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LEGALITY OF CONSTRUCTION WORKING CONTRACTS AS AN FORMIL AGREEMENT

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Abstract: *The purpose of this study is to determine the form of construction work contracts and the legal consequences of construction work contracts that are not in accordance with the provisions of statutory regulations in the field of construction services. The legal research method used is normative legal research, which is a study of the prevailing laws and regulations which are particularly related to construction service contracts. This type of research is legal obscurity. A construction work contract is a type of formal agreement in which Law Number 2 of 2017 concerning Construction Services and its implementing regulations determines the procedures and conditions before the contract is made, including the form and content of the construction work contract, by determining the standard at a minimum, the contents of a construction service work contract that must be included in the construction work agreement by the parties. Since the construction work contract is a contract with mandatory conditions, the construction work contract is a formal agreement. This is if the construction work contract is made without paying attention to the provisions of laws and regulations in the field of construction services, both regarding the qualification requirements of a construction service provider, the procedure for selecting a service provider and the form and content of the construction service contract that has been determined by the law. As a juridical consequence, if the formal conditions are not fulfilled in a contract concerned, it is not legally enforceable or in other words it is a null and void contract (nietig, null and void).*

Keywords: *Construction Work Contracts; Formal Agreement; validity.*

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INTRODUCTION

National development aims to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In accordance with these development objectives, both physical and non-physical development activities have an important role for the welfare of society. The construction service sector is a community activity in realizing a building that functions as a support or infrastructure for community socio-economic activities and supports the realization of national development goals. In addition to playing a supporting role in various fields of development, construction services also play a role in supporting the growth and development of various industrial goods and services needed in the provision of construction services and broadly supporting the national economy. Therefore, the operation of construction services must guarantee legal order and certainty.

In a construction work to accommodate the interests of the parties, the service providers, either from the government or the private sector with service users, which will later be outlined in a construction work contract. Of course, in making a contract in the field of construction services, one must first pay attention to the legal basis that applies or regulates it. As a legal basis, the construction work contract of the parties must of course be based on or based on applicable legal rules. Of course, so that an agreement or contract has legal force for the parties and is valid in the eyes of the law.

In a construction contract, many parties are involved in a project, making the construction industry a very complex industry. It is a long step to go through, starting from the emergence of an idea from the owner, a feasibility study to the emergence of an engineering design. All of them pay attention to various things including materials and transportation for further construction by preparing construction materials / materials first. In addition, the construction process is limited by various requirements such as the time for completion, cost and quality that have been determined, it is necessary to legally regulate the rights and obligations of the parties involved so that the construction can run smoothly.[1]

In addition, considering that the contract in the field of construction services is not only related to the business relationship between the parties making the agreement, but the contract in the construction service sector is also related to the interests of the public (general) because the purpose of a construction service contract is to build houses. Buildings and other infrastructure facilities are related to security, comfort and community safety issues.

Besides that, in practice so far there is an imbalance in the position of the parties in the construction service sector, between service users and construction service providers, where so far the position of construction service users seems to have a more dominant position compared to construction service providers. . The imbalance between limited construction / project works and the number

[1] Ida Bagus Gede Indramanik, "Fidic dan Kontrak Konstruksi Di Indonesia," *Jurusan Teknik Gradien* 9, Nomor 1 (2017): 123-144, http://ojs.unr.ac.id/index.php/teknikgradien/article/view/95.

of service providers causes the bargaining position of service providers to be very weak. Concerns about not getting a job tendered by service users / project owners have caused service providers to accept construction contracts made by service users.[2]

Therefore, the government needs to intervene in the relationship between the parties in the legal relationship between service providers and construction service users which will be set forth in the construction service work contract which is specifically regulated in the Construction Services Law and the implementing regulations of Law Number 8 Year 1999 concerning Construction Services and its substitute provisions, Law Number 2 of 2017 (for the latter is referred to as Law No.2 / 2017), places the construction work contract as the basis for the legal relationship between users and service providers. Thus, the legal relationship that arises between users and service providers is in the realm of civil law, particularly contract law. Consistent with this, the application of one of the principles in contract law, the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code (KUH Perdata), is applied to Law No. 2/2017 through the application of the principle of freedom as one of the principles used in the operation of construction services. The principle of freedom in Law no. 2/2017 is interpreted as freedom of contract between service providers and users in accordance with statutory provisions. Regarding freedom of contract, in line with the scope of the principle of freedom of contract above, Article 46 paragraph (2) of Law no. 2/2017 regulates that construction work contracts are formed following the development of the need to accommodate the forms of construction work that develop in society and are carried out in accordance with statutory provisions.[3] UU no. 2/2017 and its implementing regulations specifically regulate work contracts in the field of construction services starting from pre-contract, making contracts to implementing contracts, so that construction work contracts are different from other forms of agreements in general. Remember that a construction contract is not an ordinary contract, but is related to the welfare of the community and has its own characteristics. Therefore, it is necessary to study the form of construction work contracts according to Law no. 2/2017 and the legal consequences of construction work contracts that are not in accordance with the provisions of laws and regulations in the field of construction services.

