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Legal Analysis of Protection Against Breach of Employment Contract

Muhammad Rozi Asri^{1*}, Irsyaf Marsal²¹Faculty of Law, Universitas Pembangunan Nasional “Veteran” Jakarta²Faculty of Law, Universitas Pembangunan Nasional “Veteran” Jakarta*Corresponding Author: 2210611446@mahasiswaupnvj.ac.id

Abstract: This study aims to analyze the forms of default (breach of contract) committed by the government as the employer in the implementation of the Work Order (SPK) and to examine the legal remedies available for contractors to obtain legal protection. This research employs a normative juridical method using statute, case, and conceptual approaches. The legal materials used include primary, secondary, and tertiary sources, analyzed qualitatively through a descriptive-analytical technique. The results indicate that government default commonly occurs in the form of delayed payments, unilateral changes to the scope of work, and contract termination without legal justification. These actions cause losses to contractors due to their weak bargaining position in legal relations with the government. Legal protection for contractors can be pursued through warnings (*somasi*), civil lawsuits based on Articles 1243–1252 of the Indonesian Civil Code, and non-litigation dispute resolution mechanisms such as mediation or arbitration as regulated under Law Number 2 of 2017 on Construction Services and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services. This study emphasizes the need to strengthen regulations and improve dispute resolution mechanisms to ensure legal certainty and fairness for contractors in the implementation of work orders.

Keyword: Legal Protection, Contractor, Breach of Contract, Work Order, Civil Law.

INTRODUCTION

The development of national infrastructure involving work contracts between the government and contractor companies is one of the main pillars supporting economic growth and public services in Indonesia. In practice, the legal relationship between the government as the employer and the contractor company as the executor of the work is regulated through a Work Order (*Surat Perintah Kerja/SPK*), which has binding legal force as stipulated in Article 1320 of the Indonesian Civil Code regarding the validity requirements of an agreement. However, it is not uncommon for problems to arise in which the government, as

the employer, commits a breach of contract (*wanprestasi*), such as delays in payment, unilateral changes to the scope of work, or even termination of the contract without a clear legal basis (Subekti, 2008).

The issue of legal protection for contractors in facing government breaches of contract is crucial, considering that contractors are often in a weaker economic and political position. Based on data and case studies, most construction disputes involving the government occur due to disproportionate contract implementation, where compensation mechanisms and dispute resolution processes have not functioned effectively. In fact, Articles 1243–1252 of the Civil Code regulate the right to compensation for breach of contract, and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services also emphasizes the importance of legal certainty in the implementation of government contracts. However, existing regulations are considered to have not provided optimal and comprehensive protection for contractors.

A recent case that drew public attention occurred in May 2025, when three contractors—PT. Contractor A, CV. Contractor B, and CV. Contractor C—through their legal representation from the Law Office of Hendra Karianga & Associates, sent a formal demand letter (*somasi*) to the Regent of Regency X, referred to as J.U. The *somasi* was issued because the Regency Government of X had not made payments for project work that had been completed 100% in accordance with the contract. The Regency Government argued that the outstanding debt was the legacy of the previous administration and would be paid in stages according to regional financial conditions.

This case reflects the reality that although an SPK is legally agreed upon, its implementation does not always provide legal certainty for contractors. The government's dominant position often results in contractors lacking equal bargaining power in claiming their rights. Meanwhile, dispute resolution mechanisms, both litigation and non-litigation, have not been operating optimally, particularly at the regional government level, which frequently faces budget constraints and weak legal certainty. This aligns with research findings indicating that many contractors face government breaches of contract, yet compensation and dispute resolution mechanisms remain ineffective (Silitonga, 2024). They demand payment for project work that has been completed 100%, but the Regency Government of X has still not made payment. The government claims that the debt was inherited from the previous administration and plans to pay it in stages depending on the region's fiscal conditions.

The urgency of this research is further strengthened by the Constitutional Court Decision No. 18/PUU-XVII/2019, which emphasizes that the determination of breach of contract cannot be made unilaterally, as well as the mandate of Law Number 2 of 2017 on Construction Services, which encourages dispute resolution through mediation before taking the matter to court. Therefore, a juridical analysis of legal protection for contractor companies who suffer losses due to government breach of contract within the SPK is essential to identify weaknesses in existing regulations and offer solutions that can strengthen the legal position of contractors and create a healthy investment climate in the national construction sector (Satjipto, 2006).

