legal certainty. analyzed through the theory of justice, this case reflects a distortion

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<sup>4</sup>Iin Hidayah Nawir, et. al., Legal Protection for Service Users in the Settlement of Performance Bond Disbursement for Government Construction Work Contracts, *UNES Journal of Swara Justisia*, Vol. 7, Issue 1, April 2023, pp. 514-533

<sup>5</sup>Sita Nora Najmifaza, Ninis Dwi Barokah, and Lucky Dafira. Legal Protection for Service Providers in Government Construction Contracts: A Case Study of Unilateral Termination. *Al-Zayn: Journal of Social Sciences & Law*, Vol. 3, No. 2, 2025, pp. 1051-1059.

<sup>6</sup>Kediri Town Square Project: From Ambitious Revitalization to Legal Dispute <https://bacaini.id/proyek-alun-alun-kota-kediri-dari-revitalisasi-ambisius-ke-kasus-hukum/> accessed on October 1, 2025

in the application of substantive justice values in the legal relationship between the state and citizens.

According to John Rawls in his work *A Theory of Justice*, justice is the primary virtue of social institutions, including in legal relations involving the government. Rawls emphasizes two main principles of justice, namely (1) everyone has the same right to the broadest basic freedoms as long as those freedoms do not interfere with the freedoms of others, and (2) social and economic inequality can only be justified if it provides the greatest benefit to the least fortunate (difference principle). If linked to the Kediri government contract case, the government should not have used its power unilaterally to terminate the contract, as this would have placed the service provider at a disadvantage. Based on Rawls's principles, this government action did not meet the requirements of justice because it failed to protect the weaker party.<sup>7</sup>

Legal protection itself refers to the legal system's efforts to protect the rights and interests of the parties involved in legal relations, including in government construction contracts.<sup>8</sup> This protection aims to ensure that service providers are not arbitrarily disadvantaged, particularly in the context of unilateral contract termination that has no legal basis or does not comply with proper procedures.

## **2. Research Methods**

This research method uses a normative and conceptual juridical approach to examine legal regulations, principles, and doctrines in order to find solutions to the problems studied. The research is descriptive-analytical by describing statutory provisions and linking them to relevant legal theories and practices. Research data is obtained from primary, secondary, and tertiary legal materials through library research by reviewing regulations, books, journals, court decisions, and related literature. All legal materials are analyzed qualitatively through a process of inventory and structured compilation, then presented descriptively to provide a clear and directed picture in answering the problem formulation.<sup>9</sup>

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<sup>7</sup>Pan Mohamad Faiz, John Rawls' Theory of Justice. *Constitutional Journal*, Vol. 6, No. 1, 2009, pp. 135-149.

<sup>8</sup>Rena Putri Nirwana and Ratih Damayanti. *Employment Contracts and Legal Protection of Workers' Rights and Obligations in the Indonesian Employment System*. *Indonesian Legal Media (MHI)*, Vol. 2, No. 4, 2024,

<sup>9</sup>Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2005, p. 35

### 3. Results and Discussion

#### 3.1. Regulations on Construction Service Providers Regarding Unilateral Contract Termination and Late Payment of Services by the Government Are Not Yet Based on Justice

In an effort to realize the Indonesian nation's ideals of improving the prosperity of its people, the government is developing infrastructure to support and stimulate the country's economy through construction services. The construction services industry is currently growing in Indonesia, in line with the government's program to improve prosperity to ensure the well-being and well-being of the community, infrastructure development continues to be accelerated. Furthermore, the quality of infrastructure must be maintained to extend its useful life and improve public services. Construction projects, involving multiple parties, require collaborative relationships (alliances, partnerships, and other forms of relational contracts) in the construction industry.<sup>10</sup>

In the implementation of construction services, disputes often arise between the Construction Service User and the Construction Service Provider. These disputes can later become a dispute within the construction services business, also known as a construction dispute. A construction dispute is a disagreement that arises related to. with the implementation of a construction services business between the parties involved in a construction services agreement. Construction disputes can arise from demands or claims regarding construction work that has not been carried out. These disputes must be resolved in accordance with the agreement contained in the construction services agreement.<sup>11</sup>