METHOD

This research is a normative legal research, which is a study of the prevailing laws and regulations which are particularly related to construction service contracts. The approach used is the statutory approach and legal expert opinion (doctrine). In addition, this research is supported by conducting interviews with parties who are directly involved in the field of construction services. This study uses a legal obscurity research type, where there is legal inconsistency with the regulations governing construction work contracts. This research is analytical prescriptive, which attempts to

[2] Nazarkhan Yasin, *Mengenal Kontrak Konstruksi di Indonesia Buku Pertama Seri Hukum Konstruksi*, Cetakan II . (Jakarta :PT Gramedia Pustaka Utama), 13-14.

[3] Siti Yuniarti, "Sekilas Perihal Kontrak Kerja Konstruksi," *Binus University Faculty of Humanities*, last modified 2017, accessed July 9, 2019, https://business-law.binus.ac.id/2017/04/29/sekilas-perihal-kontrak-kerja-konstruksi/.

solve problems that exist in society based on the research objectives to be achieved, which are first compiled, explained and then analyzed. The legal materials used are primary and secondary legal materials.

ANALYSIS AND DISCUSSION

Forms of Construction Work Contracts according to Law No. 2 of 2017 concerning construction services

Contracts or agreements are currently developing rapidly as a logical consequence of the development of business cooperation between business actors. Many business collaborations are carried out by business actors in the form of written contracts or agreements. Even in business practice in the community there has been a growing understanding that business cooperation must be held in written form. A written contract or agreement as the basis for the parties to prosecute if one of the parties does not carry out what has been agreed in the contract or agreement. Although in fact a contract juridically can be made in writing by the parties or business actors, besides that, it can also be made a contract verbally / orally. However, a contract made orally carries a very high risk, because it will experience difficulties in proving it in the event of a legal dispute in the contract.[4]

The contract basically starts from differences in interests between the parties. Generally, the formulation of the contract-tual relationship begins with a negotiation process between the parties, through negotiation the parties attempt to create forms of agreement to mutually reconcile what they want (interests) through a bargaining process. In other words, in general, business contracts originate from differences in interests which are attempted to be reconciled through contracts. Through the contract, these differences are accommodated and then framed with a legal instrument so that it binds the parties.[5]

In a construction work to accommodate the interests of the parties, the service provider, either from the government or the private sector with service users, it is stated in the construction service work contract. As a legal basis, the construction work contract of the parties must of course be based on or based on applicable legal rules. Of course, so that an agreement or contract has legal force for the parties and is legal in the eyes of the law, of course, the agreement or contract that is made must pay attention to the applicable legal rules, as the first legal basis that must be considered is the Third Book of the Civil Code which regulates the law. Agreement.

Contracts or construction work agreements are made based on the principle of freedom of contract adhered to in the Third Book of the Civil Code, which adopts an open system that gives the broadest possible freedom to the public to make agreements which contain any kind as long as they do not conflict with law, decency. and public order. With the freedom to make an agreement, it means that people can create individual rights which are not regulated in Book Three of the Civil Code, but which are regulated by themselves in the agreement. The principle of freedom of contract is regulated in Article 1338 paragraph (1) of the Civil Code, which states that "all

[4] Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat , Teori, Dogmatik dan Praktek Hukum (Segi Pengayaan Hukum Perikatan),* Cetakan I (Bandung : Mandar Maju, 2012), 1

[5] Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Cetakan I (Jakarta:Kencana Prenada Media Group, 2010), 2

agreements made legally are valid as laws for those who make them." The word "legally" in Article 1338 paragraph (1) of the Civil Code indicates that a binding agreement as a law must fulfill the legal requirements of the agreement as stipulated in the provisions of Article 1320 of the Civil Code.[6]

The principle of freedom in contracting is a principle that occupies a central position in contract law, although this principle is not translated into a rule of law but has a very strong influence in the contractual relations of the parties. In this principle there is a view that people are free to do or not make an agreement, free with anyone to enter into an agreement, free about what is promised and free to determine the terms of the agreement, but it is important to pay attention to that freedom of contract. as concluded from the provisions of Article 1338 paragraph (1) of the Criminal Code does not stand in isolation. These principles are in a complete system and are integrated with other related provisions. In today's practice, the principle of freedom in contract is not fully understood so that many give the impression of an imbalanced and one-sided contractual relationship pattern. The freedom to contract is based on the assumption that the parties to the contract have *bar-gaining position* a balanced, but in reality the parties do not always have a balanced bargaining position.[7]

Therefore, according to Mariam Darus Badrulzaman, there is responsibility in freedom. In the national treaty law, the principle of freedom of responsible contracting which is able to maintain a balance needs to be maintained as a capital for personality development to achieve prosperity and happiness in physical and mental life that is harmonious, in harmony and in balance with the interests of society. The principle of freedom in contract does not have an unlimited meaning, but is limited to the responsibilities of the parties, so that freedom to contract as a principle is characterized as the principle of freedom of responsible contracting. This principle supports a balanced position between the parties, so that this principle supports a balanced position between the parties, as a result of which a contract will be stable and provide benefits to both parties.[8]

So far, there is an assumption that in general, in practice, the position of service providers is always weaker than that of service users. In other words, the service user is more dominant than the service provider position where the service provider almost always has to fulfill the concept / draft contract made by the service user because the service user always places himself higher than the service provider. *bouwheer* or building employer, so that usually the employer is always more powerful in his position, where this situation has occurred in the past to the present[9], placing the position of service users higher than service providers.

