



LEGAL REVIEW OF CONTRACTOR'S BREACH OF PERFORMANCE IN COOPERATION RELATIONSHIP WITH SUB CONTRACTORS IN THE WORK ON THE BELAWAN TYPE C HOSPITAL PROJECT

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15 Keywords: <i>Contractor,</i> <i>Subcontractor, default</i>	<p>In the context of increasingly complex and dynamic infrastructure development, government construction projects have a very important role in driving economic growth and social development in Indonesia. These projects often involve many parties, including main contractors and subcontractors, who collaborate to complete the work according to the specifications and standards set. The cooperative relationship between contractors and subcontractors is very important to ensure the smooth running and success of the project, and to ensure that all parties fulfill their obligations stipulated in the contract. However, in its implementation, problems often occur that can disrupt this relationship, one of which is default. This study aims to determine the legal regulations governing the cooperative relationship between contractors and subcontractors in the implementation of government construction projects, and to determine how legal protection is provided to subcontractors in the event of default by the contractor. The research method used in this study is the normative legal research method, by observing, studying, and understanding legal material, based on the study of positive law.</p> <p>From this study, it can be concluded that the legal rules governing the working relationship between contractors and subcontractors in carrying out government construction projects are regulated in Article 1320 of the Civil Code concerning the requirements for the validity of an agreement and Article 1234 of the Civil Code concerning the elements of default. Article 52 of Law Number 2 of 2017 concerning Construction Services states that service providers and subservice providers in the implementation of construction must operate in accordance with the agreement stipulated in the contract. Article 53 paragraph (3) states that if the service provider transfers part of the work to a subcontractor, the payment request must be accompanied by proof of payment to the subcontractor. The legal protection provided to subcontractors in the event of default by the main contractor includes several aspects, such as the existence of clear contract provisions, which explain the rights and obligations of the parties. Subcontractors have the right to claim compensation through a lawsuit in court as stated in the Medan District Court Decision No. 29/Pdt.G/2022/PN Mdn which resolved the dispute between the plaintiff, Bayu Afandi Nasution, ST, as a subcontractor, with the main defendant, PT Gunakarya Nusantara, who was suspected of default. The decision gave the plaintiff the right to seize collateral against the defendant's account and restore the subcontractor's financial rights as an effort to legally protect the subcontractor's rights.</p>

I. INTRODUCTION

Construction is a sector that plays an important role in the development of a country's infrastructure. Through construction projects, the government can provide facilities and infrastructure that support the economic, social, and cultural activities of the community. In its implementation, construction projects often involve various parties, such as main contractors and subcontractors, who work together to achieve project goals in accordance with the agreed agreement.(Sinaga, Mahat, and Simarmata 2023)

However, it is not uncommon for cases of default in the working relationship between the main contractor and the subcontractor to occur, resulting in delays, decreased quality of work, or even delays to the project as a whole. This phenomenon shows the importance of legal review of default in the working relationship between contractors and subcontractors on government projects.

Default in the context of civil law is defined as the failure of one party to fulfill the agreed contractual obligations, either in whole or in part.

In the working relationship between the main contractor and the subcontractor, default can occur in various forms, such as late payment, failure to complete work by the deadline, or the quality of work that does not meet the standards agreed in the contract.(2018 Novel)

This act of default not only has an impact on the subcontractor who is harmed but also has the potential to harm the government as the project owner because it can hinder the smooth completion of infrastructure projects funded by the public budget. Legally, the relationship between the main contractor and the subcontractor is regulated by a number of regulations, including Law Number 2 of 2017 concerning Construction Services and Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services.(Haryadi 2022)

The regulation establishes the rights and obligations of the parties, standards of cooperation, and dispute resolution steps in the event of default.(Hasibuan, Sembiring, and Rafianti 2024)In addition, the provisions in the Civil Code (KUH Perdata) also provide a legal basis for claims for damages due to default. Although there are regulations that regulate in detail, cases of default in government projects still often occur due to various factors, such as limited funds, differences in contract interpretation, and weak supervision of project implementation.