The Construction Services Law stipulates that all construction-related issues must be resolved through relevant legal dispute resolution procedures. Construction services establish specific requirements for a dispute resolution system that is fast, easy, fair, and professional, and capable of producing final, legally binding decisions.<sup>12</sup>

Disputes in business service Construction can be classified into several categories, namely from a technical, administrative, legal, or combined perspective. According to Mitropoulos and Howell, disputes in construction implementation often have three main root causes, including the element of uncertainty which is considered an inherent risk, issues related to construction service agreements that become a

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<sup>10</sup>Zaenal Arifin, et. al., Validity and Legal Protection of Construction Service Partnership Agreements, USM Law Review Journal, Vol. 6, No. 1, 2023, pp. 65-78

<sup>11</sup>Mayangsari Nurul Imani, et. al., Analysis of Construction Dispute Settlement Due to Default in Construction Service Agreements from the Perspective of Civil Law. Lex Patrimonium, Vol. 3, No. 1, 2024, pp. 1-16.

<sup>12</sup>Jeffry Yuliyanto Waisapi, Analysis of Construction Dispute Resolution from the Perspective of Law Number 2 of 2017. Proceedings of Realizing a Pancasila-Based National Legal System 1, 2024, pp. 94-102.

source of conflict, and conflicting behavior from the parties involved in the construction project.<sup>13</sup>

However, the unequal legal treatment of construction work contracts between the government as the user of construction services and the construction service provider (contractor) remains a problem. In this contractual relationship, the government's bargaining position is very dominant compared to the contractor's, creating the potential for disputes. injustice. Law No. 2 of 2017 concerning Construction Services actually emphasizes the importance of the principles of balance and equality in the relationship between the parties, but practice in the field shows the dominance of the government in determining contract clauses, payment schedules, and decisions on construction claims.

The difference in treatment is evident in sanctions for contract violations. If a contractor is in default, in this case negligent or failing to meet performance standards, strict sanctions are immediately imposed. Contractors can be subject to daily late fines, withholding of performance guarantees, unilateral contract termination, or even blacklisting, prohibiting them from participating in future government tenders. These sanctions create a deterrent effect for construction service providers who default. Conversely, if the government is negligent, for example, by late payment of project installments or even terminating the contract outright, unilateral Without clear justification, there is no direct and appropriate sanction mechanism. The government cannot be "blacklisted" from projects, and no fines are imposed on agencies that violate contractual obligations. Contractors instead bear the brunt of late payments and must pursue legal action to assert their rights. This unequal situation demonstrates a regulatory bias that favors service users, in this case the government, and disadvantages construction service providers.

The government's obligation to execute contracts on time is often not met without consequences for the government. The government is supposed to pay contractors for their work according to the agreed schedule, but any delay in payment is, in principle, a breach of contract. Failure to pay on time can be categorized as a breach of contract and a violation of Law Number 2 of 2017, even though Law No. Number Law No. 2 of 2017 guarantees contractors the right to receive payment according to the agreed-upon value of the work. Contractors have the right to demand compensation for losses incurred due to delays, including interest payments for delays in accordance with relevant government regulations. However, pursuing this right requires a lengthy and costly dispute process.

The above unequal treatment can be seen in Supreme Court Decision Number 1333 B/Pdt.Sus-Arbt/2024. In this case, the SGU-KSO contractor worked on the

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<sup>13</sup>P. Mitropoulos and G. Howell, Model for Understanding, Preventing, and Resolving Projects. *Journal of Construction Engineering and Management*, 2001, p. 223-231

Kediri City Square Green Open Space development project in 2023. In the middle of implementation, the government, through the Commitment Making Officer, unilaterally terminated the contract on the grounds of default on the part of the contractor. Feeling that the termination was invalid and detrimental to it, the contractor submitted a dispute to the arbitration forum according to the contract clause, namely through the Government Goods/Services Procurement Contract Dispute Resolution Service under the LKPP. The LPSK PBJP arbitration panel granted the contractor's claim by declaring the unilateral contract termination null and void and ordering the project to continue. The city government, dissatisfied with the arbitration decision, then filed a request to annul the arbitration decision with the District Court.