Prior to the birth of Law Number 18 of 1999 concerning Construction Services (hereinafter referred to as Law No. 18/1999), due to the absence of standard regulations to regulate the rights and obligations of construc-

[6] Zakiyah, *Hukum Perjanjian Teori dan Perkembangannya* (Yogyakarta : Lentera Kreasindo, 2015), 16-17

[7] Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial,* 110-112

[8] Mariam Darus Badrul Zaman, *Aneka Hukum Perjanjian,* Cet I (Bandung :Alumni, 1994), 45

[9] Nazarkhan Yasin, *Mengenal Kontrak Konstruksi di Indonesia Buku Pertama Seri Hukum Konstruksi* , Cetakan II (Jakarta :PT Gramedia Pustaka Utama, 2006), 18

tion service industry actors, the principle of freedom to contract as regulated in Article 1320 of the Civil Code, it is used as the only principle as the basis for contract formulation, with the position of the service user being more dominant, so that the service user is more flexible in drafting a contract that can harm the service provider. The imbalance, among others, is due to the limited number of construction work or projects and the number of service providers, so that service users can freely choose service providers and the fear of not getting jobs tendered by service users or project owners, which causes service providers to accept construction contracts made by service users. as a result of service providers occupying a dominant position.[10]

Besides, apart from the absence of a strong legal umbrella governing construction work contracts and considering the rapid development of construction services and the complexity of the development of problems in the construction service sector, considering that the construction services sector is closely related to the interests of society where construction service work is related to safety, security and comfort. community, as well as construction service work is also considered risky work, so in 1999 the government issued Law no. 18/1999, which was later due to Law no. 18/1999 there were still weaknesses, so a new Law on Construction Services was born, namely: Law no. 2/2017. This is also in order to provide a strong legal basis and umbrella in the field of construction services.

The purpose of the enactment of Law no. 2/2017 is that construction services are a field full of risks and complex. It is hoped that with the regulation of construction services, quality construction service results will be created that will meet the standards of security, safety, health and sustainability, so that with good governance Good construction service administration will produce quality construction results that will be able to provide safety, comfort and security to the public. In addition, Law no. 2/2017 is in the context of realizing orderliness in the construction of construction services, by ensuring an equal position between users and service providers in exercising their rights and obligations

. 2/2017, there are two important things that need to be underlined that, *first*; By regulating construction services in a law, it is hoped that good governance will produce quality construction that can provide safety, comfort and security to the community as users of the resulting construction. Of course, in order to achieve this goal it is necessary to regulate all aspects related to construction services, as for the things that are regulated in the law, starting from the classification of types of business and terms of construction service businesses as well as the types of work that can be done by service providers with the specified classification. , until the process of selecting a construction service provider so that those who will carry out construction services are expected to choose a service provider with quality and ability according to their fields that will produce quality construction of buildings or infrastructure that will meet safety standards, Kenya- public safety security.

Next is the second point; in view of the relationship between the parties in the construction service sector which will first be stated in a construction contract or agreement between the provider and the construction service user. UU no. 2/1017 also aims to ensure equal position between users and service providers

[10] Ibid, 13-14

in exercising their rights and obligations, as well as increasing compliance in accordance with the provisions of the prevailing laws and regulations. So it is the government's responsibility to guarantee equal rights and obligations between users and service providers as mandated by Article 4 and Article 5 of Law no. 2/2017, by developing a service provider selection system in the provision of construction services, developing construction work contracts that ensure equal rights and obligations between service users and construction service providers; encourage the use of alternative disputes over construction service providers outside the court; and developing a service provider performance system in the provision of construction services.

In Law no. 2/2014 regulates agreements in the field of construction services which are referred to as "construction work contracts", both in Law no. 18/1999 as well as the Law in its Substitution Law no. 2/2017. According to these two laws, the "Construction Work Contract" is. overall documents governing legal relationships between users and service providers in the provision of construction services ". When viewed from the definition of a construction service work contract provided by these two laws, it seems that they do not yet describe the meaning of a construction service contract in its true meaning, but only provide an explanation that all documents regulating the legal relationship between users and service providers are where it is called. under the name "construction service work contract". In contrast to the definition of an agreement or contract in general, we find in some literature that describes the relationship between the parties based on the object or purpose of the agreement.