The agreement or contract made between the two parties must meet four main requirements, namely, mutual agreement, legal capacity to make an agreement, the existence of a clear object, and a legitimate purpose. The contents of the agreement must be agreed upon by both parties to avoid deviations in its implementation.(GUMAY 2024)The involvement of the project provider in selecting subcontractors is already very significant. Therefore, it is reasonable for the law to recognize the existence of a legal relationship between the project provider and the subcontractor, even though this relationship is not explicitly stated in the agreement. This involvement shows that the project provider not only plays a supervisory role, but also has a strong influence in the subcontractor selection process.

This creates a more complex dynamic, where the subcontractor, although not directly bound by contract with the project provider, remains responsible for the execution of the work in accordance with the project provider's expectations. With this influence, the legal

relationship that arises between the project provider and the subcontractor can be considered valid in the eyes of the law.(2011)

This situation is important to understand, considering the risks that subcontractors may face if their work results do not match the expectations of the project provider. Legal recognition of this relationship can provide protection for all parties involved, as well as clarify the rights and obligations of each in the project implementation process.

Therefore, problems often arise between contractors and subcontractors that result in default by the contractor against the subcontractor. This situation is a serious concern in the construction industry, because the relationship between the two parties is very important for the smooth running of a project. When contractors choose to hand over part of the work to subcontractors, they should do so in good faith and respect the agreement that has been made.(Sembiring et al. 2022)

However, in practice, there is often a lack of understanding or dissatisfaction that leads to a breach of contract. This problem often stems from the contractor's inability to fulfill the agreed obligations. For example, after the project is handed over to the subcontractor and the work is completed, the contractor may fail to make payments as agreed in the contract.

Dissatisfaction from subcontractors due to this default can cause them to lose trust and affect future cooperation. As a result, subcontractors need to coordinate frequently with contractors and suppliers to facilitate the work process and prevent conflicts in the work. Supervision of the implementation of government construction projects is not only carried out at the final stage of the project, but also periodically during the project. This is important to detect potential problems early and take corrective measures.

As in the case that occurred in 2022, in the midst of the implementation of the Medan City government project for the construction of a type C hospital in Medan Labuhan District. In the project, PT. Guna Karya Nusantara was trusted as the main contractor responsible for carrying out the hospital construction project. To complete the project, PT. Guna Karya Nusantara contracted subcontractors.

During the implementation of the project, allegations of default by the main contractor against the subcontractor arose, including late payments and violations of rights stipulated in the cooperation agreement. In the middle of the work,

the project had to be temporarily stopped because PT. Guna Karya Nusantara, the company responsible for the project, did not disburse the funds needed to continue the work. This problem arose when PT. Guna Karya Nusantara's account was blocked by Bank Sumut at the request of the Bandung Pratama Tax Office. This blocking was related to tax receivables that had not been settled by PT. Guna Karya Nusantara.

As a result of the delay in the disbursement of funds, the subcontractors involved in the project, led by Bayu Afandi Nasution, felt disadvantaged. The project work was already underway, and the subcontractors had incurred large operational costs to meet the project targets. However, without the disbursement of funds from PT. Guna Karya Nusantara, the subcontractors could not continue the work, which had a direct impact on the progress of the hospital construction.

The subcontractor believes that PT. Guna Karya Nusantara has committed a breach of contract, or failure to fulfill obligations according to the agreement. Therefore, Bayu Afandi Nasution as the subcontractor decided to file a breach of contract lawsuit against PT. Guna Karya Nusantara at the Medan District Court. This lawsuit aims to obtain justice for the losses suffered by the subcontractor due to the delay in payments that should have been made by PT. Guna Karya Nusantara as the main contractor.

