



## Fines Sanction as a Meeting Form Principles of Agreement Contracts Construction Service

Muhammad Sabir Rahman<sup>1</sup>

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### ABSTRACT

*In national development, construction services have an important and strategic role in supporting the growth and development of the economic, social and cultural fields. Construction Work Contracts (Construction Services Procurement Contracts), in principle, are consensual (a reciprocal agreement), between the Employer (Project Owner) and the Service Provider (Contractor); Service Providers (Contractors) with Sub Service Providers (Sub Contractors). This research uses normative (doctrinal) legal research type. This research was conducted by examining all laws and regulations related to agreements that arise as well as the legal consequences in the form of financial penalties for breach of contract.*

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### 1. Introduction

The Government of Indonesia in implementing National Development always rests on the National Goals as mandated in the Preamble of the 1945 Constitution of the Republic of Indonesia. The objectives of the Indonesian National Development include to educate the life of the nation, create public welfare, protect the entire Indonesian blood spill, and help carry out world order and lasting peace.

Development is essentially an effort to realize the national goals of the Indonesian people who are advanced, independent, prosperous, just, based on faith and piety to God Almighty. In this case, the implementation of national development requires costs that are generally obtained from the state/regional budget of revenue and expenditures whose implementation is in collaboration with the national private sector.

In national development, construction services have an important and strategic role considering which construction services produce the final product, both in the form of

<sup>1</sup> STIH Amsir, Indonesia. E-mail: Sabirrahman6471@gmail.com

facilities and infrastructure that functions to support the growth and development of various fields, especially the economic, social and cultural fields to create a just and prosperous society that is equitable material and spiritual based on Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>2</sup> Apart from playing a role in supporting various fields of development, construction services also support the growth and development of various goods and service industries needed in the implementation of construction services.<sup>3</sup>

Besides playing a role in supporting various fields of development, construction services also play a role in supporting the growth and development of a variety of goods and service industries which 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 strong business structure and to realize the results of quality construction work. This reliability is reflected in the competitiveness and ability to carry out construction work more efficiently and effectively, while the solid business structure is reflected in the creation of a synergic partnership between service providers, large, medium and small scale, as well as those with specialist, and skilled general qualifications. Also, the necessity of the construction services implementation to be realized to ensure equality of position between service users and service providers in their rights and obligations.

## **2. Method**

This research used normative (doctrinal) legal research type. Meanwhile, this research approach used two approaches, namely statutory approach and conceptual approach. The first approach is carried out by examining all relevant laws and regulations with fines due to default in construction work contracts. The conceptual approach advances the views and doctrines which is developed in the science of law. This approach is important because understanding the views/doctrines that develop in the science of law can be a platform for building legal arguments when resolving the legal issues at hand. This view or doctrine will later clarify ideas by providing legal understandings, legal concepts, and legal principles which are relevant to the penalties resulting from defaults in construction work contracts.

## **3. Fines Sanction as Forms of Fulfilling Contact Basis**

The existence of three principles as a reference in this research is expected to be able to answer problems related to the form of non-compliance with the agreements which is made by the parties. The principles are: the principle of trust, the principle of balance, and the principle of compliance.

*First*, the principle of trust is very important in the business of construction services, because trust can lead to confidence. Therefore, the parties must first grow trust between them that each other will fulfill the promised promise or carry out their achievements in the future.

There is a belief that both parties bind themselves to a contract that has binding power as a law as determined by Article 1338 paragraph (1) Burgerlijk Wetboek (BW).

A trust that is fundamental or worthy of being raised by facts, events or behavior of one or more people, this means that trust itself is directed to the existing conditions for which the institution needs attention. The difficulty is to determine the objective situations and conditions of the justifying act (giving justification reasons) for the act. Thus the trust is

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<sup>2</sup> Mulyo, Sulistijo Sidarto. (2013). *Bisnis Konstruksi Dihadang Banyak Masalah*. Jakarta: PT. Elex Media Komputindo, p. 71.