It should be understood that a project in the field of construction services begins with a basic idea and / or idea that becomes a physical reality in the field. A project in the field of construction services is a process of procuring from nothing to being in existence over a certain period of time. This basic idea or need initially exists in the mind of a person or group of people, then it is processed, made or manifested in two-dimensional form (outlined in the form of pictures, written descriptions, graphics and so on). This process is called the planning process and is matured in the design process. The project form, which was previously two-dimensional, is then implemented into a three-dimensional form, the physical form which is the final result of the original idea, that is, a construction building that has been completed and is ready to be used according to the purpose of the building being created.[11]

A construction project is a series of activities that are carried out only once and generally have a short period of time. In these activities, there is a process that processes project resources into a result of activities in the form of buildings. The process that occurs in a series of activities certainly involves related parties, either directly or indirectly, the relationship between the parties involved in a project is differentiated into functional relationships and working relationships. With many parties involved in a construction project, the potential for conflict is very large, therefore construction projects contain quite high conflicts.[12] Project complexity can also be shown based on the scale of the invested

[11] Paulus Nugraha, Ishak Natan dan R.sutjipto, *Manajemen Proyek Konstruksi* (Surabaya: Kartika Yudha, 1985), 1.

[12] Wulfram I Ervianto, *Manajemen Proyek Konstruksi* , (Yogyakarta: Andi, 2005), 12.

capital project, resources, the level of uniqueness, internal and external relations to the project, and acceptable tolerance for deviations. The size of the project cannot determine the complexity of the project because small projects can be more complex in management than large projects.[13]

The characteristics of a construction project can be viewed in three dimensions, namely unique, involving a number of resources, and requires an organization, whose completion process adheres to three constraints *(triple constraints):* according to the specified specifications, according to the *time schedule* and according to the planned costs. All three are resolved simultaneously. These characteristics make the construction service industry different from other industries.[14]

From this it can be understood that work in the construction sector is complex and not simple work so that in this construction work contract, of course, it is equipped with important and technical documents that are closely related to the implementation of construction work, so that in a construction contract or construction contract document it contains aspects such as "technical aspects, legal aspects, administrative aspects, financial or banking aspects, taxation and socio-economic aspects". All of these aspects must be considered carefully because all aspects influence each other and determine whether a contract is executed, or in other words, the success or failure of a construction work is very much dependent on the handling of these aspects. As for these aspects according to Nazarkhan Yasin are:

1. Technical
2. Aspects Legal
3. Aspects Financial / Banking
4. Aspects Taxation
5. Aspects Insurance
6. Aspects Administrative Aspects "[15]

Judging from the aspects that exist in a contract as described above, it can be seen that in a construction contract the most dominant aspect is the aspect technical aspects, this technical aspect gets the most attention from parties in the construction service sector, the success of a project depends on the technical aspects that have been implemented, so that this technical aspect becomes the distinct characteristic of a construction service contract that is different from other contracts.

To understand construction contracts, it is necessary to first understand the role of construction contracts in the planning, implementation and control of construction projects. In simple terms there are 3 important criteria to be the focal point of construction projects, namely "cost, quality and time". These three criteria will continue to be considered throughout the stages of the construction project cycle. Type of construction project cycle always starts with early stage *(inception)* where the initial idea phrased construction project, then the appointment of consultants and do market studies, feasibility studies initiated subsequent to finalize the design strategy, the owners already have a complete picture of the projects to be made. Here, there should be a design drawing, a model, a simulation of costs and implementation time, a marketing simulation, as well as the documentation required to proceed with a job auc-

[13] Abrar Husen, *Manajemen Proyek. Perencanaan, Penjadwalan & pengendalian Proyek.* (Yogyakarta: Andi, 2011), 9

[14] Ervianto, *Manajemen Proyek Konstruksi,* 12

[15] Yasin, *Mengenal Kontrak Konstruksi di Indonesia Buku Pertama Seri Hukum Konstruksi*, 81-117

tion (tender) and contract negotiations. After the tender winner is appointed and the contract is signed, the construction phase begins. Handover of work becomes the final stage of the project cycle.[16]

When viewed from the orientation the construction contract is actually closer to an*engineering contract* than a *general contract*. This is because the construction contract is an embodiment of the characteristics of a construction project implementation which is loaded with technical aspects which include the scope of cost, quality and time. These aspects include the scope of cost, quality and time. These aspects are the focus of discussion for project management and construction contracts. Unlike a general contract, it focuses on the legal aspects related to the distribution of rights and obligations as well as the risks of the contracting parties. Even so, knowledge of the legal aspects of construction remains a point that needs to be considered so that construction contracts have legal force. The construction contract is not determined by the thickness of the contract, the important thing is that all technical or non-technical aspects in the implementation of the construction project have been properly negotiated.[17]

Therefore, a construction contract will not be sufficiently regulated entirely in a contract, therefore technical documents are part of a construction contract. Seeing the importance of a construction work contract, all agreements and aspects that cover it are made in written form. Therefore, both in Law no. 18/1999 and Law no. 2/2017 provides regulations on construction work contracts regulated in Article 46 which states that:

(1) Arrangements for work relations between Service Users and Service Providers must be set forth in the Construction Work Contract.
(2) The form of the Construction Work Contract can follow the development of the needs and be implemented in accordance with the provisions of the statutory regulations. "

From these provisions, it can be concluded that the arrangement of work relations between users of service providers must be stated in the form of a written construction work contract in which the form of a construction work contract is given the freedom to adapt it to developing needs by taking into account the prevailing laws and regulations. This is in accordance with the principle of freedom of contracting in the agreement where the parties are free to determine the form and content of the original agreement not to contradict general obligations, morals and the prevailing statutory regulations.

