



## Legal Liability of Contractors who are in Default in Construction Services Contracts

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### Abstract

There are often defaults by contractors in construction service contracts that cause losses for service users and the implementation of existing legal accountability mechanisms has not been optimal. The formulation of the problem is: 1). What is the form of default committed by the contractor in the construction service contract; 2). Dispute resolution mechanism arising from contractor default in construction service contracts. The research method used is a normative legal research type with a type of statutory approach and a conceptual approach. The results of the study show that contractor defaults in construction service contracts can be in the form of delays, quality mismatches, administrative negligence to safety violations, so a multi-layered dispute resolution mechanism is needed to ensure legal certainty and justice for the parties.

**Keywords:** Legal Liability, Contractor, Default, Construction Service Contract.

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### Introduction

A construction service contract is a crucial legal instrument in construction, as it establishes a binding agreement governing the rights and obligations of the parties. The legal relationship between the service user and the service provider encompasses not only the technical aspects of construction but also legal certainty in the event of a breach of contract (Taufika *et al.*, 2025) <sup>[23]</sup>. The reality on the ground shows that many contractors fail to fulfill their contractual obligations, either through delays or results that do not meet specifications. This situation gives rise to disputes that often end up in legal settlement forums. Therefore, the existence of binding regulations for contractors is an important basis for ensuring legal protection for the parties (Bradford, 2012) <sup>[4]</sup>.

Contractor defaults have complex legal consequences, involving both material and immaterial losses for service users. Article 1243 of the Civil Code stipulates that negligent or broken-promise parties are obligated to compensate for costs, losses, and interest incurred as a result of the delay (Wibowo, 2022) <sup>[26]</sup>. This provision is further clarified in Law Number 2 of 2017 concerning Construction Services, which contains clauses regarding service providers' responsibilities for quality, cost, and timeliness of implementation. Thus, these laws and regulations provide a strong basis for holding contractors accountable for defaults. However, enforcement of these provisions is not always effective due to administrative and technical constraints in the field.

The problem becomes even more complex when contractors attribute work delays to external factors such as weather, design changes, or late payments from service users. This situation often sparks debate over whether the delay can be classified as a pure breach of contract or falls under the category of force majeure. At this point, the role of the contract becomes crucial, as each clause defines the scope of the contractor's responsibilities. The resulting disputes not only concern technical matters but also the legal interpretation of the contract's contents. This makes research into contractor liability in cases of breach of contract increasingly relevant (Gao & Zhang, 2015) <sup>[6]</sup>.

In practice, dispute resolution in construction services demonstrates that deliberation or mediation often fails to provide a final solution. Many cases end up in arbitration or even court litigation, which in turn requires more costs and time. This fact highlights a gap between legal norms governing dispute resolution and the reality of practice on the ground (Lubis *et al.*, 2025) <sup>[10]</sup>. Contractors found to be in default often attempt to avoid responsibility under various pretexts. As a result, legal certainty and a

sense of justice for service users are neglected. This situation illustrates that the issue of legal liability for contractors in default is not merely a contractual issue, but is also closely related to the effectiveness of the law in protecting public interests. Construction, as a vital development sector, requires firm legal certainty to ensure that development goals are not hampered by service provider negligence. Research focusing on contractors' legal liability in construction service contracts is crucial for exploring the extent to which existing legal norms can be consistently applied. Furthermore, this study is also needed to assess whether compensation, sanctions, and dispute resolution mechanisms have provided a deterrent effect for contractors in default. Therefore, this academic study is expected to make a significant contribution to strengthening the legal system for construction services in Indonesia (Tassadiq, 2024) <sup>[22]</sup>.

Based on the background above, the problem can be formulated, namely, what form of default is carried out by the contractor in the construction service contract and what is the mechanism for resolving disputes arising from the contractor's default in the construction service contract?

## Methods

This research uses a normative juridical research method, which essentially examines law as a norm or rule that applies in society and serves as a reference for individual behavior. Normative juridical research utilizes primary, secondary, and tertiary legal materials to conduct this research. The author uses three approaches, namely the statute approach *and* the conceptual approach. The legal techniques for this research were collected through literature studies; primary legal materials consist of laws and regulations used to formulate the problem, books and scientific works; and secondary legal materials consist of journals and scientific works.

