



Contractor's Responsibility for Delays in Construction work Resulting in Losses

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Abstract

This study is aimed at revealing and examining the implementation practices of construction service work contracts in the construction activities of the Regional Disaster Management Agency (BPBD) in the West Sumbawa Regency area, while also exploring the form of accountability of CV Meteng Jaya for the delay in completing the construction work of the local BPBD office. The approach used in this study is a normative method combined with field studies. The results of the study show that the procurement process for construction work carried out by CV Meteng Jaya for the development of the West Sumbawa Regency BPBD office was carried out through an auction mechanism, but in its realization there was a deviation in work achievements of 10.70% which originated from the negligence of the implementing party, so that this action can be categorized as a violation of the agreement. The act of breach of promise carried out by CV Meteng Jaya in the construction of the West Sumbawa Regency BPBD office is based on the provisions of Article 54 paragraph (2) of Law Number 2 of 2017 concerning Construction Services and the provisions in the service provider agreement document numbered 601.2/298/DPU-PR/V/2022 in Article 4 letter b paragraph (4). Furthermore, the legal consequences as a result of negligence and violation of commitments made by CV Meteng Jaya in the construction work of the West Sumbawa Regency BPBD office refer to Article 54 paragraph (3) of Law Number 2 of 2017, in the form of imposing administrative sanctions as regulated in the work agreement that has been mutually agreed upon.

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1. Introduction

Contractors are generally selected by the government, which uses their services or *buildings* for large-scale projects. The employer and construction service provider, hereinafter referred to as the contractor, are bound by a construction contract or subcontracting agreement.^[1]

In its implementation, construction work activities are generally carried out by contracting out the work which is handed over to an entity outside the work owner who professionally carries out construction services, either through individual implementers or organizations in the form of companies.^[2]

An agreement is a form of event in which a subject of an agreement declares a commitment to the counterparty to realize certain obligations or not to do something that has been negotiated and agreed upon by both parties. An agreement is considered valid if the four requirements for a valid contract written in

¹ FX Djumaaldji, *Building Law*, PT Rineka Cipta, 2019, p. 5.

² Law Number 2 of 2017 concerning Construction Services

Article 1320 of the Civil Code have been met: there is an agreement between the parties; the subjects of the agreement have the ability to act legally; there is a certain case that is the main focus of the contract; accompanied by a valid legal basis and in line with legal regulations.^[3]

In the implementation of an agreement, there is certainly something that may result in the failure to achieve the agreed-upon purpose due to the negligence of one of the participants in the legal relationship, which is generally known as default. Default is a condition where a party fails to fulfill the responsibilities agreed upon in the contractual relationship between the creditor and the creditor.^[4]

In the event that one of the parties in a contractual relationship breaks a promise, the injured party can demand restoration of rights through the provision of certain compensation, reimbursement of expenses, extension of the implementation period, demands for restitution of losses, as well as termination of the legal relationship up to the transfer of risk.^[5]

In the implementation of the contractor or builder, often also make errors that arise, both in the design stage, the implementation of the work, or delays in the completion of activities caused by negligence or other factors beyond human control (force majeure). The same thing happened in the construction of the Regional Disaster Management Agency (BPBD) Office of West Sumbawa Regency.

The construction of the Regional Disaster Management Agency (BPBD) Office of West Sumbawa Regency, which was carried out in 2022, aims to provide facilities and infrastructure for the apparatus as one of the efforts. to ensure optimal service to the public. Furthermore, the provision of adequate supporting facilities is mandatory, as is the case with the West Sumbawa Regency BPBD Office, which serves as a public service facility.

Based on the Terms of Reference (TOR) for the Construction of the West Sumbawa Regency BPBD Office, the construction time allocation is 180 (one hundred and eighty) calendar periods starting from July 6, 2022 to November 13, 2022.

In the realization of the implementation of the construction of the West Sumbawa Regency BPBD Office in accordance with The work agreement stipulates a work period of 180 calendar days, which will run from May 18, 2022, to November 13, 2022. On the other hand, In its realization until the 8th (eighth) week, calculated from July 6 to July 11, 2022, the percentage of activity realization was recorded as being 10.70% behind the established plan. This is as per the results of observations carried out by a group from CV Fajar Design as the Supervisory Consultant in this construction project.