Then in Article 47 paragraph (1) Law no. 2/2017 regulates the standard content of construction work contracts, namely:

(1) Construction Work Contracts must at least include a description of:
   a. the parties, clearly containing the identities of the parties;
   b. work formulation, containing a clear and detailed description of the scope of work, work value, unit price, lump sum, and implementation time limit;
   c. the coverage period, specifying the period of implementation and maintenance which is the responsibility of the Service Provider;
   d. equal rights and obligations, contain-

[16] Seng Hansen, *Manajemen Kontrak Konstruksi Pedoman Praktis dalam Mengelola Proyek Konstruksi*, Cetakan II (Jakarta: Gramedia Pustaka Utama, 2016), 6

[17] Ibid, 8-9

ing the rights of the Service User to obtain the results of Construction Services and their obligations to comply with the agreed conditions, as well as the rights of the Service Provider to obtain information and compensation for services and their obligations to carry out Construction Services services;

e. the use of construction workers, contains the obligation to employ certified construction workers;
f. method of payment, contains provisions regarding the obligations of the Service User in making payments for the results of Construction Services, including guarantees for payment;
g. default, contains provisions regarding responsibility in the event that one of the parties does not carry out the obligation as promised;
h. dispute settlement, contains provisions on procedures for settling disputes due to disagreements;
i. termination of the Construction Work Contract, containing provisions regarding the termination of the Construction Work Contract arising from the inability to fulfill the obligations of one of the parties;
j. a coercive situation, contains provisions regarding events that occur beyond the willing and ability of the parties which cause harm to one of the parties;
k. Building Failure, contains provisions regarding the obligations of the Service Provider and / or Service User for Building Failure and the period of responsibility for Building Failure;
l. protection of workers, contains provisions regarding the obligations of the parties in the implementation of occupational safety and health as well as social security;
m. protection for third parties other than the parties and workers, containing the obligations of the parties in the event of an event that causes loss or causes an accident and / or death;
n. environmental aspects, containing the obligations of the parties in fulfilling environmental provisions;
o. guarantees for risks that arise and legal liability to other parties in the implementation of construction work or the consequences of building failure; and
p. construction dispute resolution options ".

Then according to Government Regulation Number 22 of 2020 concerning Implementing Regulations of Law Number 2 of 2017 concerning construction services in Article 77 paragraph (1) it is stated that the Construction work contract as referred to in Article 75 paragraph (1) is financed by: a. state expenditure budget funds regional expenditure revenue budgets use standardized documents; b. non-state expenditure budget, regional expenditure revenue budget uses documents according to the agreement of the parties. (2) Further provisions regarding the use of standardized documents as referred to in paragraph (1) letter a are regulated in a Ministerial Regulation.

With the regulation of construction services in the construction services law, it can be seen that the government's efforts to provide balanced protection to the parties involved in construction services, namely by regulating construction contract standards which contain the obligation to contain at least clauses that must be stated. in contracts

by construction by users and construction service providers.

Bearing in mind that so far the position between service users and service providers is in an unbalanced position as described previously.

Based on the principle of freedom of contract, many construction contract models exist in society. The contra-contracts are classified into three groups:

a. Government Version construction contracts

Usually each department has its own standard contract. The standard that is usually used is the standard of the Ministry of Public Works (Kimpraswil). Even Public Works has more than one standard because each Directorate General (3 units) has its own standard.

b.National Private Version Construction Contracts This

form of private national varies depending on the tastes of service users / project owners, sometimes quoting the standards of the Ministry of Public Works or those that are more advanced citing (partly) foreign contracting standards such as FIDIC, JCT or AIA. However, because it was taken in half, the contents of this contract became chaotic and very prone to disputes.

c. The version construction contract/ *standard* private / foreign

in general, service users / foreign project owners use a contract with the fidic system or JCT.[18]

By stipulating standard clauses that must exist in a construction contract as a government effort to implement balanced protection for the parties in order to create a fair and balanced contract between construction service users and construction providers as the principle of balance in the agreement.