METHOD

This research employs a normative legal research method (juridical-normative), which originates from the existence of a normative problem, namely the ambiguity of norms and the

weak implementation of legal protection for contractors due to the government's breach of contract in the execution of the Work Order (*Surat Perintah Kerja/SPK*). This ambiguity arises because there is no firm regulation regarding the government's responsibility as the employer and no effective dispute resolution mechanism between the government and contractors. In normative legal research, the author examines legal norms contained in legislation, court decisions, and relevant legal doctrines. The approaches used include the statute approach, the conceptual approach, and the analytical approach. The statute approach is used to examine various related legal regulations, such as the Indonesian Civil Code, Law Number 2 of 2017 on Construction Services, and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services.

The sources of legal materials in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and relevant court decisions. Secondary legal materials consist of legal literature, academic journals, and legal experts' opinions that support the research analysis. Tertiary legal materials include legal dictionaries and legal encyclopedias. The technique for collecting legal materials is conducted through document study (library research) by reviewing various legal sources, both printed and online, to obtain accurate and relevant data (Sunggono, 2001). The analysis of legal materials is carried out qualitatively using a descriptive-analytical method, by interpreting and connecting legal norms to find solutions to the problem of legal protection for contractors. Through this method, it is expected that a systematic and argumentative understanding of legal certainty in contractual relations between the government and contractors can be obtained (Rahardjo, 2006).

RESULTS AND DISCUSSION

Form of Breach of Contract (*Wanprestasi*) Committed by the Government (Commitment-Making Official) in the Implementation of the Work Order (*SPK*)

The form of breach of contract committed by the government—specifically the Commitment-Making Official (*Pejabat Pembuat Komitmen/PPK*)—in the implementation of the Work Order (*SPK*) is evident in several actions. According to the contractors' legal representative, Hendra Karianga, the breach committed by the Regency Government of X was the failure to pay several projects that had been completed by its partners (PT. Contractor A, CV. Contractor B, and CV. Contractor C) under the 2021 budget. The work completed by each company includes, among others: PT. Contractor A executed a project package for the expansion of the IKK Jailolo with a value of IDR 2,783,600,000 (two billion seven hundred eighty-three million six hundred thousand rupiah), but it was only paid an advance of 20% of the contract value, amounting to IDR 556,700,000, as submitted by the company. In fact, the work progress had reached 80% and was financed using the company's own capital.

Next, CV. Contractor B had three different project packages, all of which had been completed 100%, with a total unpaid value of IDR 726,241,500 (seven hundred twenty-six million two hundred forty-one thousand five hundred rupiah). Third, CV. Contractor C carried out an irrigation network rehabilitation project with a contract value of IDR 842,640,000 (eight hundred forty-two million six hundred forty thousand rupiah), which had also been fully completed. The remaining unpaid amount from the Regency Government X was IDR 294,924,000 (two hundred ninety-four million nine hundred twenty-four thousand rupiah).

The transfer of authority from the previous Regent, D.M., to the newly elected Regent, J.U., also resulted in unilateral changes to the scope of work. The new Regent of X Regency,

J.U., stated that the work carried out by the aforementioned companies was the legacy of the previous administration, awarded when Regent D.M. was still in office. Using this reasoning, the Regency Government X—specifically Regent J.U., who had been served a formal demand letter (*somasi*)—provided such a response.

Unilateral termination of the contract by the Commitment-Making Official (PPK) without a clear legal basis clearly contradicts the principle of *pacta sunt servanda*, as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code, which states that all legally made agreements shall serve as law for those who make them (Ramadhani, 2024). In this case, both the government and the contractor companies are bound by the same contract, and both parties are obligated to fulfill their respective rights and obligations. Article 11 paragraph (1) letter c of Presidential Regulation No. 16 of 2016 on the procurement of goods/services states that the PPK represents the government as the budget user and is the party to the contract, authorized to sign and control the implementation of the contract. However, such authority does not grant the freedom to terminate or refuse to pay for an agreed-upon contract. Article 78 of Presidential Regulation No. 16/2018 stipulates that contract termination can only be carried out if there is a violation of contract provisions or laws and regulations, such as when the contractor fails to fulfill obligations, commits a material breach, or if a force majeure occurs that prevents the continuation of the contract. However, none of these conditions were violated by the three contractor companies, yet they remained unpaid by the government. Thus, if the PPK terminates the contract without reasons stipulated in the contract or without an official mechanism such as written warnings, minutes of meeting, or performance evaluations, such actions constitute a breach of contract on the part of the Regency Government X, particularly the Commitment-Making Official (PPK).