The Kediri case proceeded to the Supreme Court. In 2024, the Supreme Court finally ruled in favor of the contractor, with a ruling that included annulling the Kediri District Court's decision, which had previously favored the government, and upholding arbitration decision No. 01/LPS-PBJP/01/2024, dated July 1, 2024, which had annulled the unilateral contract termination. The Supreme Court's ruling affirmed that the Kediri City PPK's contract termination was a breach of contract by the government, and that the contractor was entitled to restitution. Although the contractor ultimately prevailed legally, the lengthy process demonstrated the heavy burden placed on the contractor in seeking justice. The contractor had to bear the costs of arbitration, court costs, and delays in project completion during the dispute, all of which added to its financial losses. Meanwhile, there were no fines or other penalties for government agencies that failed to comply with the contract; the consequences for the government were limited to the obligation to continue the contract and pay court costs.

In another case, a contractor in Pekanbaru acted recklessly and dismantled the drainage system he had built, frustrated by the lack of payment from the Pekanbaru City Government. The drainage system was completed in June 2024, but payment, worth hundreds of millions of rupiah, was delayed due to budgetary issues, including the impact of the previous regional head's sting operation. The contractor admitted to having personally funded five city drainage projects and felt entitled to reclaim his work because his "sweat" had not been repaid. On the contrary The Pekanbaru City Government believes the late payment was due to a deferred payment mechanism in the Regional Budget (APBD). The Pekanbaru Mayor explained that the project debt of approximately Rp180 million for the project was actually scheduled to be paid off in 2025 and that the incident was triggered by a miscommunication between the relevant agency and the contractor. While acknowledging the delayed obligations, the City Government strongly condemned the demolition of the public facility.

The case against PT SGU-KSO and the contractor case in Pekanbaru can be approached through John Rawls's theory of justice by examining the concept of



justice as fairness, which encompasses two main principles. The first principle affirms the equality of basic freedoms for every individual, while the second principle states that socioeconomic inequality can only be justified if it provides real benefits to the most disadvantaged groups.<sup>14</sup> This part, known as the difference principle, demands that the distribution of resources and rights be designed in such a way that the advantages enjoyed by the powerful while simultaneously improving the position of the weak. Rawls describes this justice through the concept of the veil of ignorance, namely the situation when someone makes rules without knowing whether they will eventually be in a position of power or weakness. Applying Rawls's principle to construction contracts The government shows that construction service providers are in a more vulnerable position than the government, because contractors depend on projects for their business continuity and have limited resources, while the government holds much stronger authority and regulatory tools.

While Law Number 2 of 2017 concerning Construction Services and Government Regulation Number 22 of 2020 in conjunction with Government Regulation Number 14 of 2021 already accommodate the principle of balance and legal protection for all parties, their implementation demonstrates unequal treatment between service providers and service users, in this case the government. If a construction service provider commits negligence or defaults, they can be subject to strict sanctions in the form of late fines, forfeiture of performance guarantees, and even blacklisting. Conversely, if the service user, namely a government agency, is negligent, either through late payments or unilateral contract termination, the sanctions imposed tend to be light or even nonexistent. This situation is exacerbated when service users are late in making payments, as they only pay the principal construction costs without any fines or compensation in the form of bank interest.

As we know, not all government contractors are large, well-capitalized contractors; some have limited capital. To fulfill their construction obligations, contractors often incur debt to banks. If the government, in this case the user of construction services, is late in paying its obligations, the contractor will suffer losses due to the obligation to repay the bank loan and interest. This injustice demonstrates that the construction contract system in Indonesia is still biased and does not fully implement the values of fairness.