Starting from Nieuwenhuis's opinion regarding the principle of freedom of contract on a reciprocal agreement, it can be understood that the factors that can disrupt the balance of a reciprocal contract are the way in which contracts are formed involving parties with unequal positions. But the factor that determines the upholding of the principle of balance is not only the equality of performance agreed upon by the parties making the contract, but also the equality of the parties making the contract which reflects the parties' desire to realize a fair exchange of economic interests for goods and services provided. promised in the contract. Therefore, if there is an imbalance due to the unequal position of the parties making the contract which results in disturbing or affecting the contents of the contract, state / government intervention is required to enforce the principle of balance in the contractual relationship that is made.[19]

In the form of state intervention in providing a balance to the parties in a construction contract or according to Agus Yudha Hernoko to realize the principle of proportionality, in several products of the applicable laws in Indonesia the content of the principle of proportionality has been adopted which will serve as a guideline in preparing or making contracts commercial certain. One of them is the application of the principle of proportionality in the field of construction services as regulated in Law no. 18/1999 where in the provisions of Article 22 paragraph (2) it is stipulated that

[18] Yasin, *Getting to Know Construction Contracts in Indonesia The First Book of Construction Law Series*, 14-15

[19] Syaifuddin, *Contract Law Understanding Contracts in the Perspective of Philosophy, Theory, Dogmatics and Legal Practice (Enrichment Series of Engagement Law)*, 98-99

the construction contract must at least include substances that reflect the principle of proportionality.[20]

Thus, with government intervention in making contracts in the field of construction services through laws and regulations in the field of construction, which are actually based on the principle of freedom of contract, the parties are free to make agreements in both form and content, it shows that the government wants to provide guarantees or equal protection, guaranteeing the making of contracts based on a proportional exchange of rights and obligations, so as to achieve a balanced, fair agreement. Considering that construction service contracts are different from those in general agreements but are more related to technical matters, apart from being written down with the enactment of certain documents in the contract, it also takes into account the standard contracts stipulated by Law No. 2/2017 and the implementing regulations.

Then to choose the form of construction that will be applied in a construction service project, the project owner or service user must consider certain things, the complexity and uniqueness of the project, the ability of the project owner or service user to manage design and construction, the tolerance of the project owner or service user for risks, availability of resources, ability to control projects, ability to select contractors or construction service providers, the possibility of changes and delays in work, the total duration of work required and the financial condition of the project owner or construction service user. Forms of construction contracts continue to evolve in line with trends in the construction method used. In fact, the form of a construction contract is influenced by how the construction project will be carried out. [21]

Specifically for construction service work owned by the government, contracts of course also comply with the provisions based on Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services and Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018. Which is then for standards the government version of the contract, the standard contract issued by the Ministry of Public Works applies.

Thus, considering that in making a construction service contract, apart from having to fulfill the legal terms of the agreement as stipulated in Article 1320 of the Civil Code, it is also subject to the provisions of Law no. 2/2017 and the implementing regulations. Also for government projects subject to the provisions of Presidential Regulation No. 16 of 2018 and Regulation of the Minister of Public Works and Public Housing No. 7 / PRT / M / 2019 concerning Standards and Guidelines for the Procurement of Construction Work for Service Providers, both the procedure, form and content of the agreement and the documents that bind it, the construction service agreement includes a contract or formal agreement, which is a contract that requires an agreement, but the law -The law requires that the contract be made in accordance with the procedure as well as the form and content as determined by the statutory regulations.

[20] Hernoko, *Proportionality Principle Agreement Law in Contracts Commercial,* 213-214

[21] Hansen, *Construction Contract Management Practical Guidelines in Managing Construction Projects,* 23

Legal Consequences of Construction Work Contracts that are not in accordance with the Prevailing Laws and Regulations

The contract has a juridical function, to create legal certainty for the parties making the contract, as well as to third parties who have legal interests in the making of the contract. Where the contract will provide answers to the needs of concrete economic law in society and at the same time guarantees the realization of legal certainty. The meaning of legal certainty in a contract according to Muhammad Syaifuddin involves a number of interrelated aspects, namely: the first aspect; contains protection of contract law subjects (persons and legal entities) from the arbitrariness of other contract law subjects; The fact that the legal subject of the contract must be able to assess the legal consequences of his actions, both the results of his actions and mistakes / negligence. The legal certainty contained in the contract guarantees that it can be suspected and that the fulfillment of the contract can also demand legal responsibility for the implementation of the contract. When two people or legal entities as the subject of a contract or more bind themselves to each other, where the agreement that has been reached is set forth in a contract.[22]

In order for a construction work contract to have legal force in making a construction service contract, of course in preparing and making it must be based on applicable legal rules. Construction service contract law is based on the third book of the Second Chapter of the Civil Code which regulates the agreements that are born from contracts or agreements from Chapter V to Chapter XVIII which regulates legal principles and norms of contract law in general, as well as norms. contract law that has a special character known as a contract called (*benoemd contract or nominate contract),* which is a contract that is specifically regulated and has a specific name in the Civil Code of limited type and quantity, sale and purchase, exchange, lease, agreement to undertake work, fellowships, associations, grants, safekeeping of goods, borrowing and loans, fixed or perpetual interest, chance agreements, power of attorney, guarantees and reconciliation.[23]

In addition to regulating the general provisions that apply to contracts, the Civil Code also regulates construction work contracts which are part of the work agreement contract as regulated in Article 1604 to Article 1617 of the Civil Code Chapter VII A, which regulates the agreement to perform work, which is divided into 3 types, a work agreement (labor), an agreement to carry out certain services and an agreement for contracting work. The construction service contract is part of the contracting law regulated in Article 1601b of the Civil Code using the name of the work contracting agreement as an agreement with which the first party, the contractor, binds himself to complete a job for another party, namely a *bouwheer* at a predetermined price.