Furthermore, the delay in paying retention (a portion of funds withheld by the employer) on administrative grounds or budget limitations results in delayed fulfillment of obligations and can be categorized as a breach of contract. In construction work contracts, including the SPK, retention is a percentage of funds (typically 5–10% of the contract value) temporarily withheld by the employer (Regency Government X) after the work is completed as a guarantee that the contractor will repair any defects during the maintenance period. After the maintenance period ends and no defects are found, the funds must be returned to the contractor as final payment. This is in accordance with Article 88 paragraph (1) letter c of Law No. 2 of 2017 on Construction Services, which stipulates that the service user must make payments according to the progress of the work and the provisions of the contract. In addition, Articles 7 and 74 of Presidential Regulation No. 16 of 2018 and its implementing regulation (LKPP Regulation No. 12 of 2021) emphasize that payments may only be postponed when there is a valid legal basis or contractual provision. In this case, the government clearly violated existing regulations because it failed to make payments within the agreed period without any clear legal basis. In other words, administrative reasons or budget limitations do not nullify the government's legal obligation to pay, as the contractual agreement is governed by the principle of *pacta sunt servanda* (agreements must be honored).

In the context of government contract law, the above forms of breach of contract illustrate a gap between norms and implementation (*das sollen* and *das sein*) (Rahardjo, 2019). Although Articles 1243–1252 of the Civil Code provide a legal basis for the aggrieved party to claim compensation, bureaucratic processes and contractors' weak bargaining power against the government often hinder enforcement (Sidarta, 2025).

Legal Remedies Available to Contractors to Obtain Legal Protection in Cases of Government Breach of Contract.

There are several legal remedies available to contractors to obtain legal protection against breaches of contract committed by the government. The first step that must be pursued is a non-litigation approach, considering that the matter falls within the scope of civil law; therefore, this method must be prioritized. Through mechanisms such as mediation and the issuance of a formal demand letter (*somasi*) prior to initiating formal legal proceedings,

contractors can seek a swift and efficient resolution (Sari & Fadilah, 2025). Another non-litigation method that may assist in resolving such disputes is arbitration. In accordance with the contractual clauses in construction work contracts, as regulated under Law No. 2 of 2017 on Construction Services and Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services, arbitration is considered a viable mechanism because it produces final and binding decisions, in contrast to mediation, which is more persuasive in nature and aims at reaching an amicable settlement.

Contractors have two main litigation options. First, they may file a civil lawsuit with the District Court. Under Article 1243 of the Indonesian Civil Code, if the government is proven to have committed a breach of contract, the contractor may claim compensation in the form of costs, damages, and interest arising from delayed payments (Demonggeng & Pattiwael, 2025). This option is highly relevant for demanding overdue payments or requesting contract rescission along with compensation for losses incurred. Second, in situations where the government's breach of contract takes the form of an administrative decision—such as unilateral termination of the contract, imposition of sanctions, or refusal to make payment—the contractor may submit a legal challenge to the Administrative Court (Pengadilan Tata Usaha Negara/PTUN). A lawsuit may be filed with the PTUN if the administrative decision is deemed legally flawed, violates procedural requirements, or contradicts general principles of good governance. This avenue specifically seeks to annul decisions made by government officials acting under their public authority, which have caused harm to the contractor, while also providing an opportunity to claim compensation if the decision results in material losses (Nasution, 2020).

A combination of non-litigation and litigation approaches is considered the most effective strategy for safeguarding contractors' rights. The process generally begins with informal or conciliatory efforts, such as issuing a *somasi* as an official warning, followed by mediation or arbitration before resorting to judicial remedies (Fadilah, 2025). A *somasi* may be issued by contractors in response to delayed payments by the government. However, to enhance the overall legal protection available to contractors, substantive measures are needed to strengthen legal norms within government procurement regulations. Such reinforcement should include clear provisions on payment deadlines, explicit mechanisms for compensation due to delays, and improvements to the effectiveness of dispute resolution institutions under the National Public Procurement Agency (LKPP), ensuring that their decisions are binding and transparent. Regulatory reform in this area must aim to minimize the government's dominant position to create a more balanced bargaining power for contractors in asserting their rights (Rizal, 2022). Consequently, optimal legal protection can be realized, enabling contractors to recover their rights swiftly and efficiently, in accordance with the principle of legal certainty and in support of a healthy investment climate in the national construction sector.