## Results Study and Discussion

### Forms of Default by Contractors in Construction Services Contracts

Default in construction service contracts generally begins with late completion of work that falls short of the agreed schedule. Contractors are always bound by a detailed work plan and implementation schedule in the contract. If a contractor fails to meet completion targets without a valid reason, they are deemed to have defaulted on their obligations. This often results in losses for service users, such as delays in building use or increased project costs. Therefore, delays are one of the most common forms of default (Mustopa, 2024) <sup>[13]</sup>.

In addition to delays, breach of contract can also occur when work results do not meet the technical specifications stipulated in the contract. The contractor is obligated to carry out work in accordance with established quality standards, materials, and implementation methods. If the work results deviate, for example, by decreasing the quality of the building or replacing materials without approval, the contractor can be held legally accountable (Astawa *et al.*, 2019) <sup>[3]</sup>. These deviations can have serious consequences for user safety and the sustainability of the building. Therefore, non-conformity to quality is a crucial form of breach of contract.

Another form of breach of contract is the failure to complete the work after the contract is signed. Some contractors, having received an advance payment, then abandon the project without justifiable reason. Such actions not only violate the agreement but also harm the state or private party

financing the project. In this case, the service user has the right to unilaterally terminate the contract and demand compensation (Chouaibi *et al.*, 2022) <sup>[5]</sup>. This situation demonstrates the importance of a performance guarantee clause in construction contracts (Prasetyo & Handayani, 2018) <sup>[14]</sup>.

A contractor can also be considered in default if they transfer the main work to another party without the user's permission. Unauthorized subcontracting practices create serious problems because the quality of the work is no longer under the control of the main contractor. Contracts typically limit the scope of the subcontract to maintain quality control. If the contractor acts arbitrarily in transferring the work, it constitutes a breach of contractual obligations. Consequently, legal responsibility remains with the main contractor.

Default can also take the form of a contractor's failure to provide labor or equipment in accordance with the contract's provisions. Construction contracts typically require the use of certified experts and equipment with a specific capacity. If the contractor fails to meet these requirements, work can be disrupted and even risk accidents. This situation is clearly detrimental to the service user because the work does not proceed according to plan. Therefore, a shortage of human resources or equipment is a clear form of default. Contractors often default by delaying work even though payments have been made on time. Intentional delays, for example, to wait for material prices to rise or for personal gain, can be considered a breach of contract (Agung *et al.*, 2022) <sup>[1]</sup>. Contractors should work based on the principle of punctuality, not solely to accommodate business interests. Such delays directly impact the uncertainty of project completion. Ultimately, the loss of time and costs must be borne by the service user (Suwitra *et al.*, 2022) <sup>[21]</sup>.

A breach of contract is also evident in situations where contractors violate occupational safety and health provisions. Every construction contract typically stipulates the service provider's obligation to ensure the safety of workers and the surrounding community. If a contractor ignores safety standards, such as failing to provide protective equipment or allowing risky procedures, they can be held liable. Workplace accidents resulting from contractor negligence fall within the scope of a breach of contract (Saputra & Anggiriawan, 2021) <sup>[17]</sup>.

This demonstrates that breach of contract is not only related to the final product, but also to the implementation process. Contractors can also breach contract by failing to deliver work on time during the handover stage. Construction contracts generally recognize two stages of handover: first handover (PHO) and final handover (FHO). If a contractor fails to meet the administrative and technical requirements for handover, they are deemed to have defaulted on their obligations. Failure to deliver work within the specified timeframe carries legal consequences. Therefore, delays in the handover stage constitute breach of contract (Jayawarsa, Wulandari, *et al.*, 2021; Sara & Saputra, 2021) <sup>[8, 17, 19]</sup>.

There are also breaches of contract that occur due to contractors failing to fulfill post-construction guarantee obligations. Law Number 2 of 2017, Article 65, requires service providers to be liable for building failures for up to ten years following the planned life. If damage is discovered during the contract period but the contractor refuses to repair it, this constitutes a breach of contract. This guarantee obligation is intended to protect service users from incurring losses due to the service provider's negligence. Violation of

this obligation can result in a lawsuit for damages. Breach of contract can also arise in the form of failure to fulfill administrative contractual obligations. Contractors are required to provide progress reports, minutes, and quality certificates as required. If these obligations are ignored, service users lose the basis for oversight of the project. The absence of reports often hinders payment disbursement or exacerbates future disputes. Therefore, breach of contractual obligations is not only seen in terms of physical work, but also in terms of the promised administrative completeness (Simanjuntak, PNH, 2017: p. 30) <sup>[20]</sup>.

