IOSR Journal Of Humanities And Social Science (IOSR-JHSS)
Volume 24, Issue 2, Ser. 4 (February. 2019) 22-35
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

Penalty Sanctions Due to Defaults in ConstructionWork Contracts in the Perspective of Justice

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Abstract: This study provides a fair value on construction work contracts; the legal service standards for default against construction service providers; the implementation of fines to default on a construction work contract that is fair to the construction service provider. The type of research that will be conducted is descriptive research with the type of combination between normative legal research and sociological legal research related to fines sanctions due to defaults on construction work contracts in a justice perspective.
Keywords: *Construction Work Contracts, Construction Service Providers*

Date of Submission: 28-01-2019 Date of acceptance: 11-02-2019

I. INTRODUCTION

In national development, construction services have an important and strategic role considering that construction services produce final products, both in the form of facilities and infrastructure that function to support the growth and development of various fields, especially economic, social and cultural fields to create a just and prosperous society that is materially and spiritual based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In addition to playing a role in supporting various fields of development, construction services also play a role in supporting the growth and development of various industries of goods and services needed in the implementation of construction services.

In addition to playing a role in supporting various fields of development, construction services also play a role in supporting the growth and development of various industries of goods and services needed in the implementation of construction work. National construction services are expected to be increasingly able to develop their role in national development through increased reliability supported by a solid business structure and capable of realizing the results of quality construction work. Reliability is reflected in competitiveness and the ability to carry out construction work more efficiently and effectively, while a solid business structure is reflected by the realization of synergic partnerships between service providers, both large, medium and small, as well as those with general qualifications, and skilled, and it is necessary to realize orderliness in the construction services to ensure equality of position between users of services and service providers in their rights and obligations.

Every Contract made by the parties will cause legal consequences. Legal consequences are the emergence of rights and obligations, rights are a pleasure and obligation is a burden. In the provisions of Law Number 18 of 1999 concerning Construction Services also regulates the legal consequences between Service Users and Service Providers, where the Service Provider is obliged to complete a Construction Work in accordance with what has been agreed with the previous Service User. While Service Users are entitled to a Construction Work that has been done by the Service Provider.

Construction Work Contracts carried out by Service Users and Service Providers occur because of an agreement between the two parties. Whereas agreement is the conformity of the statement of intention between the parties.[1]

The existence of a contract between the Service User and the Service Provider serves to provide legal certainty for the parties and move (property rights) resources from lower economic values to higher economic values.[2]

Construction services regulated in Law Number 2 of 2017 concerning Construction Services, include three construction services, namely planning construction work, carrying out construction work, and supervising

[1]Salim, H. S. *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika, 2009,p.5.
[2]Salim, H. S., Abdullah, and Wiwiek Wahyuningsih. *Perancangan Kontrak & Memorandum of Understanding (Mou)*. Jakarta: Sinar Grafika, 2007,p.23.

construction works. Construction service implementation business provides implementation services that cover architectural, civil, mechanical, electrical, and / or environmental management. The scope of supervision services for construction works can consist of supervision services for the implementation of construction works, as well as supervision of the quality and timeliness of the work process and the results of construction work. The scope of integrated planning, implementation and supervision services can consist of design services; planning, procurement, and implementation of receiving or carrying out the work received. [3]

II. STATEMENT OF THE PROBLEM

1. How does the nature of penalties due to default on construction work contracts provide fair values to construction service providers?
2. Does the legal substance governing fines due to defaults on construction work contracts guarantee the fulfillment of justice for construction service providers?
3. How do penalties result from default on a construction contract that is fair to the construction service provider?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Contract Theory (Agreement)

In theory the contract guarantees the rights and obligations of each party fairly. The moral obligation to be bound by this contract is recognized by anyone including people who live in the criminal world. Therefore, contract theory actually bases a moral obligation to obey the law on genuine moral principles that can be universally accepted.[4]

Not only applies to individuals, a company often collaborates with other companies to meet their needs. The cooperation is poured into a form of agreement.

According to Herlien Budiono, an agreement can also be defined as a legal act that creates, changes, abolishes rights, or raises a legal relationship and in this way the agreement creates legal consequences which are the goals or the wishes of the parties.[5]

The following are explained agreement theories, namely:

1. Theory of Will (Will theorie)

This theory is a theory that emphasizes the will factor. Based on this theory if we express a statement that is different from what is desired, then what is bound to us is the statement that we express it. [6]

2. Statement Theory (Verklarings theorie)

According to the theory of statement, the formation of will takes place in one's mental realm. So that the opponent is not possible to know what is actually in someone's mind. Thus a will that cannot be recognized by another party cannot be the basis of the formation of an agreement. Birth revelation theory as an answer to the weaknesses of the theory of will. But this theory also has weakness, because statement theory only focuses on statements and does not pay attention to one's will. So that there is a potential loss that occurs if there is no match between the will and statement.