Deviation is a condition where there is an irregularity the actual conditions in the project area are different from the arrangements contained in the agreement document.^[6]

According to CV Meteng Jaya, the cause of the deviation was negligence due to a shortage of labor and a shortage of building materials which resulted in delays in the work process and late delivery of construction materials.

Carelessness in implementation leads to a misalignment of the work agreement provisions with the realization of work

at the project location, which is an unlawful act if there is no justification accompanying it and the act is a form of neglect of the agreed responsibilities and has implications for the emergence of separate legal consequences. Based on these problems, the researcher sees the need to conduct research to analyzing the contractor's legal responsibility for delays in construction work resulting in losses (study on the construction of the West Sumbawa Regency BPBD Office). Based on the description that has been outlined, the legal issues in this article are how the construction contract is implemented for the West Sumbawa Regency BPBD office construction project and to what extent the contractor is accountable for delays in construction work that result in losses.

The focus of the study is to find out and analyze construction contract regulations in Indonesia and to identify and analyze contractor liability for construction delays resulting in losses.^[7] The benefits of this research can contribute to advance knowledge law, especially in the sector of contract and agreement law, related to liability in construction contracts in Indonesia.

2. Method

Study This use method law empirical, namely research that emphasizes observation direct to practice law in society. The focus No only on legal norms written (law in books), but also on the implementation and effectiveness law in reality (law in action). Approach study use approach case approach, review dispute or problems that arise consequence delay contractor in project construction, and Approach sociological see How connection between contractor, owner projects, and parties third (for example consultant or supervisor) in progress in practice.

Primary data sources consist of from interview with parties related (contractor, owner) projects, consultants supervisors and practitioners law), Observation direct to project construction that is experiencing delay as well as analyze document contracts and reports project. Secondary data includes statutory regulations related (eg. Civil Code, Construction Services Law). Literature laws, journals, and decisions relevant courts. Data collection techniques were carried out with method interview in-depth (in-depth interview) for dig information about factor reason delays and forms accountability contractor. Documentation study done for examine contract work, report projects, as well as document related laws whereas observation field for observe condition projects that are experiencing delay. The data obtained analyzed in a way qualitative, with method: Grouping information based on theme (eg. reason delay, form loss, mechanism accountability). Compare field practice with provision applicable law. Interesting conclusion about effectiveness rule law in give protection to injured party. Research Objectives Know How law implemented in case delay project construction. Identify form accountability contractor to losses incurred. Give recommendation for repair regulations and practice contractual to be more effective prevent and resolve dispute.

³ Salim HS *et al.*, *Contract Design & Memorandum of Understanding (MoU)*, Sinar Grafika, Jakarta, 2019, p. 9.

⁴ Salim HS, *Introduction to Written Civil Law (BW)*, 12th Edition, Sinar Grafika, Jakarta, 2019, p. 180.

⁵ Government Regulation Number 22 of 2020 concerning Implementing Regulations of the Construction Services Law.

⁶ Slamet Widodo *et al.*, *Deviation in the Application of Legal Aspects of Construction Contracts*, Journal of Engineering Research, UII, Vol.2 No.2 May 2023, p. 56.

⁷ I Nyoman Putu Budiarta, *Contract Law Construction*, Udayana University Press, Denpasar, 2016. p. 13

3. Discussion

3.1. Implementation of Construction Contracts for the West Sumbawa Regency BPBD Office Development Project

The construction project for the West Sumbawa Regency BPBD Office, which was handled by CV Meteng Jaya as the tender holder, is a project carried out in the context of providing facilities and infrastructure for civil servants as an effort to provide optimal service in the field of public services.

In its implementation, the appointment of CV Meteng Jaya as a construction contractor through a tender system in accordance with the provisions of Article 28 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services states that tender selection can be carried out if the method regulated in the provisions of Article 38 of Law Number 16 of 2018 cannot be implemented.

In the case that occurred in the construction project for the West Sumbawa Regency BPBD Office, which was carried out by CV Meteng Jaya as the construction contractor, there was a delay in construction progress of -10.70% from what it should have been in the eighth week so that the project was declared a critical contract.

Referring to the narrative of the results of the conversation with Mr. Suratman as the head of CV Fajar Design who carries out the supervisory and design functions in the activity, it was revealed that the delay in implementation was influenced by the hampered distribution of materials needed for the implementation of the work, as well as the minimal availability of human resources in the construction sector.^[8] This situation resulted in the activity being halted, so that the completion of the activity could not be met according to the previously determined schedule.