The lawsuit filed by Bayu Afandi Nasution as a subcontractor was successfully won in court with case number 29/Pdt.G/2022/PNMdn. In the verdict, the court sentenced PT. Guna Karya Nusantara as the defendant to return the subcontractor's money, which is Rp. 10,295,525,621. The funds were previously stored in PT. Guna Karya Nusantara's checking account with the number 100.01.04.000091-0.

This decision was made after the court considered the evidence submitted by the plaintiff regarding the losses due to the delayed payment. With this decision, Bayu Afandi Nasution is expected to get his rights back, including the funds he is entitled to to continue working on the type C hospital project.

The victory of this lawsuit is also expected to provide a lesson to contractors to be more responsible in fulfilling their obligations. The court also determined that PT. Guna Karya Nusantara must comply with the verdict, so that the rights of the subcontractors can be fully restored.

A government project that should be a symbol of success is instead caught up in a legal dispute, (Talib 2013) creating uncertainty and distrust among business actors in the construction industry. This case is a valuable lesson about the importance of integrity and transparency in contractual relationships between contractors and subcontractors. (Haryadi 2022)

This research is very relevant considering the conflicts that often arise between contractors and subcontractors in government projects. In such cooperation, it is not uncommon to find cases where one party violates the contract agreement that has been drawn up together. This condition shows the importance of a comprehensive evaluation of the legal rules governing the contractor-subcontractor relationship, as well as the legal protection provided to subcontractors when there is a default by the contractor.

This study aims to explore the extent to which existing regulations are effective in protecting subcontractors and ensuring that subcontractors obtain fair rights in government project cooperation. This study is expected to be a reference for construction industry players in understanding the legal aspects and risks that may arise when a contract breach occurs. The existence of clear legal rules will help prevent conflict and provide fair solutions when problems such as default occur.

Based on the description above, the author formulates the problems analyzed as follows:

1. What are the legal rules governing the working relationship between contractors and subcontractors in government construction projects?

What legal protection is provided to subcontractors in the event of default by the contractor?

II. RESEARCH METHODS

The research method applied in this study prioritizes the normative legal approach, by observing, studying, and understanding legal materials based on analysis of positive law. Normative legal research is library legal research because normative legal research is carried out by examining library materials or secondary data only. (Indra Utama Tanjung 2024)

The type of research in this study is Normative legal research, which is a scientific procedure that focuses on the study of applicable legal rules, including analysis of relevant

principles, doctrines, and laws and regulations. In the context of this study, a normative approach is used to analyze contractor default in a cooperative relationship with subcontractors on government construction projects, with reference to regulations such as the Civil Code (KUHPerdata), construction services laws, and other regulations.(Yam 2022)

The legal material for normative legal research is to use secondary data which is generally known as legal material consisting of primary legal material, secondary legal material and tertiary legal material. Secondary data used in this study include the Civil Code, Law Number 2 of 2017 concerning Construction Services, and Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services and primary legal materials include laws and other legal regulations relevant to the topic of this research.

III. RESULTS AND DISCUSSION

A. Legal Rules Governing the Cooperative Relationship Between Contractors and Subcontractors in the Implementation of Government Construction Projects.

Itsbat nikah is the process of legalizing a marriage that has taken place but is not officially recorded in an authorized marriage registration institution. The word "itsbat" comes from Arabic which means to establish or legalize, while "nikah"

A subcontractor is an individual or company that signs an agreement to perform some or all of the tasks listed in another party's contract. The main contractor usually hires subcontractors to complete specific work or tasks as part of the overall project.(2018 Novel)

Generally, subcontractors are involved in fields related to construction and civil engineering. However, the scope of subcontractor work is now wider, including the information technology and business services sectors. The use of subcontractors aims to reduce the risk borne by the main contractor. By involving subcontractors, the main contractor can get the same, or even better, work results than if they did it themselves.

In the context of government projects, the relationship between contractors and subcontractors is governed by several legal frameworks that aim to safeguard the interests of all parties. The Civil Code (KUHPerdata), especially Articles 1320 and 1338, provides a basis for the principle of freedom of contract and

the requirements for the validity of an agreement. These articles stipulate that contracts between contractors and subcontractors must be based on a valid agreement and must not violate the law or public order.