3. Theory of Trust (Vertrouwens theorie)

Based on this theory, a contract is said to exist when the answer to an offer has been made in writing, in the form of an answer letter to an offer. The contract is born or arises when the party receiving the offer states its acceptance or acceptance in written form. A statement from the party giving the offer and acceptor to meet each other, when the recipient of the offer states in written form the acceptance.[7]

4. Delivery Theory (verzendingstheorie)

Based on this delivery theory, a contract is born when the recipient of the offer sends his written answer in the mail. The answer in question is that the recipient accepts the offer given, thus the momentum of his birth or the emergence of a contract can be known by looking at the date of the postmark stamp. This delivery theory makes it easier for the parties to determine with certainty at birth or emergence of an agreement, however, this theory still has weaknesses as the opinion of experts.

5. Knowledge Theory (vernemings theorie)

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[3]Muhammad, Abdulkadir. *Hukum Perdata Indonesia*. Bandung: PT. Citra Aditya Bakti, 2010,p.590.

[4]Ujan, Andre Ata. *Filsafat Hukum: Membangun Hukum, Membela Keadilan*. Yogyakarta: PT. Kanisius, 2009,p.216.

[5]Budiono, Herlien. *Ajaran Umum Hukum Perjanjian Dan Penerapannya Di Bidang Kenotariatan*. Bandung: PT. Citra Aditya Bakti, 2008,p.3.

[6]Setiawan, Rachmat. *Hukum Perikatan-Perikatan Pada Umumnya*. Bandung: Bina Cipta, 1987,p.57.

[7]Satrio, J. *Hukum Perikatan, Perikatan Yang Lahir Dari Perjanjian*. Vol. 1, 2 print. Bandung: PT. Citra Aditya Bakti, 2001,p.258.

Knowledge theory is a theory that was born to overcome the weaknesses of the theory of shipping. Based on the theory of knowledge, a contract is born when an answer regarding acceptance or acceptance is given by the recipient or acceptor, is known by the party providing the offer. The point is when the letter of response to the offer is received and the contents are known by the party giving the offer, then the contract is there.[8]

2. Theory of Legal Liability

The concept of legal responsibility is closely related to the concept of rights and obligations. The concept of rights is a concept that emphasizes the definition of rights in pairs with the notion of obligations.[9] General opinion says that rights to a person always correlate with obligations to others.[10]

According to the law, responsibility is a consequence of the consequences of a person's freedom of action related to ethics or morals in carrying out an act.[11] Furthermore, according to the Quarterly Point, accountability must have a basis, namely things that cause legal rights for someone to sue another person as well as things that give birth to other people's legal obligations to give responsibility.[12]

3. Justice Theory

Justice can be seen from a sociopolitical, economic, legal, moral and religious perspective. Each of these points of view provides a rather specific interpretation and emphasis on justice.[13] The same opinion was expressed by Jimly Asshiddiqie, The idea of justice does contain many aspects and dimensions, namely legal justice, economic justice, political justice, and even social justice.[14] The variety of definitions of justice because justice is subjective and abstract. [15]

1) Justice in Islamic Law

In Islamic law there are several universal principles that must always be considered. First, Tawheed; Second, Justice; Third, Amar ma'ruf nahi munkar; Fourth, al-Hurriyah (independence); Fifth, al-Musawwa (equality); Sixth, al-Ta'awun (please help); and Seventh, al-Tasamuh (Tolerance). So, justice is one of the principles in Islamic law.[16]

The concept of justice which is the second principle after tauhid has a very broad scope, covering justice in various relationships, among others: the relationship of individuals with themselves, individuals with humans and their own communities, individuals with judges and litigants and relationships with various other related parties. Justice is one of the most important principles for humanity in its association with the community or the state. In fact, it can be said that there are no basic principles or views that are so coveted throughout the history of mankind, such as the principle of justice. The principle of justice in various dimensions is the highest ideals of mankind which are sometimes not easy to realize.

2) The Nature of Western Philosophy Justice

Theories of Natural Law since Socretes to Francois Geny, still maintain justice as the crown of law. Natural Law Theory prioritizes "the search for justice"[17] There are various theories about justice and fair society. These theories concern rights and freedoms, opportunities for power, income and prosperity.

The general impression that might emerge after reading Western theories of justice from Utilitarianism, Liberal Equality, Libertarianism, Marxism, Communitarianism to the Criticism of Feminism is that they are universal, which represent the experience of all humanity regardless of space and time, although it is clear that most, if not all, theories were developed by western writers and influenced by the background of western cultural values. This tendency to be universal can of course be considered as one of the advantages of the western scientific tradition.[18]

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[8] *Ibid*.,p.295.

[9] Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, 2000,p.55.

[10] *Ibid*.

[11] Notoatmodjo, Soekidjo. *Etika Dan Hukum Kesehatan*. Jakarta: PT. Rineka Cipta, 2010,p.25.

[12] Triwulan, Titik, and Shinta Febrian. *Perlindungan Hukum Bagi Pasien*. Jakarta: Prestasi Pustaka, 2010,p.48.