The delay in providing building materials used in the construction was due to the numerous ongoing construction projects in West Sumbawa Regency at the time, leading to a shortage of building materials in the area. Furthermore, this also led to a shortage of construction workers, which was a contributing factor to the delay, according to Mr. Muhammad Imami, Director of CV Meteng Jaya.^[9]

The realm of contract law is a highly complex branch, requiring careful application. This is closely related to Article 1338 of the Civil Code, which stipulates that every legally drafted agreement binds the parties involved, just as statutory provisions do.^[10]

The legal consequences of forming an agreement are essentially born from the existence of a legal bond in the form of an agreement, which gives rise to a reciprocal relationship in the form of authority and obligations attached to each party.

3.2. Contractor's Liability for Delays in Construction Work Resulting in Losses

The obligations imposed on the party implementing the work include compliance with the rules stated in the binding regulations. as has been agreed and mutually agreed upon in the contract between the service provider and the service user, both regarding quality, quantity, to carrying out the

work in accordance with what is instructed and agreed upon with the service user, including recording and informing all information such as all forms of delays that must be notified to the job owner or client.^[11]

Then the contractor's responsibility also includes implementing the contract in accordance with the construction work contract, all provisions stated in the contract document and have been mutually agreed upon, then responsibility related to the requirements of materials and work methods; then responsibility according to the work time and delivery time.

The contractor, the party carrying out the activity, is obligated to complete the entire series of activities within the agreed timeline. If the scope of the activity consists of several separate segments, the implementing provider is also obligated to submit results at each stage in accordance with applicable provisions and procedures as agreed.^[12]

In the construction contract for the West Sumbawa Regency BPBD office based on the Construction Services Provider Agreement Number 601.2/298/DPU-PR/V/2022 between the PUPR Service of West Sumbawa Regency as the user of construction services and CV Meteng Jaya as the construction services provider or contractor dated April 13, 2022, the parties reached an agreement to implement the construction work contract agreement for the construction of the West Sumbawa Regency BPBD office.

CV Meteng Jaya as the tender winner in the public auction for the construction of the West Sumbawa Regency BPBD Office held by the West Sumbawa Regency Public Works and Spatial Planning Agency based on SPPBJ (Goods/Service Provider Appointment Letter) Number: 641.2/04/PPK-CK.B/V/2022 dated May 9, 2022. Regarding the construction project for the West Sumbawa Regency BPBD Office, the value is IDR 2,664,518,000 (Two billion six hundred sixty-four million five hundred and eighteen thousand rupiah).

As for its implementation, according to the Work Order (SPK) Number: 601.2/298/DPU-PR/V/2022 dated May 18, 2022, CV Meteng Jaya is required to start the implementation of the West Sumbawa Regency BPBD Office construction project within a work period of 180 (one hundred and eighty) calendar days calculated from May 18, 2022 to November 13, 2022. Initially, the work agreement for the construction of the West Sumbawa Regency BPBD Office Building went well and as it should, however, in the 8th week, namely July 6, 2022 to July 11, 2022, there was a deviation in the work progress which resulted in delays. The deviation was discovered based on a warning letter issued by CV Fajar Design on July 11, 2022. CV Fajar Design is a supervisory consultant appointed by the PUPR Office of West Sumbawa Regency as the user of the construction services, this is as based on state regulation number 22 issued in 2020 concerning construction services as stipulated in the provisions of point 49. The setback in the achievement of the implementation of the project activities in the eighth week was recorded at minus 10.70% compared to the ideal target of 17.28%. The delay was caused by negligence committed by the contractor in this case CV. Meteng Jaya.

The delay was caused by the contractor's negligence in failing

⁸ Ervianto, Wulfram I., *Construction Project Management*, Andi, Yogyakarta, 2015.

⁹ I Nyoman Putu Budiarta, *Contract Law Construction*, Udayana University Press, Denpasar, 2016, p. 25

¹⁰ BN. Marbun, *Making Safe and Legal Agreements*, Puspa Swara Jakarta, 2009, p. 3

¹¹ Subekti, *Contract Law*, 21st Edition, Intermasa, Jakarta, 2014, pp. 1-3.

