



Legal Protection for Contract Work Service Providers Due to Contractor Default in Road Paving Construction Services Contracts Based on Law Number 2 of 2017 Concerning Construction Services

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ABSTRACT

Contract service providers are often in a weak position in the implementation of construction service contracts, especially when the main contractor commits a breach of contract, such as through work delays or work that does not meet specifications. Therefore, this study aims to examine the forms of legal protection for contract service providers who suffer losses due to contractor default and examine the legal remedies that can be taken by these service providers. The research method used is a normative juridical approach with qualitative analysis techniques of laws and regulations, legal doctrine, and a case study of the Dolok Sanggul Siborong-borong asphalt project. The results show that legal protection for contract service providers can be carried out preventively through detailed contract agreements, performance guarantees, and business certification. As for repressive protection, protection is provided through efforts to summons, lawsuits for breach of contract, contract termination, and reporting to supervisory institutions. In the context of work delays, service providers can also take litigative and non-litigative routes such as mediation, arbitration, and court. Therefore, it is important for contract service providers to fully understand the contents of the contract and legal procedures to protect their rights fairly and proportionally.

INTRODUCTION

The fulfillment of goods/services needs is an essential part that cannot be separated from the implementation of government activities. The availability of goods/services is not only part of the government's duties and responsibilities in meeting public infrastructure and facilities needs, but also serves as a necessity for the government itself in running its administration.

The provision of services in construction work is inseparable from agreements or contracts, which serve as evidence of an agreement between the parties involved—in this case, the service provider and the service user—in carrying out their respective rights and obligations. According to Mohammad Amari and Asep N. Mulyana, a contract is “a legal relationship between parties that gives rise to mutual rights and obligations.”

Construction work contracts are regulated under Law Number 2 of 2017 concerning Construction Services. According to Article 1 point 8 of Law Number 2 of 2017: "A Construction Work Contract is a set of contractual documents that govern the legal relationship between the service user and the service provider in the implementation of construction services."

The rights of service providers in a construction services contract include receiving payment for construction services as agreed in the contract. Meanwhile, the obligations of the service user include paying the construction service fees to the provider in accordance with the terms of the construction work contract.

Based on Article 1 paragraph (6) of Law Number 2 of 2017 on Construction Services, a “Service Provider is a provider of Construction Services.” However, in practice, society often uses the term "Building Contractor," which is also used in the Civil Code (KUHPerdata) when referring to someone who undertakes building construction. Meanwhile, Article 1 paragraph (5) of the same law states:

“A Service User is the owner or party assigning the work who utilizes the Construction Services.” According to Article 39 paragraph (2) of Law Number 2 of 2017, service users and service providers can be individuals or business entities. The types of services provided by service providers are divided into three categories: Construction Consultancy Services, Construction Work Services, and Integrated Construction Work Services.

In practice, both service providers and users often prioritize technical aspects and pay little attention to other aspects, particularly legal ones. During contract implementation, both parties are required to perform their obligations in good faith and must not violate the terms stipulated in the contract.

However, during the implementation of an agreement, there are instances where a party fails to fulfill the agreed terms for various reasons—either due to external circumstances or internal incapacity. When the failure is caused by factors within the party itself, it constitutes a breach of contract (*wanprestasi*). Such breach inevitably causes harm to one party, and the breaching party must be held civilly liable for their actions.

A breach of contract may include delayed payments, failure to meet quality specifications, or even unilateral termination of the contract without valid justification. As a result, contractors often suffer material and immaterial losses and are frequently in a weak position when it comes to asserting their rights.

To categorize an act as a breach of contract (*wanprestasi*), the following elements must be present:

- The existence of a valid agreement
- An unfulfilled obligation
- Fault or negligence of the breaching party
- Damages incurred by the other party
- A legal right to claim compensation

One real case reflecting the issue of breach of contract occurred in the national road preservation project on the Doloksanggul–Siborongborong route in Humbang Hasundutan Regency, North Sumatra Province. The project experienced delays in completion, resulting in a contract addendum of 25 days. However, the final work still did not meet the technical specifications.

This condition meets the elements of breach of contract as outlined in Article 1243 of the Civil Code and Law Number 2 of 2017 on Construction Services. Therefore, this case is relevant as an empirical reference in legal research on the protection of labor-based service providers affected by contractors' breach of contract in road paving projects.

Based on the above explanation, normative legal research is necessary to examine the legal protection available to subcontracted service providers who suffer losses due to the contractor's breach of contract in the implementation of road paving construction service contracts. The study will focus on a juridical approach based on Law Number 2 of 2017 on Construction Services and the Civil Code. This research specifically addresses two research questions:

1. What form of legal protection is available to subcontracted service providers who suffer losses due to a road paving contractor's breach of contract under Law Number 2 of 2017?
2. What legal remedies can be pursued by subcontracted service providers in response to delays in road paving work by the contractor?