It's not uncommon for contractors to default by ignoring environmental provisions stipulated in the contract. For example, disposing of construction waste inappropriately or using environmentally damaging materials. These actions not only violate the contract but can also give rise to legal liability beyond the civil realm. Contractors who fail to comply with environmental clauses are deemed to have failed to fulfill their contractual obligations. Thus, the breach of contract can extend to environmental protection. Contractors can also be considered in default if they fail to follow up on legitimate work change instructions from the service user. Contracts typically include addendums or variation orders that must be complied with (Jayawarsa, Saputra, *et al.*, 2021; Saputra *et al.*, 2021) <sup>[17, 7]</sup>. If the contractor refuses or fails to implement these changes without acceptable reasons, they are in breach of their obligations. This is detrimental to the service user because project requirements are not met according to field developments. Therefore, ignoring change orders constitutes a form of default.

Based on the description above, contractor default can also be seen in the failure to fulfill payment obligations to workers or material suppliers. Although the primary legal relationship lies between the contractor and the service user, the contractor's obligations to third parties remain. If the contractor fails to pay workers' wages or material debts, the project could be halted and the service user will suffer losses. This demonstrates that contractor default not only impacts the contractual relationship with the service user but also the project's supply chain. Therefore, fulfilling financial obligations is part of the integrity of construction contract implementation.

### **Dispute Resolution Mechanism Arising from Contractor Default in Construction Services Contracts**

Disputes resulting from contractor default in construction service contracts often have far-reaching impacts, both financially and socially. Therefore, the law provides various resolution mechanisms that the parties can pursue. The primary objective of these resolution mechanisms is to restore the balance of rights and obligations as stipulated in the contract. Dispute resolution can be conducted through non-litigation or litigation, depending on the agreed-upon clauses (Bradford, 2012) <sup>[4]</sup>.

The presence of this multi-layered mechanism is expected to provide legal certainty while ensuring project continuity. The first stage typically taken is deliberation or direct negotiation between the service user and the contractor. Deliberation is chosen because it is simple, quick, and inexpensive. The parties seek a fair solution by assessing the losses and benefits that can still be retained from the contract. If an agreement is reached, the results of the deliberation can be outlined in an addendum or settlement agreement. However, if deliberation fails, the dispute will proceed to other, more

formal mechanisms (Alexander Thian, 2024: p. 26) <sup>[24]</sup>.

Mediation has become a popular alternative after discussions fail to reach a consensus. In mediation, a neutral third party is present to help reach an agreement. The mediator has no authority to decide but merely facilitates the communication process between the service user and the contractor. The success of mediation depends heavily on the good faith of the parties in expressing their interests and finding a compromise. If successful, the mediation agreement is as binding as a new contract (Mbanyelet *et al.*, 2022) <sup>[12]</sup>.

In addition to mediation, there is also a conciliation mechanism, which has a similar function but emphasizes the active role of the conciliator in proposing a resolution. The conciliator can prepare written recommendations outlining a solution to the dispute. The parties can then accept or reject these recommendations. Conciliation is typically used when the dispute involves technical aspects that require expert opinion. The presence of a conciliator helps clarify the issues, thus increasing the chances of a resolution (Titik Triwulan Tutik, 2015: p. 15) <sup>[25]</sup>.

In the construction sector, a typical non-litigation forum is the Dispute Board. This board is typically established at the outset of the contract to anticipate potential disputes. The board's members are experts in both technical and legal aspects of construction. When disputes arise, the board provides prompt and practical recommendations to prevent project stalling (Saputra *et al.*, 2021) <sup>[18]</sup>. This mechanism is widely used in large contracts that adhere to international standards.

Arbitration is a frequently included option in construction service contracts, especially for large-scale projects. Arbitration is considered effective because it provides a final and binding decision. Furthermore, the arbitration process is faster than court proceedings and is confidential, thus protecting the reputations of the parties. In Indonesia, construction arbitration can be conducted through the Indonesian National Arbitration Board (BANI) in accordance with Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. With an arbitration decision, the service user can firmly hold the contractor accountable. Litigation in court is a last resort if all non-litigation avenues are unsuccessful (Jayawarsa, Saputra, *et al.*, 2021) <sup>[7]</sup>.