[13] Gea, Antonius Atosokhi, Antonina Panca Yuni Wulandari, and Yohanes Babari. *Character Building II: Relasi Dengan Sesama*. 3 print. Jakarta: Elex Media Komputindo, 2005,p.315.

[14] Asshiddiqie, Jimly. "Pesan Konstitusional Keadilan Sosial." Malang, 12 April 2011.

[15] Ali, Achmad. *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)*. Vol. 1, Jakarta: Kencana Prenada Media Group, 2009.p.223.

[16] Wanto, Sugeng. "Filsafat Keadilan Dalam Islam." Harian Waspada, https://issuu.com/waspada/docs/waspada_jumat_7_agustus_2009. AccessedonJune 6, 2018.

[17] Huijbers, Theo. *Filsafat Hukum Dalam Lintasan Sejarah*. Yogyakarta: PT. Kanisius, 1993. p. 196.

[18] Wahyudi, Agus. "Filsafat Politik Barat Dan Masalah Keadilan: Catatan Kritis Atas Pemikiran Will Kymlicka."*Jurnal Filsafat* 14, no. 1 (2004): pp. 88-99.

B. Covenant Principles

1. The principle of consensualism

In treaty law, the principle of consensualism comes from the word consensus which means agreement between the parties regarding the subject of the agreement. The principle of consensualism was born from the moment the agreement was reached, then at that time a contract based agreement was established.[19] In other words, the agreement has legal consequences from the time the agreement was reached from the parties concerned.[20]

The principle of consensus is the 'spirit' of an agreement. This is concluded from the agreement of the parties, however in certain situations there are agreements that do not reflect the actual form of the agreement. This is due to a disability (wilsgebreke) that affects the emergence of agreements.

2. The principle of freedom of contract

The principle of freedom of making contract is one of the very important principles in the treaty law. This freedom is an embodiment of free will, while at the same time demonstrating the emission of human rights.[21]

The principle of freedom of contract in its implementation is limited by three things as stated in Article 1337 of the Civil Code, namely the agreement is not prohibited by law, does not conflict with decency and does not conflict with public order. Besides being limited by Article 1337 of the Civil Code, the principle of freedom of contract is also limited by the following matters:[22]

a. There is standardization in the agreement. This is due to the economic development that requires everything quickly. Here, usually one of the parties is domiciled to make a standard agreement, both in form and content. In the standard agreement there is also an Exclusion (exoneration) clause, which is one that requires one party to do or not do or reduce or transfer its obligations or responsibilities. If the exclusion clause (exoneration) is made by the opposing party, then the other party is deemed to have agreed to the clause even though the clause is a burden on him.

b. Not against the moral, customs and public order

3. Principle of good faith

Good intentions are defined by the Uniform Commercial Code as "honesty in fact and the observance of reasonable commercial standards of fair dealing"[23] or honesty in facts and obedience to fair commercial standards of fair transactions.

Honesty or good faith, can be seen in two kinds, namely at the time of the entry into force of a legal relationship or at the time of the implementation of the rights and obligations contained in the legal relationship.[24]

The principle of good faith is stated in Article 1338 paragraph (3) of the Civil Code which determines: "The agreement must be carried out in good faith." This principle implies that the parties, namely creditors and debtors must implement the substance of the contract based on firm belief or good will. from the parties.

J. M. van Dunne divided the stages of contracting in three phases, namely the pre-contract phase, the contract implementation phase, and the post-contract phase. Good faith must have been in place since the pre-contract phase where the parties began negotiations until they reached an agreement, and the implementation phase of the contract.[25]

Good faith in the pre-contract stage is an obligation to notify or explain and examine material facts for the parties relating to the object being negotiated. In this regard, the decisions of the Hoge Raad state that the parties to the negotiations each have good faith.[26]

While good faith in the implementation of the contract refers to objective good faith. The standard used in good faith is an objective standard that refers to an objective norm. Good faith provisions refer to unwritten norms that have become legal norms as a separate source of law. The norm is said to be objective because behavior is not based on the assumption of the parties themselves, but this behavior must be in accordance with the general assumption of the good faith.[27]

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[19]Sukandar, Dadang. *Panduan Membuat Kontrak Bisnis*. Jakarta: PT. Visimedia Pustaka, 2017,p.31.

[20]Yunus, Ahyuni. *Perjanjian Perbankan, Keperkasaan Kreditur Dan Ketidakberdayaan Debitur*. Makassar: Pustaka Refleksi, 2017,p.82.

[21]*Ibid*., p.89.

[22]Hernoko, Agus Yudha. *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*. Yogyakarta: CV. Laksbang Mediatama, 2008,p.122.

[23]Thomas J. Kelleher, Jr., IV Thomas E. Abernathy, and Jr. Hubert J. Bell, eds. *Smith, Currie & Hancock's Federal Government Construction Contracts: A Practical Guide for the Industry Professional*. New Jersey: John Wiley & Sons Ltd., 2008,p.57.

[24]Wirjono, Prodjodikoro. *Azas-Azas Hukum Perdata*. Bandung: Sumur, 1983,p.56.