RESEARCH METHOD

This study employs a normative juridical method with a qualitative approach through library research, aiming to analyze the forms of legal protection and legal remedies available to subcontracted service providers due to the contractor's breach of contract in road paving construction services.

The data used in this research include:

- **Primary legal materials**, such as Law Number 2 of 2017 on Construction Services and the Civil Code (KUHPerdata);
- **Secondary legal materials**, including relevant legal literature or textbooks, scholarly articles, legal journals, and previous research;
- **Tertiary legal materials**, such as legal dictionaries, legal encyclopedias, and other popular sources that support the explanation of primary and secondary legal materials.

All data are analyzed qualitatively through systematic description, interpretation, and evaluation to address the core legal issues discussed in this research.

DISCUSSION

A. Forms of Legal Protection for Subcontracted Service Providers Who Suffer Losses Due to Breach of Contract by the Main Contractor

In construction service contracts, subcontracted service providers often find themselves in a weaker position compared to the main contractor or the service user. When a breach of contract occurs—such as delayed payments, failure to complete the work, or work quality that does not meet the specified standards—subcontracted service providers are highly vulnerable to direct financial losses.

According to Article 1243 of the Indonesian Civil Code (KUHPerdata), a party who fails to fulfill an obligation in an agreement and is declared in default must compensate the injured party. Law Number 2 of 2017 on Construction Services also emphasizes that both parties in a construction work contract hold equal legal standing and are obligated to execute the contract in good faith. In this context, legal protection is understood as an effort to ensure that service providers who suffer losses due to a contractor's breach of contract are still able to obtain their rights—either through dispute resolution mechanisms or through administrative and civil sanctions imposed on the defaulting party.

(1) Preventive Legal Protection

Preventive legal protection refers to the form of protection provided before a dispute arises, specifically through contractual arrangements that anticipate potential violations of rights. In the context of construction services, this type of protection is important to ensure that subcontracted service providers are safeguarded from possible losses resulting from the main contractor's breach.

a. Clear and Detailed Contractual Clauses

Article 43 of Law Number 2 of 2017 mandates that construction work contracts must include clear provisions regarding the scope of work, duration, rights and obligations of the parties, as well as detailed and enforceable dispute resolution mechanisms. This aligns with Article 1320 of the Civil Code on the validity of agreements, and Article 1338 of the Civil Code, which stipulates that all legally established agreements shall serve as law for the parties involved.

b. Performance Bond and Advance Payment Bond

These are instruments that provide protection for both service users and providers. The requirement for a performance bond is stipulated in Article 45 paragraph (2) letter a of Law Number 2 of 2017, which obliges the service provider to submit a performance guarantee to the service user before commencing the work.

c. Certification and Qualification of Construction Business Entities

As regulated in Articles 21 and 22 of Law Number 2 of 2017, certification and qualification are essential prerequisites to ensure that construction service providers possess the necessary competence, technical capacity, and accountability to carry out their work. This acts as a preventive measure to avoid breaches of contract stemming from technical or managerial incapability.

d. Principles of Transparency and Accountability

These are fundamental principles that must be upheld in every construction work contract, as stated in Article 4 of Law Number 2 of 2017. The implementation of construction services must promote openness, accountability, and equality between the parties involved.

Through these preventive measures, the risk of breach of contract can be minimized from the outset, while also providing subcontracted service providers with a more balanced bargaining position in contract execution.

(2) Repressive Legal Protection

Repressive legal protection refers to protection provided after a violation or dispute has occurred, serving as the enforcement of legal rights that have been infringed. If a subcontracted service provider suffers losses due to the contractor's breach, the following steps may be taken:

- a) Issuing a formal warning (*somasi*) to the contractor to fulfill their obligations, as an initial non-litigation step;
- b) Filing a civil lawsuit in court, based on Articles 1243 and 1246 of the Civil Code, to claim compensation in the form of costs, damages, and interest;
- c) Reporting the breach of contract to a supervisory institution, such as the National Road Implementation Center (Balai Pelaksanaan Jalan Nasional/BPJN), or other authorized agencies to propose blacklisting the contractor;
- d) Terminating the contract in accordance with the terms of the construction work contract and Article 96 of Law Number 2 of 2017 on Construction Services.

Repressive protection serves as a final safeguard to ensure that subcontracted service providers—who are structurally in a weaker position—retain access to legal justice.

B. Legal Remedies Available to Subcontracted Service Providers for Delays in Road Paving Projects by the Contractor

In the civil legal system, delays in project execution by contractors are categorized as a form of breach of contract (*wanprestasi*). According to Article 1243 of the Indonesian Civil Code (KUHPerdata), breach of contract occurs when a debtor (in this case, the contractor) fails to fulfill their obligation properly or on time after being formally warned (through a *somasi*) by the creditor (which may include the service user or subcontracted service provider).