Construction work contracts are made based on the principle of freedom of contract, namely the principle that occupies a central position in contract law, although this principle is not translated into a legal rule, it has a very strong influence on the contractual relationship of the parties. Book Three of the Criminal Code Civil adopts an open system, which means that the lawlaw gives flexibility

[22] Syaifuddin, *Contract Law Understanding Contracts in the Perspective of Philosophy, Theory, Dogmatics and Legal Practice (Enrichment Series of Engagement Law)*, 38

[23] Ibid, 33

to the parties to regulate their own patterns of legal relations. The open system is reflected in Article 1338 paragraph (1) of the Criminal Code Civil which states that lawall agreements that are legally made apply as law for those who make them.[24]

Thus the law determines that a legal agreement has the power to act as law. All agreements that are legally made apply as law to those who make them, where the agreement made cannot be withdrawn unless it is the agreement of the parties or for reasons that are declared by law to fulfill such. In addition, the agreement must be made and implemented in good faith for the parties making it. With the term `` legally '' the legislators indicate that the making of an agreement must be according to law, so that all agreements made according to law or legally are binding. Therefore, the act of making a contract or agreement is valid and must follow what is stipulated by Article 1320 of the Civil Code.[25] As well as the applicable laws and regulations. In order for a construction service contract to be valid and have binding power, it must comply with Article 1320 of the Civil Code regarding the terms of the validity of the agreement.

Basically, the agreement is not bound by any particular form, the agreement can be made orally and in writing. In the event that the agreement is made in writing the purpose is for a means of proof at a later date. For certain agreements the law determines a certain form so that if the form is not followed, the agreement becomes invalid. For example, an agreement to form a limited liability company must be in the form of a notary deed (Article 7 point 1 of Law No.40 of 2007 on Limited Liability Companies). This is called a formal condition or the agreement is called a formal agreement, which in principle is required to create an agreement between the parties, for certain agreements the law requires it to be stated in a certain form.[26]

The construction service agreement is a type of formal agreement which by law, both Law no. 18/1999 and Law no. 2/2017, where the procedures or conditions before the contract are made, this law also determines the form and content of a construction service contract, namely by establishing *a standard for the* minimum contents of a construction service agreement that must be contained in a construction service agreement by the parties. as stipulated in Articles 46 to 47 of Law no. 2/2017 and Article 22 of Government Regulation No. 29 of 2000 concerning the Implementation of Construction Services with several changes to the Government Regulation. Where in the law and implementing regulations, the construction service contract must contain clauses as stipulated in the construction services law which is made in writing and also documents that are part of the construction service contract, considering that the construction service contract is an agreement. which is different from agreements in general, that it has more to do with technical matters in accordance with the scientific field in the field of engineering and other supporting documents.

In addition, in practice, construction work contracts, especially government construc-

[24] Firman Floranta Adora, *Aspects-Aspect of Engagement Law* (Bandung: Mandar Maju, 2014), 89-90

[25] Mariam Darus Badrulzaman, *Various Business Laws*, Printing I (Bandung: Alumni, .1994), 27

[26] Mariam Darus Badrulzaman, Bond *Law in the Third Book of Civil Code, Jurisprudence, Doctrine, and Explanations* (Bandung: Citra Aditya Bakti, 2015), 110

tion work contracts, have been formulated in advance by the service user (government) in the form of a *standard contract*. The standard contract eliminates the right of the service provider to enter into negotiations at the time of contract formation, so that the parties' positions are not equal. The service provider can only choose between two: accept or reject the construction work contract that has been formulated by the service user in advance.[27]

Although the Construction Services Law and its implementing regulations do not mention the legal consequences of not fulfilling the form and content of the contract specified by the law, if we examine from the legal aspect of the agreement, the construction service contract includes contracts with mandatory conditions, contracts with conditions. compulsory according to Munir Fuady the meaning is that sometimes to take certain actions, certain conditions are required by law. If a contract is made to perform the action but these conditions are not fulfilled, then the contract concerned also does not have a legal power of attorney.[28] This is if a construction service contract is drawn up without considering the provisions of the Construction Services Law and its implementing regulations, both regarding the qualification requirements of a construction service provider, the procedures for selecting a service provider and the form and content of the construction service contract as determined by the law. Legislation is made with the premise that the obligations regarding the form and content are compelling with the aim of providing equal protection for the parties with the aim of providing certainty and fairness to the parties in a contract or agreement.