[25]Khairandy, Ridwan. *Iktikat Baik Dalam Kebebasan Berkontrak*. Jakarta: UI Press, 2003,p.190.

[26]*Ibid*.

[27]*Ibid*.,p.191.

4. The principle of binding power

The principle of binding force or principle of action is related to the consequences of the agreement. The meaning of pacta sunt servanda is that the agreement made legally has binding power and applies as a law to the parties who make it, so the parties must submit and carry out the everything that has been promised. This principle can be known from Article 1338 paragraph 1 of the Civil Code which states that all agreements made legally, apply as laws for those who make them.

As for pacta sunt servanda, it is recognized as a rule that stipulates that all agreements made legally, given the strength of the law contained therein, are intended to be implemented and finally the arrangement can be imposed.[28]

5. Personality principle

This principle of personality is defined as the principle of personality. The principle of personality is the principle that determines that someone who will do and or make an agreement is only for the benefit of individuals.[29]

An agreement is only binding on the parties to the agreement, and is not binding on other people not involved in the agreement. There are exceptions to this personality principle, namely what is referred to as "derden beding" or an agreement for a third party. In this case, an agreement is made, in which the agreement promises the rights of others, without the power of the person who is promised. Personality is regulated in Article 1317 of the Civil Code, mentioning the promise to that third party.

C. Construction Work Contract

The agreement term is part of the scholar equating with a contract. The term contract itself comes from the English language, namely contracts. Whereas in Burgerlijk Wetboek (hereinafter abbreviated as BW) uses the term overeenkomst and contract for the same meaning. This can be clearly observed from Book III of the Second Titel about "Agreements born from contracts or agreements" which are in the original language, namely: "Van verbintenissen die uit contract of overeenkomst geboren worden".

This understanding was supported by the opinions of several scholars, including: J. Satrio[30], Ahmadi Miru[31],Mariam Darus Badrulzaman[32], Purwahid Patrik[33], and Ricardo Simanjuntak[34], Munir Fuady[35] who used the terms contract and agreement in the same sense.

Meanwhile, the construction service agreement as stipulated in Article 1 Number 1 of Law No. Number 2 of 2017 concerning Construction Services (UUJK) that construction services are construction consultancy services and / or construction works.

While the term construction work contract is a translation of the construction contract. The construction work contract is a contract known in the implementation of building construction, both carried out by the Government and the private sector. According to Article 1 Number 8 UUJK, the construction work contract for a construction work contract is the whole contract document that regulates the legal relationship between service users and service providers in the implementation of Construction Services.

According to R. Subekti what is meant by a construction service agreement is an agreement between a person who buys a job with another person as a job contractor, where the first party requires an outcome agreed by the other party to pay money as the price of construction services. The most important thing is not the way the contractor does the work but the results to be delivered are in good condition within a period of time that has been applied in the agreement.[36]

Before the construction contract is made, the service user first conducts or holds an announcement about the tender to interested service providers. The definition of tender or auction itself is a series of activities that require goods and / or services and fulfill the requirements, based on regulations that have been determined by the parties concerned.

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[28]Budiono, Herlien. *Op.Cit*.,p.31.

[29]Marbun, B. N. *Membuat Perjanjian Yang Aman Dan Sesuai Hukum*. Jakarta: Puspa Swara, 2009,p.6.

[30]Satrio, J. *Op.Cit*.

[31]Miru, Ahmadi. *Hukum Kontrak & Perancangan Kontrak*. Jakarta: Rajawali Pers, 2010,p.1.

[32]Badrulzaman, Mariam Darus. *Kitab Undang-Undang Hukum Perdata Buku III*: Hukum Perikatan Dengan Penjelasan. 2 ed. Bandung: PT. Alumni, 1996, p.89.

[33]Patrik, Purwahid. *Dasar-Dasar Hukum Perikatan*. Bandung: CV. Mandar Maju, 1994,p.45.

[34]Simanjuntak, Ricardo. *Teknik Perancangan Kontrak Bisnis*. Jakarta: PT. Gramedia Pustaka Utama, 2006,p. 27.

[35]Fuady, Munir. *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*. Bandung: PT. Citra Aditya Bakti, 2001,p.9.

[36]Subekti, Raden.*Aneka Perjanjian*. Bandung: PT. Citra Aditya Bakti, 2005,p.57.

H.S. Salim said that in a construction service contract document contains or includes the following matters:[37]

1. Letter of agreement signed by service users and service providers;
2. Bidding documents, namely documents compiled by service users which are the basis for service providers to prepare proposals or offers to carry out tasks that cover the scope of duties and requirements (general and specific, technical and administrative, contract conditions);
3. Proposals or offers, namely documents prepared by service providers based on auction documents that contain methods, bid prices, time schedules, and resources;
4. Minutes that contain agreements between service users and service providers during the process of evaluating proposals or offers by service users include clarification of matters that raise doubts;
5. Statement from the service provider stating the ability to carry out the work.