In addition, Law No. 2 of 2017 concerning Construction Services confirms the rights and obligations of the parties in a construction services contract, including the contractor's obligation to ensure that the subcontractors they choose have permits and meet the required quality standards.(Wardiono et al. 2021)

This legal regulation is also designed to ensure that the implementation of government construction projects is transparent and accountable. In Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods and Services, various procedures that must be followed in the procurement of goods and services are regulated, including provisions for contractors to ensure that subcontracted work can be completed in accordance with the agreed time and specifications.(Bagenda et al. 2023)

Clear and firm legal regulations in the working relationship between contractors and subcontractors in government construction projects play an important role in maintaining the smooth implementation of the project. These regulations allow the parties to work according to their respective duties and responsibilities and ensure that the final results of the project can be accounted for. Without proper regulations, this working relationship can become unstable and risk causing legal problems in the future.

The legal rules governing the working relationship between contractors and subcontractors are stated in the following provisions:

1. Civil Code (KUHPerdata).(Tutik and SH 2015)

The Civil Code (KUHPerdata) is the main legal basis in cooperation contracts between contractors and subcontractors, especially through regulations regarding agreements or contracts. In Article 1320 of the Civil Code, there are four conditions that must be met for an agreement to be considered valid, namely an agreement between the two parties, the capacity to make an agreement, a specific object, and a lawful cause. These conditions apply to all types of agreements, including cooperation contracts between contractors and subcontractors, and are the basis for the validity of the legal relationship between the two. Thus, a contract will be considered valid if both parties have reached an

agreement, have sufficient legal capacity, and the object and purpose do not conflict with the law or public order.

In addition, the principle of freedom of contract as regulated in Article 1338 of the Civil Code provides flexibility for the parties to formulate the terms of their contract. This principle emphasizes that a legally made contract will bind the parties like a law. This means that the parties in this cooperation contract must fulfill the rights and obligations as agreed in their contract. In the relationship between contractors and subcontractors, the principle of freedom of contract allows the parties to determine various aspects, such as the scope of work, payment terms, and other relevant provisions according to their respective agreements.

Thus, both the conditions for the validity of the agreement and the principle of freedom of contract are fundamental principles that not only guarantee the validity of the contract, but also provide flexibility for the parties to negotiate and reach mutually beneficial agreements in the implementation of government construction projects. This is very important to ensure that the project can run well, in accordance with the expectations and standards set.

2. Law Number 2 of 2017 concerning Construction Services.(Tarigan, Zarzani, and Fatmawati 2019)

In Law Number 2 of 2017 concerning Construction Services, the term "subcontractor" is not used. Instead, the term "service subprovider" is used, which refers to the party that provides construction services to the service provider. The "service provider" itself is the party that provides construction services. Article 52 of Law Number 2 of 2017 concerning Construction Services states that service providers and service subproviders in the implementation of construction must operate in accordance with the agreement set out in the contract.

The work relationship between Service Users and Service Providers must be stated in the form of a construction work contract. The provisions regarding this contract also apply to construction work relationships between service providers and service sub-providers.

Based on Munir Fuady's opinion, subcontractors refer to third parties involved by the main contractor to carry out certain obligations arising from the construction contract between the main contractor and the bouwheer (task giver). The work carried out by the

subcontractor is for and on behalf of the main contractor.

Service providers and sub-service providers are required to carry out the rights and obligations as stated in the construction work contract. Article 48 letter b of Law Number 2 of 2017 states that a construction work contract for the implementation of construction services may include provisions on sub-service providers and suppliers of materials, building components, and/or equipment that must comply with applicable standards. Based on Law Number 2 of 2017 concerning Construction Services, the forms of subcontracts between the main contractor and subcontractors include:

- a. main job with specialization characteristics,
- b. supporting work,
- c. provision of materials, building components, and/or equipment.