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<sup>14</sup>Muhammad Taufik, John Rawls's Philosophy on the Theory of Justice. *Mukaddimah: Journal of Islamic Studies*, Vol. 19, No. 1, 2013, pp. 41-63.



### **3.2. The Ideal Formulation of Legal Protection for Construction Service Providers Against Unilateral Contract Termination and Delays in Payment of Services by the Government Based on Justice Values**

A welfare state based on the rule of law places the government as the primary actor in meeting the needs of its citizens across various sectors of life. Azhari explained that this type of state based on the rule of law emerged as a result of a shift from the classical rule of law model, which merely acted as a night watchman, to a state that is involved in regulating and administering the national economy, providing public services, mediating between groups, and implementing various other social functions. The implementation of the delegation of some legislative authority to the government means that the state not only maintains order, but also ensure that order runs fairly and in accordance with welfare goals.<sup>15</sup>

The provision of construction services, which encompasses planning, implementation, and supervision, requires policies that serve as operational guidelines for all parties involved. This legal framework is outlined in a written agreement between the client and the implementers, from supervisors, contractors, planning consultants, to service users. Law Number 2 of 2017 concerning Construction Services refers to all these parties as construction service providers. This legal document binding the parties is known by various terms, such as Construction Contract, Construction Agreement, "Construction Contract", or "Construction Agreement".<sup>16</sup>

Article 39 Paragraph (3) of the Construction Services Law, Part Two concerning the Binding of Parties, states that binding in construction services work relationships is carried out based on the principle of healthy competition through the selection of providers. Service by means of a public or limited auction. Article 42 Paragraph (1) of the Construction Services Law also states that in certain circumstances, the determination of service providers can be done by means of direct selection or direct appointment. Furthermore, Article 46 Paragraph (1) of the Construction Services Law states that service users and service providers must follow up the written determination with a Construction Work Contract to ensure the fulfillment of the rights and obligations of the parties in a fair and balanced manner and based on good faith in the implementation of construction work.<sup>17</sup>

Protection law It is an obligation for the state it self, therefore the state is obliged to provide legal protection to its citizens. Therefore, in other words, it can be said

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<sup>15</sup>Azhari, The Legal State of Indonesia, A Legal Analysis of Its Elements, UI Press, Jakarta, 1995, p. 54.

<sup>16</sup>Edison Hatoguan Manurung, Infrastructure Construction Contracts Reviewed from the Perspective of Law Number 2 of 2017 Concerning Construction Services, Legal Studies Journal, Vol. 2, No. 2, 2022, pp. 29-49

<sup>17</sup>Erwin Suryoprayogo, "The Validity of Construction Work Contracts Proven to Be Formed Through Tender Rigging," Lex Renaissance, No. 1, Vol. 7, 2022, pp. 16-30

that legal protection is a separate illustration of the function of law itself, which has the concept that law provides justice, order, certainty, benefit, and peace.<sup>18</sup>

Cases of unilateral contract termination by the government in construction projects have created uncertainty and losses for construction service providers. Formulation Legal protection here is very high, given the vulnerability of service providers to government default. The theory of legal protection asserts that the law must be present to protect the rights of injured parties to achieve justice. Satjipto Rahardjo, stated that legal protection is essentially protection for the rights of people who have been harmed so that they can enjoy their rights. Law is necessary for those who are socially, economically, and politically disadvantaged to achieve social justice. Based on this theory, construction service providers, as private entities often in a vulnerable position, require legal protection when their rights are violated by the government.<sup>19</sup>

Service providers construction often face the risk of significant losses if the government unilaterally halts projects or delays payment obligations. Without adequate legal protection, service providers' bargaining power is significantly lower than that of the government. The law should protect public interests from arbitrary action.

One source of inequality in government construction contracts is the lack of clear sanctions for government default. Contracts typically contain a penalty clause for service providers who are late in completing work or violate the terms. Service providers are generally subject to a late payment penalty of 1/1000 per mile per day of delay, up to a maximum of 5% of the contract value. Conversely, if the government is late in making payments or terminates the contract without reason Unsubstantiated, contracts often do not stipulate any fines or compensation for the government. This absence of a sanction clause for government default creates an imbalance in the rights and obligations of the parties. The provider is disadvantaged without a clear compensation mechanism, while the government appears to be exempt from consequences when it neglects its obligations.