Construction agreements must be made in writing, but this is not an absolute matter, because without being made in writing, the agreement is also valid as long as it fulfills the legal requirements of the agreement contained in Article 1320 of the Civil Code, namely:

1) Agree that they commit themselves;
2) The ability to make an agreement;
3) Regarding certain things;
4) A valid reason

D. Default

The definition of default is a condition that is due to negligence or error, the debtor is unable to fulfill the performance as specified in the agreement and not in a situation which forcibly states that default is not fulfilling or negligent in carrying out obligations as specified in the agreement made between creditors with the debtor.

Default arises from agreement. This means that to postulate that a legal subject has been defaulted, there must be an earlier agreement between the two parties. From the agreement, the parties' obligation arises to carry out the contents of the agreement (achievement). These achievements can be prosecuted if they are not fulfilled. According to Article 1234 of the Criminal Procedure Code the performance is divided into 3 types:

1. Achievement to submit something (this achievement is contained in Article 1237 of the Civil Code);
2. Achievement to do something or do something (this type of achievement is found in Article 1239 of the Civil Code);
3. Achievement for not doing or not doing something (this type of achievement is found in Article 1239 of the Civil Code).

To find out since when the debtor is in default, it needs to be considered whether or not in the said words the grace period for implementing the achievement is determined or not. In the event that the grace period for the fulfillment of the "not determined" persuasiveness, it is necessary to warn the debtor so that he fulfills the performance. But in the event that the time limit has been determined, according to the provisions of Article 1238 of the Civil Code the debtor is considered negligent with the passing of the time limit specified in the agreement. [38]

This default problem must be stated in writing, that is by warning the party, that the other party wants immediate or short term payments. This warning or bill is called a subpoena. The way to do this subpoena is determined in Article 1238 of the Civil Code.

Regarding the default, the service provider that fails to carry out its obligations is given the right of defense to submit its reasons for its failure to carry out the achievement. There are three types of defense reasons that can be used by the defaulting party, namely:

a. The existence of a force mejeure, namely a condition that occurs beyond the ability of a human to suspect or handle it, so that the implementation of an agreement or agreement becomes impossible or if it can be implemented, the implementation will cause such a large loss from the service provider .
b. That service users themselves have not fully repaid all their obligations to service providers (exeptio non ademleti contractus).
c. That service users have given up their rights to request the implementation of these achievements from service providers (rechtsverwerking)[39]

[37]Salim, H. S. *Perkembangan Hukum Kontrak Innominaat Di Indonesia*. Jakarta: Sinar Grafika, 2008,p.90.
[38]Muhammad, Abdulkadir.*Op.Cit*., p. 204.
[39]Widjaja, Gunawan. *Seri Hukum Bisnis: Lisensi*. Jakarta: Rajawali Pers, 2001, p.23.

IV. DISCUSSION

A. The Nature of Penalty Sanctions Due to Defaults in Construction Work Contracts Giving Justice Values to Construction Service Providers

1. Fulfillment of the Principle of Trust

Basically the construction service business starts from one principle, namely trust or trust principle. Only through trust can the assignment / project be implemented. Because, what is offered is not a product, but a service product. It's just that, in the business of trust it is formed by the firmly held professionalism and code of ethics.[40]

The table below illustrates the opinions of respondents regarding fines sanctions as a form of fulfilling the principle of trust in construction service contractor contractors as follows:

Table 1
Penalty Sanction Is Fulfillment of the Principle of Trust

No.	Statement	Research sites							Total	
		1	2	3	4	5	6	7	P	F (%)
1	Strongly agree	2	7	5	-	3	3	7	**27**	**12,85**
2	Agree	15	13	10	12	20	17	13	**100**	**47,61**
3	Doubtful	4	3	4	2	-	5	-	**18**	**8,58**
4	Disagree	9	7	11	16	7	5	10	**65**	**30,95**
5	Strongly disagree	-	-	-	-	-	-	-	-	-
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**

Information:
1) Makassar city; 2) Palopo city; 3) Takalar Regency; 4) Bulukumba Regency; 5) Bone Regency; 6) Pare-pare city; 7) Wajo Regency

Source: Primary data processed, 2018

Based on the data above illustrates that the majority of respondents agreed that fines sanction as a form is the fulfillment of the principle of trust in construction service provider contractors.

2. Fulfillment of the Principle of Balance

The principle of balance implies that the implementation of construction work must be based on principles that ensure the realization of a balance between the ability of the service provider and the workload. Service users in determining service providers must comply with this principle, to ensure the selection of the most suitable service providers, and on the other hand can provide proportional equalization opportunities in employment opportunities for service providers.

The table below illustrates the opinions of respondents regarding penalty sanctions as a form of fulfilling the principle of balance of construction service provider contractors as follows:

Table 2
Penalty Sanction Is Fulfillment of Balance Principle

No.	Statement	Research sites							Total	
		1	2	3	4	5	6	7	P	F (%)
1	Strongly agree	5	5	4	10	9	6	8	**50**	**23,80**
2	Agree	17	20	13	8	16	21	14	**109**	**51,90**
3	Doubtful	5	2	5	5	3	2	5	**27**	**12,85**
4	Disagree	-	3	7	3	1	-	3	**17**	**8,10**
5	Strongly disagree	-	-	1	4	1	1	-	**7**	**3,97**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**

Information:
1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Pare-pare city ;7) Wajo regency

Source: Primary data processed, 2018

Based on the above data illustrate that the majority of respondents agreed that fines sanctions as a form of fulfillment of the principle of balance of construction service provider contractors.