In this law, the term main contractor is defined as a service provider, while subcontractors are identified as subservice providers.

3. Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services(Sangkilang 2023)

Government policies related to government procurement of goods/services also pay attention to the involvement of small businesses. Article 65 paragraph (6) of Presidential Decree Number 16 of 2018 concerning Government Procurement of Goods and Services states that non-small service providers implementing projects can collaborate with small businesses in the form of partnerships, subcontracts, or other forms of cooperation, if the small business has competence in the related field. In addition, Article 63 paragraph (3) of Presidential Decree Number 16 of 2018 concerning Government Procurement of Goods and Services.

The subcontractor is tasked with carrying out parts of the contract given to him according to the agreement made with the main business actor. Thus, the subcontractor acts as a third party involved by the main business actor to handle certain tasks or jobs in the project.

Presidential Regulation Number 16 of 2018 also regulates provisions regarding payment for work involving subcontractors. Article 53 paragraph (3) states that if a service provider transfers part of the work to a subcontractor, the payment request must be accompanied by proof of payment to the subcontractor, which reflects

the progress of the work that has been completed by the subcontractor.

Based on the provisions of subcontracting in Presidential Regulation Number 16 of 2018, it can be concluded that the form of subcontracting from the main contractor to the subcontractor is limited to the scope of the work subcontract. In this Presidential Regulation, the main contractor is referred to as the "provider" or "main business actor," while the term "subcontractor" remains unchanged.

4. Default in the Work Contract between the Contractor and the Subcontractor.

Default occurs when one party does not carry out the obligations set out in the agreement, whether arising from the agreement or the provisions of the law. This violation can occur intentionally or unintentionally. In the case of unintentional, default can be caused by the inability of the party to fulfill its obligations or because of conditions that force it to be unable to fulfill the agreed performance.

Elements of default include:

- a. The existence of a valid agreement (1320) of the Civil Code
- b. There are errors (due to negligence and intent)
- c. There is a loss
- d. The existence of sanctions (can be in the form of compensation, resulting in cancellation of the agreement, transfer of risk
- e. Paying the case (if the matter goes to court)

B. Legal Protection Given to Subcontractors in the Event of Default by the Contractor.

Default refers to the failure of one party to fulfill its obligations according to the agreed contract. In the context of a construction contract, default can occur if the main contractor does not carry out the specified obligations, which ultimately harms the subcontractor who has completed his part of the work according to the agreement. According to Salim HS, the causes of default can vary, both intentional and unintentional, and can result in a claim for compensation by the injured party. (JUVENTY and RETNO 2024)

Based on Article 1320 of the Civil Code (KUHPerdata), a contract must meet the legal requirements, which include agreement, capacity to contract, a specific object, and a lawful cause. If the main contractor is in default, the subcontractor has the right to demand fulfillment

of the contract or compensation for losses incurred.

Article 1338 of the Civil Code states that a legally made contract binds the parties like a law. Thus, the main contractor is obliged to fulfill its obligations to the subcontractor in accordance with the agreement. If the contractor fails to fulfill its obligations, the subcontractor has the right to file a lawsuit to demand fulfillment or compensation.

Law No. 2 of 2017 concerning Construction Services provides specific provisions regarding the rights and obligations of contractors and subcontractors. Article 52 states that service providers (main contractors) are required to fulfill the rights of subservice providers (subcontractors) in accordance with the agreement. This provision protects subcontractors from detrimental defaults and provides assurance that the contract must be implemented in accordance with the agreed provisions. (SIMAMORA 2021)

Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services regulates the payment procedure to subcontractors. Article 53 paragraph (3) states that if the main contractor hands over part of the work to a subcontractor, the payment request from the main contractor must be accompanied by proof of payment to the subcontractor according to the progress of the work. This provision serves as protection so that subcontractors still receive the appropriate payment rights, even if the main contractor is in default.