¹² Munir Fuady, *Contract Law (From a Business Law Perspective)*, Bandung: Citra Aditya Bakti, 2016, pp. 87-90.

to take concrete and prompt steps to address the obstacles, which could not be considered extraordinary circumstances. This situation persisted for some time, as evidenced by the critical contract implementation period, and the supervisory consultant holding two *Showcase Meetings (SCM)*.^[13]

Based on this, it can be seen that the negligence carried out by CV Meteng Jaya can be said to be an act of default, this is because one form of default is carrying out things that have been agreed upon but the results are not in line with the agreement.^[14]

In the provisions of Article 1238 of the Civil Code, the debtor is stated to be in default if after being given a written warning or through a similar document it has been declared to be in a state of default, or based on the bond itself it is determined that the debtor is considered to be in a state of negligence when the specified deadline has been exceeded. Based on these provisions, CV Meteng Jaya has been declared negligent, this is based on a summons or in the form of a warning letter and two SCMs as a result of the implementation of critical contract procedures because CV Meteng Jaya committed negligence, namely delays in fulfilling the target for realizing the construction.^[15]

If we look at the provisions of Article 1366 of the Civil Code which emphasizes that each individual bears the obligation to be responsible not only for the negative impacts arising from their own actions, but also for the losses arising from negligence and lack of caution, if it is linked to negligence found in the construction project, then the contractor is obliged to be responsible for the negligence which causes delays in the realization of construction progress.

In addition to the provisions above, other provisions that stipulate default in construction work contracts are in Article 23 Paragraph 1 letter g of Government Regulation Number 29 of 2000 concerning Construction Service Providers which outlines the regulations regarding default, namely:^[16]

A. Various types of broken promises made by service providers:

1. Not completing the work that is his obligation
2. Not achieving the work volume as per the provisions
3. Not delivering the results as agreed

B. What the job owner does:

1. Making payments beyond the specified time period
2. Not paying off payment obligations
3. Late in providing supporting facilities for work implementation

Based on the provisions of Article 54 of Law Number 2 of 2017, it is emphasized that in the implementation of construction service activities, the implementing party and/or implementing partners are required to submit work results in accordance with the budget accuracy, quality standards, and time schedule as stipulated in the construction work agreement. However, in relation to the construction project for the construction of the West Sumbawa Regency BPBD Office carried out by CV Meteng Jaya, these provisions were violated because in practice CV Meteng Jaya committed negligence which caused delays in the project work so that it

exceeded the time limit as stipulated in the agreement document.

If we look closely at the provisions of Article 78 paragraph (3) letter f in Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services, it is stated that one of the types of violations handled by the relevant service provider which can be subject to administrative action is delays in completing work as stipulated in the agreement. Based on these regulations, therefore, regarding the delay in completion carried out by CV Meteng Jaya, CV Meteng Jaya can be subject to sanctions in accordance with applicable provisions.

4. Conclusion

The implementation of the Construction Contract under the implementation of CV Meteng Jaya in the construction activities of the West Sumbawa Regency BPBD Office was carried out using a tender system referring to the regulations of Article 28 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services. In its implementation, it turned out that there were obstacles, namely the process was delayed in its work which resulted in a deviation of -10.70% which was caused by an obstacle in its implementation as a result of the contractor's negligence so that the delay included a default by the contractor because the negligence by the contractor could not be proven as a force majeure.

The form of liability for negligence or breach of promise carried out by CV Meteng Jaya in the construction activities of the West Sumbawa Regency BPBD Office is guided by the provisions of Article 54 paragraph (3) of Law Number 2 of 2017, CV Meteng Jaya is subject to administrative action as stated in the agreed agreement. In the context of the agreement on the activity, CV Meteng Jaya is required to bear a penalty of 1/1000 (one per thousand) before the imposition of VAT of the total agreed value for each day of delay. Meanwhile, CV Meteng Jaya is recorded as having experienced a delay of 16 days so that it is required to pay a fine of IDR 42,632,288,000 (forty-two million six hundred thirty-two million two hundred eighty-eight thousand rupiah), in the implementation of administrative sanctions by CV Meteng Jaya, the Director of CV is fully responsible as an active partner in accordance with the rules written in Article 19 paragraph (1) of the KUHD.

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¹³ I Ketut Oka Setiawan, *Contract Law*, Jakarta: Sinar Grafika, 2018, pp. 62–64.

¹⁴ Abdul Kadir Muhammad, *Indonesian Civil Law*, Citra Aditya Bakti, Bandung, 2014, pp. 234–236.

¹⁵ R. Setiawan, *Principles of Contract Law*, Bandung: Binabuat, 2005, p. 75–77.

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