The government, as the service user, holds a dominant position, from contract drafting to contract termination. Service providers, on the other hand, often lack the flexibility to negotiate contract content, as government procurement contracts are typically unilaterally determined. Consequently, contract clauses tend to overly protect government interests. For example, many contracts omit provisions requiring the government to pay interest or fines for late payment of project installments. This clearly violates the principle of balance of rights and obligations in contract law. Unbalanced public procurement undermines service providers'

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<sup>18</sup> Ahmad Jamaludin, Legal Protection for Child Victims of Sexual Violence. JCIC: Journal of the CIC Institute for Social Research and Consultancy, Vol. 3, No. 2, 2021, pp. 1-10.

<sup>19</sup> Musataklima, Musataklima. The urgency of legal protection for motorcycle taxi users: a consumer protection law perspective and mashlahah theory. Jurisdictie: Jurnal Hukum dan Syariah, 2019.

trust in the government contract law system and has the potential to lead to injustice.

The principle of *pacta sunt servanda* requires both parties to a contract to fulfill their agreed promises, but if they fail to do so, there must be consequences. Therefore, the government should be obligated to pay fines or compensation in the event of default, just as service providers are. This obligation is important for upholding the value of justice in construction contracts. Law No. 2 of 2017 concerning Construction Services has actually anticipated this. Article 47 paragraph (1) letter g of Law 2/2017 requires that construction work contracts contain provisions regarding default, namely regulating responsibilities if one party does not fulfill their obligations according to the agreement. The explanation of this article emphasizes that default includes conditions when one party does not do what was promised, or is late in doing so, and responsibilities resulting from default include compensation, reimbursement of costs, extension of time, repair of work, or compensation.

Article 56 paragraph (2) of Law Number 2 of 2017 stipulates that service users (governments) who do not provide a budget and do not make payments in the correct amount and on time for the results of the service provider's work can be subject to compensation as agreed in the contract. This means that the regulation has opened up space for the imposition of sanctions or compensation when the government fails to pay. Unfortunately, the phrase "as agreed in the contract" indicates that this is only effective if it is included in the contract clause from the start. The problem Many government contracts do not include such a clause, making it difficult for service providers to demand late payment penalties. Therefore, a reformulation of standard government contracts is needed to explicitly state the government's obligation to pay penalties/compensation in the event of default. This step aligns with the Construction Services Law's goal of creating equitable contractual relationships.

#### **4. Conclusion**

Regulation of construction service providers in government procurement contracts has not yet fully reflected the value of justice because the relationship between the government as the service user and the contractor as the service provider remains unequal. The government has a dominant position in drafting contract clauses, controlling work, and determining sanctions, while contractors often have no room for negotiation and must accept standard, one-sided clauses. Contractors are subject to strict sanctions such as late fines, unilateral contract termination, and blacklisting, but when the government is negligent, there is no comparable sanction mechanism. The inequality is evident in the cases of Kediri and Pekanbaru, which show losses for contractors due to contract termination or late payment, while government agencies do not bear clear legal consequences. The ideal formulation of legal protection for construction service providers requires the

presence of fair norms and places the government and service providers in an equal position, especially against the risk of unilateral contract termination and late payment. The government is obliged to fulfill the principle of justice through contracts that protect the rights of service providers. The Construction Services Law has provided the basis through Article 47 paragraph (1) letter g and Article 56 paragraph (2) which regulates the obligation to include provisions for default, including compensation or damages due to negligence of service users. However, its implementation relies on explicit inclusion in the contract, while in practice, many government contracts do not include penalty clauses for late payment or unilateral termination. As a result, construction service providers are in a vulnerable position, lacking certainty of redress when the government defaults on its obligations.

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