Breach of contract lawsuits are typically filed under Article 1243 of the Civil Code, which regulates the obligation to compensate. The court process provides a decision with enforceable power, forcing the contractor to fulfill its obligations. However, litigation tends to be time-consuming and expensive. Therefore, the courts are often considered a last resort, resorted to out of necessity (Yahman, 2016: p. 22) <sup>[27]</sup>.

Dispute resolution through the courts is often chosen when payment certainty is concerned. Many cases demonstrate that late payments by government service users can only be legally resolved in court. Court decisions serve as the basis for disbursement of funds or payment execution. This demonstrates that the choice of dispute forum is heavily influenced by the characteristics of the contracting parties. Ultimately, legal certainty remains the primary objective of each mechanism. Each dispute resolution mechanism has its own advantages and disadvantages. Deliberation and mediation are faster but depend on the good faith of the parties (Jayawarsa, Saputra, *et al.*, 2021) <sup>[8]</sup>. Conciliation and dispute resolution councils offer technical solutions, but the results are not always final. Arbitration provides certainty of

decision but is relatively expensive. Meanwhile, litigation guarantees enforcement but is often time-consuming and energy-intensive.

The choice of dispute resolution mechanism is usually specified in the contract clause from the outset. Law Number 2 of 2017 concerning Construction Services even requires contracts to include a dispute resolution clause. This provides contractors and service users with clear guidelines when disputes arise. If a dispute resolution clause is not specified, settlement automatically follows general civil law provisions. This means that well-designed contracts play a crucial role in preventing protracted debates (Krista Yitawati, Anik Tri Haryani, and Sigit Sapto Nugroho, 2017: p. 16) <sup>[28]</sup>.

It's also important to note that effective dispute resolution depends heavily on the completeness of contract evidence and documentation. Both contractors and service users must be diligent in preparing reports, minutes, and official correspondence. Without documentation, it's difficult to prove the nature of the breach. The lack of evidence often prolongs the dispute resolution process in all forums. Therefore, contract administration is an essential aspect.

Based on the above description, the dispute resolution mechanism resulting from contractor default is a crucial instrument for maintaining a balance of rights and obligations. Large-scale construction projects involving multiple parties require legal certainty to avoid stalling. Through deliberation, mediation, conciliation, dispute resolution boards, arbitration, and litigation, the law seeks to provide appropriate solutions. The choice of mechanism depends on the nature of the dispute, the characteristics of the parties, and the agreements in the contract. With this mechanism, it is hoped that the resolution of construction service disputes will be fair, effective, and provide optimal legal protection.

## Conclusion and Suggestion

### Conclusion

Contractors' breaches of contract in construction services contracts come in various forms, ranging from delays in completion, work that does not meet specifications, to the failure to complete the work altogether. Violations are also evident in unauthorized subcontracting practices, failure to provide labor and equipment, and deliberate delays. These breaches can also take the form of violations of occupational safety standards, delays in handover, and failure to fulfill post-construction guarantee obligations as stipulated in Law Number 2 of 2017 Article 65. Failure to fulfill administrative obligations, disregard for environmental provisions, and refusal to implement work change orders also demonstrate contractor negligence in fulfilling the contract. Failure to pay workers or suppliers is a form of breach that has broader impacts because it disrupts the project supply chain, making it clear that contractor breaches relate not only to the final construction results but also to the entire process, social responsibility, and the integrity of contract implementation. Dispute resolution mechanisms arising from contractor default in construction service contracts are generally provided in layers to provide justice and legal certainty for the parties. The initial route is deliberation and negotiation, which can then progress to mediation, conciliation, or a dispute council as a more technical, non-litigation forum. If these efforts are unsuccessful, arbitration is an effective option because its decision is final and binding, while litigation remains the last resort, guaranteeing enforceability,

despite the lengthy duration. The choice of mechanism is generally regulated in the contract clause, as mandated by Law Number 2 of 2017 concerning Construction Services. Therefore, it is crucial for the parties to draft a detailed contract from the outset. With a clear choice of forum, dispute resolution is expected to not only recover losses for service users but also maintain the continuity of development and a sense of overall justice.

### Suggestion

Contractors are advised to always comply with all contract provisions, maintain quality, time, and work safety, and carry out administrative and financial obligations consistently to avoid default and ensure the continuity of the construction project.

The parties are advised to always prioritize dispute resolution through deliberation in good faith and to prepare detailed and clear contract clauses, so that each stage of the settlement mechanism can run effectively, fairly, and maintain the continuity of the construction project.

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