<sup>3</sup> Soehino. (2008). *Ilmu Negara*. Yogyakarta: Liberty, p. 58.

subjective, so it is necessary to establish psychological criteria, which are used without being explicitly referring to the 127 element of “subjective”. Therefore a contract can become valid despite the fact that there is an “objective” that actually one Party is not available to be bound or the basis of the trust of the other party which can be justified or grounded (gerechtesteardige vertrouwen).

In the implementation of construction service agreements, especially at the precontractual stage, each party (user and provider of construction services) must enter into an agreement by avoiding violations of the contract provisions of the freedom principle (contractsvrijheid) and abuse of circumstances (misbruik van omstandigheden) as applicable provisions.

Basically the construction business services starts from one principle, namely trust or the principle of trust. It is only through trust that the assignment/project can be carried out. The offered is not a product, but a service product. Merely, it is formed by upholding professionalism and ethical codes in the business of trust. The table below illustrates the opinion of respondents regarding the sanction of fines as a form of fulfilling the principle of trust of contractors providing construction services as follows:

**Table 1.** a Fines Sanction as Principle of Trust, 2018.

Interpretation	Research Location							Sum	
	1	2	3	4	5	6	7	P	F (%)
Strongly Agree	5	3	3	7	6	11	6	41	19,52
Agree	17	22	19	17	19	18	16	128	60,95
Doubt	5	2	4	1	4	1	6	23	10,95
Disagree	3	3	4	3	1	-	2	16	7,60
Strongly Disagree	-	-	-	2	-	-	-	2	0,97
<b>Sum</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>210</b>	<b>100</b>

*Source: Primary data, 2018. Location: Makassar, Palopo, Takalar, Bulukumba, Bone, Parepare and Wajo (Edited).*

Table 1 describes about the majority of respondents agreed to a fines sanction as a form of fulfilling the principle of trust of construction service providers. Theoretically, the principle of trust is very important in making agreements, because trust can lead to confidence for the parties that the agreement will be implemented by the parties. Therefore, the parties must foster a trust firstly between them that each other will fulfill the promise or carry out their achievements in the future. With trust, both parties bind themselves to a contract which has a binding power as a law.

*Secondly*, the principle of balance is the principle which requires both parties to fulfill and implement the agreement. The service user has the power to demand performance and if necessary can demand the payment of performance through the debtor’s wealth, but the service provider also bears the obligation to carry out the agreement in good faith.

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

The table below describes the respondents opinion regarding the sanction of fines as a form of fulfilling the principle of construction balance service provider contractors as follows:

**Table 2.** a Fines Sanction as Principle of Balance, 2018.

Interpretation	Research Location							Sum	
	1	2	3	4	5	6	7	P	F (%)
Strongly Agree	5	5	4	10	9	6	8	50	23,80
Agree	17	20	13	8	16	21	14	109	51,90
Doubt	5	2	5	5	3	2	5	27	12,85
Disagree	-	3	7	3	1	-	3	17	8,10
Strongly Disagree	-	-	1	4	1	1	-	7	3,97
<b>Sum</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>210</b>	<b>100</b>

*Source: Primary data, 2018. Location: Makassar, Palopo, Takalar, Bulukumba, Bone, Parepare and Wajo (Edited).*

Based on table 2description, the majority of respondents agreed to sanction fines as a form of fulfilling the construction principle of balance service provider contractors.

The realization of the principle of balance in the construction services agreement is necessary to realize mutually beneficial agreements, including the imposition of financial penalties.

The findings in the study explained that the construction service providers are presumed about the principle of balance which is actually a public secret and the imbalances sometimes occur in construction service agreements. When the provider of goods/services in this case is the contractor who is late in completing the work, the penalty is deducted directly from the last payment made by the service user. However, when the service user is late paying the performance, the provider only awaits until the rights are fulfilled.