As a juridical consequence, if the legal or halal causal conditions as meant in Article 1320 of the Civil Code are not fulfilled in a contract concerned, it is not legally enforceable (Article 1335 of the Civil Code) or in other words it is a contract that is null and void (*nietig, null and void*).[29] Agreements that can be canceled as well as those that are null and void in practice will ultimately have the same effect, that these agreements are judged to have no legal effect according to the law. However, an agreement which is null and void does not necessarily mean that the agreement does not exist or is deemed non-existent because after all the agreement has existed or has occurred, only according to the law such agreement has no effect or has no legal effect. In such circumstances, the law assesses that the condition is reversed back to its original condition as when the engagement arose or when the agreement was closed. The agreement has no legal effect, the parties do not need to perform achievements and the party who has performed the achievement is deemed to have made payments that are not required. For payments that are not required according to Article 1359 of the Civil Code must be returned.[30]

For an agreement that is classified as a formal agreement if the legal provisions are not fulfilled, for example regarding the form or format of the agreement, the method of mak-

[27] Mariske Myeke Tampi, "Analysis of The Theory of Justice in Construction Work Contracts and Aspects of Dispute Settlement," *Reflections on Law* 9, no. 1 (2015): 65-76, https://ejournal.uksw.edu/refleksihukum/article/view/437.

[28] Munir Fuady, *Contract Law (From a Business Law Point of View)*, Printing I (Bandung: Citra Aditya Bakti, 2001), 80.

[29] Ibid, 75

[30] Elly Erawati and Herlien Budiono, *Explanation of the Law on Cancellation of Agreements* (Jakarta: National Legal Reform Program, 2010), 28-29.

ing the agreement, or the method of ratifying the agreement, as required according to statutory regulations, the legal consequence is that the agreement is null and void. Considering that a formal agreement is an agreement based on certain formalities that must be fulfilled in order for the agreement to be valid by law. Certain formalities are meant for example regarding the form of the agreement format which must be made in a certain form, by authentic deed or under hand.[31]

However, in several Supreme Court decisions it turns out that a contract is considered valid even though the terms of form and content are not fulfilled (Supreme Court Decisions dated 19 September 1970 Number 123 / Sip / 1978 and Number 126 K / Sip / 1978 and MA dated 31 July 1980 Number 665 K / SIP / 1979). With the aim of protecting the weaker party in the contract or agreement, as it is known, the agreement for transfer of rights to land, acquisition of new rights to land, land mortgage or borrowing with land as collateral for debt repayment must be made in the form of a deed (Article 19 of Government Regulation Number 10 of 1961) which must be made by and before the PPAT.[32] Which was later regulated in PP No. 24 of 1997.

However, the Supreme Court in a decision determined that the sale and purchase agreement was deemed valid, even though the conditions above were not fulfilled, as well as the sale and purchase of land witnessed by the village head and two other witnesses. Which was not made before the PPAT. The two Arrest seeks to provide protection for buyers as economically weak parties in the above cases not referring to the form of how the agreement is translated, but more concerned with the substance to be achieved through the agreement.[33]

This is in line with opinion Sterk's that "formality easily becomes formalism, which leads to annulment, even though the interests that the formalities are trying to protect are not harmed". Even if there is a flaw in the fulfillment of the form requirements, it remains open to the possibility that the agreement made in such conditions as it is, remains valid and valid, especially for the protected party because the agreement containing a defect does not always harm the parties.[34]

CONCLUSION

The construction work contract is an *engineering contract*, which is different from a *general contract*. This is because the construction contract is the embodiment of the characteristics of the construction project implementation which is full of technical aspects which include the scope of cost, quality and time. Given that construction service contracts are different in general agreements but are more related to technical matters other than being written in writing with the validity of certain documents in the contract, also takes into account the contract standards stipulated by Law no. 2/2017 and the implementing regulations. Especially for construction service work owned by the government, the contract, of course, is also subject to the provisions based on Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services. Then for the government version of the standard con-

[31] Ibid, 46

[32] Herlien Budiono, *Principles of Balance for Indonesian Agreement Law Law of Agreements Based on Indonesian Wigati Principles* (Bandung: Citra Aditya Bakti, 2006), 449-450

[33] Ibid. 449-450

[34] Ibid, 451.

tract, issued by the Ministry of Public Works based on the Regulation of the Minister of Public Works and Public Housing Number 7 / PRT / M / 2019 concerning Standards and Guidelines for the Procurement of Construction Work for Service Providers, both procedures, forms and contents the agreement and the documents that bind it, the construction service agreement includes a formal contract or agreement, which is a contract that not only requires an agreement, but the law requires that the contract be made in accordance with the procedure or procedure as well as the form and content as determined by statutory regulations. -invitation.

UU no. 2/2017 and its implementing regulations do not mention the legal consequences of not fulfilling the form and content of the contracts stipulated by the law. Considering that the construction service contract is a contract with mandatory conditions, this is if the construction service contract is made without heeding the provisions of the Construction Services Law and its implementing regulations, both regarding the qualification requirements for construction service providers, procedures for selecting service providers and the form and content of the construction service contract. which has been determined by the law. Legislation is made with the premise that the obligations regarding the form and content are compelling with the aim of providing equal protection for the parties with the aim of providing certainty and fairness to the parties in a contract or agreement. As a juridical consequence, if the formal conditions are not fulfilled in a contract, it is not legally enforceable (Article 1335 of the Civil Code) or in other words it is a contract that is null and void (*nietig, null and void*). Although in several decisions of the Supreme Court in deciding formal agreements, not all of them ended in cancellation because the interests to be protected by formalities were not harmed.

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