[40]Mulyo, Sulistijo Sidarto. *Bisnis Konstruksi Dihadang Banyak Persoalan*. Jakarta: Elex Media Komputindo, 2013, p.85.

3. Compliance with the Principle of Compliance

In general, the position of service providers is almost always weaker than service users or the position of service users is always more dominant, where service providers almost always have to fulfill the draft contract that has been made by service users. This is inherited by the notion of Bouwheer (Building Employer), so that as is the nature of employers who are always more powerful.[41] With a dominant position, service users are more free to form contracts that can harm service providers.

The following is based on the Statistics of Contractor Business Entities from the Construction Services Development Institute of South Sulawesi Province, as follows:

Table 3
Statistics of Contracting Business Entities in South Sulawesi

No.	Regency/ City	Frequence	Percentage (%)
1.	Selayar	139	2,20
2.	Bulukumba	324	5,15
3.	Bantaeng	67	1,07
4.	Jeneponto	162	2,58
5.	Takalar	152	2,41
6.	Gowa	506	8,10
7.	Sinjai	120	1,90
8.	Maros	243	3,87
9.	Pangkajene Islands	180	2,87
10.	Barru	192	3,05
11.	Bone	251	3,99
12.	Soppeng	210	3,33
13.	Wajo	210	3,33
14.	Sidenreng Rappang	75	1,20
15.	Pinrang	254	4,03
16.	Enrekang	120	1,90
17.	Luwu	109	1,73
18.	Tana Toraja	154	2,44
19.	North Luwu	171	2,71
20.	East Luwu	234	3,71
21.	North Toraja	108	1,71
22.	Makassar	1930	30,69
23.	Pare-Pare	133	2,11
24.	Palopo	247	3,92
	Total	**6291**	**100 %**

Source: Secondary data processed, 2018

Based on the data above shows that, Makassar City has the largest Contractor Business Entity, which is as much as 1930 or equal to 30.67%; then the least is Sidenreng Rappang Regency with 75 or 1.19%.

In the implementation of contracts for the procurement of goods / services it is sometimes found that there is a promise of injury by the parties either by the Commitment Making Officer (PPK) or by the supplier of goods / services. This certainly will have an impact on the implementation of work both in terms of decreasing the quality of work, lack of quantity, and inaccurate time to complete work. Thus, the contract must be regulated in the contract and compensation that will be received by the parties making the agreement. But in this paper only the late penalties for the Government goods / services procurement contract will be discussed.

To find out the opinions of respondents regarding penalty sanctions, the fulfillment of the principle of compliance with construction service provider contractors can be seen in the table below:

Table 4
Penalty Sanction Is Compliance with Compliance Principle

No.	Statement	Research sites							Total	
		1	2	3	4	5	6	7	P	F (%)
1	Strongly agree	8	6	2	3	10	5	6	**40**	**19,04**
2	Agree	21	19	24	27	20	24	22	**157**	**74,76**

[41]Slamet, Sri Redjeki. "Kesempurnaan Kontrak Kerja Konstruksi Menghindari Sengketa."*Lex Jurnalica* 13, no. 3 (2016): 191-208.

3	Doubtful	1	3	4	-	-	1	1	**10**	**4,76**
4	Disagree	-	2	-	-	-	-	1	**3**	**1,44**
5	Strongly disagree	-	-	-	-	-	-	-	**-**	**-**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**
Information: 1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Parparecity7) Wajo regency										

Source: Primary data processed, 2018

Based on the above data, it is illustrated that the majority of respondents agreed to fine penalties as a form of prosecution of compliance with construction service provider contractors.

4. Fulfillment of the Principle of Morality

One of the factors that gives motivation to the person involved in carrying out legal actions is based on morality as a calling to his conscience. Basically, every construction service contract contains a moral principle in the form of good faith in order to create a moral bond or legal bond between the parties (service providers and service users).[42]

To find out the opinions of respondents regarding fines sanctions, the fulfillment of morality principles can be seen in the table below:

Table 5
Penalty Sanction Is Fulfillment of the Principle of Morality

No.	Statement	Research sites							Total	
		1	**2**	**3**	**4**	**5**	**6**	**7**	**P**	**F (%)**
1	Strongly agree	14	4	8	6	10	14	10	**66**	**31,42**
2	Agree	10	13	18	22	11	15	16	**105**	**50,00**
3	Doubtful	1	5	1	1	3	-	1	**12**	**5,71**
4	Disagree	4	7	3	1	5	1	2	**23**	**10,95**
5	Strongly disagree	1	1	-		1	-	1	**4**	**1,90**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**
Information: 1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Pare-pare city;7) Wajo regency										

Source: Primary data processed, 2018

Based on the data above illustrates that the majority of respondents agreed to fine penalties as a form of moral responsibility for construction service provider contractors.