Law Number 2 of 2017 on Construction Services states that every service provider is obliged to complete the work in accordance with the contract in terms of quality, time, and cost. Any delay or substandard quality is a contractual violation and may result in sanctions.

As in the case of the road paving project on the Dolok Sanggul-Siborongborong route, the work experienced delays, requiring a 25-day contract addendum. However, even with the granted extension, the final result did not meet technical specifications, with cracks and peeling surfaces. This clearly constitutes a breach of contract and directly harms subcontracted service providers who rely on the timely progress of the main work.

(1) Legality-Based Remedies (Non-Litigation)

Legal or administrative efforts can be pursued preventively before taking the matter to court. These include:

a. Imposition of Late Penalty Clause

Subcontracted service providers may demand the enforcement of penalties against the main contractor for delays. According to standard LKPP contract terms, penalties are typically set at 0.1% per day of delay based on the contract value (as per Article 1243 of the Civil Code).

b. Performance Reporting to BBPJN or PPK

In government projects, delays can be reported to the Commitment Making Officer (*PPK*) or the National Road Implementation Center (*BBPJN*) for administrative evaluation and contractor performance documentation.

c. Request for Fair Addendum for Subcontractors

If the main project deadline is extended (e.g., the 25-day addendum in Dolok Sanggul), subcontractors can request a corresponding addendum clause to ensure their rights and timeline are also extended.

d. Somasi / Formal Written Warning

Subcontractors may issue a *somasi* (legal warning) to the main contractor as the first legal step, as regulated in Article 1238 of the Civil Code.

e. Negotiation or Internal Project Mediation

The service provider may request project supervisors or management to mediate, ensuring that payment and work stages continue despite delays in the main project.

f. Arbitration / Indonesian National Arbitration Board (BANI)

If the contract includes an arbitration clause, the subcontractor may submit the case to BANI. Arbitration is final, binding, and generally faster than conventional court proceedings.

(2) Litigation (Court Proceedings)

If non-litigation efforts are ineffective, the subcontracted service provider may pursue litigation to defend their legal rights. This includes:

a. Filing a Breach of Contract Lawsuit in District Court

Subcontractors may sue the main contractor under Articles 1243 and 1246 of the Civil Code to claim compensation for financial losses, material damages, and project delays.

b. Termination of Contractual Relationship

If delays in the main project render the subcontracted work impossible to perform, the service provider may request unilateral termination of the contract under force majeure or breach of contract clauses, as stipulated in Article 96 of Law Number 2 of 2017 on Construction Services.

CONCLUSION

The form of legal protection for subcontracted service providers who suffer losses due to a contractor's breach of contract is a legal guarantee to ensure

their rights are upheld during the implementation of a construction service contract. This protection is classified into two types: preventive and repressive. Preventive protection includes detailed contractual clauses, performance bonds, advance payment guarantees, and the certification and qualification of construction business entities in accordance with Articles 21–22 and 43 of Law Number 2 of 2017, as well as Articles 1320 and 1338 of the Civil Code.

Repressive protection is undertaken after a violation has occurred, through actions such as *somasi*, civil lawsuits under Articles 1243 and 1246 of the Civil Code, reporting to the BPJN, or contract termination pursuant to Article 96 of Law Number 2 of 2017.

The combination of these protections aims to balance the legal position of subcontracted service providers, who are often vulnerable to losses caused by the main contractor's breach of contract.

The legal remedies available to subcontracted service providers for delays in road paving projects represent a form of legal protection against contractual breaches, as stipulated in Article 1243 of the Civil Code and Law Number 2 of 2017 on Construction Services. In the case of the Dolok Sanggul–Siborongborong project, the delay and non-conformance with technical specifications serve as legitimate grounds for subcontracted service providers to assert their rights.

Legal actions may begin with administrative steps such as reporting to the BBPJN, enforcement of delay penalties, requesting fair addendums, *somasi*, internal negotiation or mediation, and arbitration through BANI. If non-litigation efforts fail, litigation may be pursued through breach of contract claims or contract termination under Article 96 of the Construction Services Law. Thus, subcontracted service providers continue to have legal access to justice and the protection of their rights.

RECOMMENDATIONS

To minimize the risk of breach of contract in construction service agreements, it is recommended that each subcontracting agreement be drafted in detail and include clear clauses on the rights and obligations of the parties, including dispute resolution mechanisms and sanctions for violations.

Subcontracted service providers are advised to include firm contractual clauses regarding the responsibilities of the main contractor, including delay penalties and dispute resolution mechanisms. Furthermore, they should understand their legal rights to promptly pursue either non-litigation or litigation remedies in the event of a breach, in order to ensure legal certainty and protection against incurred losses.

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