Medan District Court Decision No. 29/Pdt.G/2022/PN Mdn highlights legal protection for subcontractors in cases of default by contractors. This case involves a dispute between the plaintiff, Bayu Afandi Nasution, ST, as a subcontractor, and the main defendant, PT Gunakarya Nusantara, who is suspected of defaulting on payment obligations in a construction project. The decision gives the plaintiff the right to seize collateral against the defendant's account and restore the subcontractor's delayed financial rights, reflecting legal protection efforts to enforce subcontractor rights against default.

In this case based on the Statement of Decision of the Limited Liability Company Meeting of PT. Gunakarya Nusantara, Number 16, dated May 18, 2017, made by Notary Thamind Tirtapradja, SH, Sp.1 in Bandung. The statement letter essentially appointed Bayu Afandi Nasution,

ST was appointed by the board of directors of PT. Gunakarya Nusantara as Director VII at PT. Gunakarya Nusantara. The appointment was intended so that Bayu Afandi Nasution, ST could carry out the work on the type C hospital construction project from the Medan City government in Medan Labuhan.

The problem in the implementation of the project occurred because it turned out to have tax debts so that the special account for the implementation of the project which directly deals with the financing provided by the Medan city government which was opened by Bayu Afandi Nasution, ST with the account number Bank Sumut Number 100.01.04.000091-0 was opened. Based on this, Bayu Afandi Nasution, ST as a subcontractor considered PT. Gunakarya Nusantara as the main contractor to be in default against him because he did not provide flexibility in managing the finances of the construction of the type C hospital project in accordance with the agreement so that the subcontractor felt a loss because the money in the account was used.

One of the crucial decisions in this decision is the right given to the plaintiff to seize the defendant's account. Seizing the security is a legal step that aims to protect the assets and interests of the plaintiff, in this case, the subcontractor. With this right, the subcontractor can take preventive action to ensure that they will not suffer further losses due to default by the main contractor.

This is important, given that many subcontractors may not have the financial resources to absorb losses resulting from late payments. The court's move to allow the seizure of collateral reflects a desire to maintain balance in the business relationship between contractors and subcontractors. In the construction industry, where projects often involve multiple parties and significant investments, this type of protection can contribute to market stability.

By providing clear legal protection for subcontractors(Sagita, nd)This decision not only protects individual interests but also creates a fairer and more transparent climate in the construction sector. This is an important step towards strengthening subcontractors' rights and upholding justice in contractual relations.(Ghany and Yandi 2024)

Legal protection for subcontractors in the face of default by the main contractor is essential to ensure fairness in construction work relationships. With clear contract provisions, the principle of freedom of contract, laws governing

construction services, and dispute resolution mechanisms, subcontractors have a way to protect their rights and claim compensation in the event of default.

IV. CONCLUSIONS AND RECOMMENDATIONS

The legal rules governing the working relationship between contractors and subcontractors in government construction projects include a number of important regulations, including the Civil Code (KUHPerdata) which regulates the legal requirements of agreements and the principle of freedom of contract, as well as Law No. 2 of 2017 concerning Construction Services and Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods and Services. These rules provide a clear legal framework for both parties in determining their rights and obligations, as well as the procedures to be followed in the implementation of the contract.

Legal protection provided to subcontractors in the event of a default by the main contractor includes several aspects, such as the existence of clear contract provisions, which explain the rights and obligations of the parties. Subcontractors have the right to claim compensation through a lawsuit in court as stated in the Medan District Court Decision No. 29/Pdt.G/2022/PN Mdn which resolved the dispute between the plaintiff, Bayu Afandi Nasution, ST, as a subcontractor, and the main defendant, PT Gunakarya Nusantara, who was suspected of default. The decision gives the plaintiff the right to seize collateral against the defendant's account and restore the subcontractor's financial rights as an effort to legally protect the subcontractor's rights. Thus, subcontractors have a legitimate way to claim their rights and obtain justice in the existing working relationship.

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