5. Fulfillment of the Principle of Responsibility

The type of responsibility that is the obligation of the service provider relates to down payment, execution of work, results of work, labor, third party demands, third party demands and building failures. Accountability as mentioned above contains: (1) guarantee value; (2) the period of coverage; (3) disbursement procedures; (4) the rights and obligations of each party. In the event that the service provider does not fulfill the obligations in accordance with the construction work contract, the service user can withdraw later using collateral from the service provider as compensation for fulfilling the obligations of the service provider (Article 23 paragraph (1) letter PP No. 29 of 2000).

To find out the opinions of respondents regarding fines sanctions as a form of prosecution the responsibility of construction service provider contractors can be seen in the table below:

Table 6
Penalty Sanction Is Fulfillment of Principles of Responsibility

No.	Statement	Research sites							Total	
		1	**2**	**3**	**4**	**5**	**6**	**7**	**P**	**F (%)**
1	Strongly agree	10	7	12	5	8	7	12	**61**	**29,04**
2	Agree	18	20	16	20	20	23	15	**132**	**62,85**

[42]Irianto, Sulistyowati, and Sidharta. *Metode Peneltian Hukum: Konstelasi Dan Refleksi*. Jakarta: Yayasan Obor Indonesia, 2009, p.124.

3	Doubtful	-	2	2	4	2	-	3	**13**	**6,19**
4	Disagree	2	1	-	-	-	-	-	**3**	**1,42**
5	Strongly disagree	-	-	-	1	-		-	**1**	**0,50**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**
Information: 1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Pare-pare city;7) Wajo regency										

Source: Primary data processed, 2018

Based on the above data, it is illustrated that the majority of respondents agreed to fine penalties as a form of prosecution of compliance with construction service provider contractors.

B. Legal Substance That Regulates Fines Sanctions Due To Defaults In Construction Work Contracts That Guarantee Guaranteed Equity To Construction Service Providers

1. Legal Actualization

The implementation of construction services is carried out based on the principles of honesty and justice, benefits, equality, harmony, balance, professionalism, independence, openness, partnership, security and safety, freedom, sustainable development and environmental insight.

To find out the opinions of respondents regarding the legal substance of construction services, adjusting the development of construction services can be seen in the table below:

Table 7
The substance of the Law on Construction Services Has Adjusted the Development of Construction Services

No.	Statement	Research sites							Total	
		1	**2**	**3**	**4**	**5**	**6**	**7**	**P**	**F (%)**
1	Strongly agree	5	3	3	7	6	11	6	**41**	**19,52**
2	Agree	17	22	19	17	19	18	16	**128**	**60,95**
3	Doubtful	5	2	4	1	4	1	6	**23**	**10,95**
4	Disagree	3	3	4	3	1	-	2	**16**	**7,60**
5	Strongly disagree	-	-	-	2	-		-	**2**	**0,97**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**
Information: 1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Pare-pare city;7) Wajo regency										

Source: Primary data processed, 2018

Based on the table above it is known that the majority of respondents agree (60.95%) regarding the legal substance of construction services has adjusted the development of construction services. Law No. 2 of 2017 concerning Construction Services in lieu of Law No. 18 of 1999 concerning Construction Services turned out to have more material content than the previous Law. In addition, the latest Construction Services Law has many differences and is more detailed and involves more government in the construction services business.

2. Legal Synchronization

Synchronization is the alignment and acceleration of various laws and regulations related to existing laws and regulations that are being compiled that regulate a particular field.[43]

To find out the opinions of respondents regarding the existence of legal synchronization in the legal substance of construction services can be seen in the table below:

Table 8
The existence of legal synchronization in legal substance Construction service

No.	Statement	Research sites							Total	
		1	**2**	**3**	**4**	**5**	**6**	**7**	**P**	**F (%)**
1	Strongly agree	7	4	2	7	2	8	5	**35**	**16,68**
2	Agree	18	16	20	22	25	16	19	**136**	**64,76**

[43]Hukum, Sudut. "Sinkronisasi Hukum." Sudut Hukum, https://www.suduthukum.com/2016/11/sinkronisasi-hukum.html. AccessedonJuly20,2018.

3	Doubtful	4	7	5	1	3	2	4	**26**	**12,38**
4	Disagree	1	3	2	-	-	2	1	**9**	**4,28**
5	Strongly disagree	-	-	1	-	-	2	1	**4**	**1,90**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**
Information 1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Pare-pare city;7) Wajo regency										

Source: Primary data processed, 2018

Based on the data above shows that as much as 16.68% which states strongly agree that there is legal synchronization in the legal substance of construction services, as much as 64.76% which states that there is a legal synchronization in the substance of construction services law, as much as 12.38% who expressed doubt doubt about the existence of legal synchronization in the legal substance of construction services; as much as 4.28% who disagree regarding the existence of legal synchronization in the legal substance of construction services; and as much as 1.90% which stated strongly disagree with the existence of legal synchronization in the legal substance of construction services.