The circumstances happened because none of the contractors had sued the service users by submitting supporting data such as what had been stipulated in the construction services agreement. This is due to the lack of knowledge of the contractor regarding the regulations or legislation regarding the construction services agreement. But if there is a late payment for work that has been completed by the service provider, the fault is not entirely caused by the service user but the budget disbursement from the agency.

The legal compliance of the community is essentially the loyalty of the community or legal subjects to the law. Loyalty is manifested in the form of real behavior which is obeying the law.

In a contrario, society is not compliant with the law because the community is faced with two claims of loyalty, between the one is against the other. For example, the community is faced with loyalty to the law or loyalty to personal interests which are contrary to the law, such as many traffic violations, corruption, acts of anarchism, etc. Moreover, the public becomes brave to not obey the law for personal interests because the law does not presently have an authority. The law enforcers because of their personal interests are no longer good law enforcers. Thus, this case, loyalty to personal interests becomes the starting point why humans or society are not obedient to the law.<sup>4</sup>

According to Schuyt in Satjipto Rahardjo, people obey the law because:

<sup>4</sup> Lubis, M. Sofyan. (2009). *Mengenal Hak Konsumen dan Pasien*. Yogyakarta: Pustaka Yustisia, p. 23.

1. Legal compliance is imposed by sanctions (coercive theory).
2. Compliance is given on the basis of consent given by members of the community, to the law which is applied to them.

Richard A Wasserstrom identified three possible positions adopted regarding the character of the obligation to obey the law, namely:

*(1) One has an absolute obligation to obey the law; disobedience is never justified. (2) One has an obligation to obey the law but this obligation can be overridden by conflicting obligations; disobedience can be justified, but only by the presence of outweighing circumstances. (3) One does not have a special obligation to obey the law, but it is in fact usually obligatory, on other grounds, to do so; disobedience to the law often does turn out to be unjustified.*

The compliance in carrying out the procurement of goods/services is guided by the applicable laws and regulations. The process of implementing Goods/Services Procurement in government agencies involves several parties, both internal and external agencies, namely the providers of goods/services who will later carry out the obligations of providing goods/services in accordance with what was promised. Each of these parties has obligations to fulfill responsibilities that differ from one another. These differences can eventually lead to limitations of legal responsibility, particularly the law on State Finance.

To seeking the respondents opinion regarding fines sanctions is compliance with the principle of compliance with construction service providers can be seen in the table below:  
**Table 3.** a Fines Sanction as Principle of Compliance, 2018.

Interpretation	Research Location							Sum	
	1	2	3	4	5	6	7	P	F (%)
Strongly Agree	8	6	2	3	10	5	6	40	19,04
Agree	21	19	24	27	20	24	22	157	74,76
Doubt	1	3	4	-	-	1	1	10	4,76
Disagree	-	2	-	-	-	-	1	3	1,44
Strongly Disagree	-	-	-	-	-	-	-	-	-
<b>Sum</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>210</b>	<b>100</b>

*Source: Primary data, 2018. Location: Makassar, Palopo, Takalar, Bulukumba, Bone, Parepare and Wajo (Edited).*

Based on table 3describeswhich the majority of respondents agreed to sanction fines as a form of prosecution of contractor construction of service providers.

The results of an interview with the Respondent, Zuhaelsi Zubir (Head of Infrastructure and Building of the Makassar City Government, interview on October 2, 2018, in Makassar City) said that an amercement due to breach of construction service providers as a form of responsibility for the agreement or contract agreed by both parties.

Meanwhile, the opinion of Abdul Kadir, as the Auditor in the city of Parepare (Interview on October 2, 2018) that sanctions need to be confirmed one thousandth of the contract value which is included in the contract but sometimes included in the contract part of the contract, causing different perceptions.

#### **4. Conclusion**

Sanctions are negative penalties for someone who violates a rule, while an amercement is a punishment given by requiring tax offenders to pay money for violating the rules. Laws and regulations contain rights and obligations which are allowed or not allowed to be done by

the community. In order to law and regulations to be obeyed, the sanctions for violators must be existed as well as fines for construction services.

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#### **Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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