CONCLUSION

The review of the implementation of the Work Order (*Surat Perintah Kerja/SPK*) between the contractor and the Regency Government of X shows that the government, particularly the Commitment-Making Official (*Pejabat Pembuat Komitmen/PPK*), has committed several forms of breach of contract, including delayed payments, changes to the scope of work without a valid contract addendum, termination of the contract without clear legal grounds, and delayed retention payments due to administrative reasons. These types of breaches violate Presidential Regulation Number 16 of 2018 concerning the Procurement of Goods/Services of the Government and Law Number 2 of 2017 on Construction Services, as well as the principle of *pacta sunt servanda* stipulated in Article 1338 of the Indonesian Civil Code.

Contractors may take various legal measures to protect themselves from the government's breach of contract. These include non-litigation measures such as negotiation, formal notice (*somasi*), conciliation, and arbitration, as well as litigation measures, namely

civil lawsuits before the District Court or administrative lawsuits before the Administrative Court (*PTUN*) if the breach arises from an administrative decision. One of the most effective ways to restore the contractor's rights is through a combination of non-litigation and litigation measures.

On the other hand, to establish legal certainty, fairness, and a balanced position between the government and contractors in the implementation of construction work contracts, it is necessary to strengthen government procurement regulations, ensure payment timelines, and improve the performance of dispute resolution bodies under the National Public Procurement Agency (*LKPP*).

REFERENCE

- Civil Code of Indonesia (KUHPerdata). Article 1320.
- Law of the Republic of Indonesia Number 2 of 2017 on Construction Services. Presidential Regulation of the Republic of Indonesia Number 16 of 2018 on Government Procurement of Goods/Services.
- Institute for the Procurement of Goods/Services of the Government (LKPP). (2022). *Module on dispute resolution for procurement contract of goods/services*. LKPP.
- Rahardjo, S. (2019). *Legal science*. Citra Aditya Bakti.
- Subekti. (2008). *Law of contracts*. Intermasa.
- Sunggono, B. (2001). *Legal research methodology*. RajaGrafindo Persada.
- Demonggeng, Y., & Pattiwael, R. J. S. (2025). The authority of administrative courts in government procurement contract disputes: A case study of contract termination by administrative officials. *Journal of Legal, Humanities and Political Sciences*, 5(5), 4259–4265.
- Nasution, A., Kam, J. P., Wijaya, M. C., & Nugraha, Q. Q. (2020). Legal certainty in the tender process for construction services: A case study of the Jayapura Administrative Court Decision Number 23/G/2020/PTUN.JPR. *Journal of Legal, Humanities and Political Sciences*, 5(5).
- Nevianti, N. D., Marniati, F. S., & Ismail. (2024). Legal certainty in construction work contracts regarding breach of contract by service providers due to late handover of construction works to the users. *Cendekia: Journal of Research and Scientific Studies*, 1(9), 610–625.
- Ramadhani, K. S., Fahamsyah, E., & Ali, M. (2024). Legal protection for service providers against unilateral termination of construction contracts in government goods and services procurement. *Equivalent: Scientific Journal of Social Engineering*, 6(1).
- Rizal, R., & Sami'an, S. (2022). Legal consequences of termination of construction contracts in state-funded projects. *Konstruksia*, 16(2), 11–25.
- Sari, F. K., Rifai, A. T. F., & Purbawati, A. (2025). Legal assistance and contract analysis to prevent breach of contract among business actors, particularly related to the Judgment of Makassar District Court. *Journal of Indonesian Education*, 6(9), 4360–4368.
- Sidarta, D. D., & Lestari, S. E. (2025). Breach of contract in the implementation of government procurement contracts. *Court Review: Journal of Legal Research*, 5(3), 60–73.
- Silitonga, G. C., Ikhsan, E., Leviza, J., & Harris, A. (2024). Breach of contract in the implementation of a work order: A case between Adam Malik General Hospital and Mitsubishi Jaya Elevator. *Locus: Journal of Legal Concept*, 4(2), 45–59.