C. Implementation of Penal Sanctions Due to Defaults on Equitable Construction Contracts of Construction Service Providers

1. Delay Fines

One of the problems for Ministries / Institutions / SKPD / Institutions (K / L / D / I) that are carrying out goods and services procurement activities that use a single year contract is that all work must be completed before the end of the fiscal year. But this is where the problem that often occurs is a lot of work procurement of goods and services that turned out to be not or has not been completed while the contract for implementing the work has ended.

To find out the opinions of respondents regarding payment of fines in the event of delays in the implementation of construction services, see the table below:

Table 9
Payment of fines if there is a delay Implementation of Construction Services

No.	Statement	Research sites							Total	
		1	**2**	**3**	**4**	**5**	**6**	**7**	**P**	**F (%)**
1	Strongly agree	10	7	8	14	10	14	9	**72**	**34,28**
2	Agree	16	16	18	10	11	15	17	**103**	**49,04**
3	Doubtful	1	2	1	1	3	-	2	**10**	**4,76**
4	Disagree	2	4	3	4	5	1	2	**21**	**10,02**
5	Strongly disagree	1	1	-	1	1	-	-	**4**	**1,90**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**
Information: 1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Pare-pare city;7) Wajo regency										

Source: Primary data processed, 2018

Based on the data above shows that as many as 49, 04% stated that they agreed on the payment of fines if there was a delay in the implementation of construction services; 34.28% who strongly agree regarding payment of fines if there is a delay in the implementation of construction services; 10.02% who stated that they did not agree regarding the payment of fines if there was a delay in the implementation of construction services in doubt, and 1.90% which stated strongly disagree regarding the payment of fines if there was a delay in the implementation of construction services.

2. Performance bond

The Implementation Guarantee must be given by the provider when the contract for the procurement of goods for services will be signed. The Commitment Making Officer will not sign the contract if the offer guarantee has not been provided by the provider. Implementation guarantees can be issued by commercial banks, insurance companies, or guarantee issuers, but PPK (Commitment Making Officials) prefer guarantees from commercial banks.

To find out the opinions of the respondents above regarding the guarantee of implementation so that the contract can be implemented properly can be seen in the table below:

Table 10
Guaranteed Implementation For Contracts To Get Well Implemented

No.	Statement	Research sites							Total	
		1	2	3	4	5	6	7	P	F (%)
1	Strongly agree	5	11	4	4	7	9	4	**44**	**20,95**
2	Agree	21	13	22	18	17	20	25	**136**	**64,76**
3	Doubtful	1	2	2	4	5	1	-	**15**	**7,14**
4	Disagree	3	4	2	3	1	-	1	**14**	**6,66**
5	Strongly disagree	-	-	-	1	-	-	-	**1**	**0,49**
	Total	**30**	**30**	**30**	**30**	**30**	**30**	**30**	**210**	**100,00**

Information
1) Makassar city; 2) Palopo city; 3) Takalar regency; 4) Bulukumba regency; 5) Bone regency; 6) Pare-pare city;7) Wajo regency

Source: Primary data processed, 2018

Based on the data below, it shows that as many as 20.95% respond strongly to the guarantee of implementation so that the contract can be implemented properly; 64.76% answered agreeing on the implementation guarantee so that the contract can be implemented properly; as many as 7.14% who answered doubtfully about the guarantee of implementation so that the contract could be implemented properly; 6.66% answered that they did not agree on the guarantee of implementation so that the contract could be implemented properly, and as many as 0.49% answered strongly disagree regarding the guarantee of implementation so that the contract could be implemented properly.

The guarantee of implementation functions as part of risk management related to controlling the implementation of work. In provider performance management, there are two main aspects that must be considered, namely the motivational aspects and capability aspects. The high motivation of providers can be inversely proportional to the capabilities possessed. Generally, though not all, providers that appear to be highly motivated tend to have inadequate capabilities. Conversely, providers who have high capability tend to have low motivation to be involved in government projects for various reasons.

V. CONCLUSION

1. In essence the penalty sanctions on construction work contracts are the responsibility of fulfilling the principles of the agreement, namely the principle of trust, the principle of balance, the principle of obedience, the principle of morality, and the principle of responsibility which leads to the value of justice. However, in practice, fine penalties due to default on construction work contracts have not provided fair values in the construction work contract.
2. The legal substance governing fines due to defaults against construction service providers has not provided a guarantee of justice to the construction service providers in the construction work contract because there are still rules that have not been synchronized in Law No. 2 of 2017 concerning construction services.
3. The implementation of fine sanctions due to defaults on construction work contracts have not provided justice because in practice only construction service providers are subject to fines while service users are not subject to fines if they default.

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Muhammad Sabir. " Penalty Sanctions Due to Defaults in ConstructionWork Contracts in the Perspective of Justice. ″ IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 02, 2019, pp. 22-35