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Legal Protection for Contractors Against Unilateral Termination by the Employer under Construction Contracts

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ABSTRACT

This study examines legal protection for contractors against unilateral termination by the employer under construction contracts in the Indonesian construction sector. This issue arises from the imbalance in legal and economic positions between the contracting parties, as well as inadequate legal regulations that allow broad and discretionary interpretation by the employer. The research adopts a normative juridical method, employing statutory, conceptual, case-based, and comparative legal approaches. The analysis focuses on the Civil Code (*KUHPerdata*), Law Number 2 of 2017 concerning Construction Services, and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services, and compares these frameworks with legal systems in the European Union, China, and South Korea. The findings reveal that legal protection for contractors in Indonesia remains predominantly administrative and formalistic, failing to ensure proportional contractual justice and equitable risk allocation. Accordingly, this study proposes a balanced contractual protection model emphasizing the employer's obligation to provide compensation, the application of the principle of good faith, and the establishment of an independent construction contract mediation institution as a means of achieving a fair, transparent, and sustainable construction contractual legal system.

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INTRODUCTION

The construction sector constitutes a fundamental pillar of national economic development, playing a vital role in infrastructure provision, employment creation, and economic growth (Haekal & Marniati FS, 2025). Nevertheless, the legal relationship between the Contractor and the Employer, whether in public or private construction projects, frequently reflects an imbalance in legal and economic bargaining positions (Coleman et al., 2025; Lopes, 2022). One of the most recurrent issues in construction contract implementation is the unilateral termination of the contract by the Employer, particularly when a project encounters administrative, technical, or financial difficulties (Lopes, 2012; Pourhosseini et al., 2021). In the context of government procurement, such circumstances often place the Contractor in a significantly disadvantaged position due to inadequate legal protection and unequal bargaining power (Ramadhani E. et al., 2024).

The 2023 report from the Government Procurement Policy Institute (LKPP) shows that approximately 22% of construction disputes in Indonesia are related to unilateral contract termination or late payment (Riskawati, 2022). The impact includes not only economic losses but also disruptions to the contractor's business continuity and reputation. Therefore, analyzing the issue is increasingly relevant, given the importance of balancing the rights and obligations of the parties in a construction contract(Giang & Pheng, 2011). The discrepancy between ideal legal norms and their implementation in the field demonstrates a gap between *das sollen* and

das sein, or between "what should be" and "what happens" in practice (Kurniawati, 2024; Putra, 2015).

Legally, provisions regarding contract termination are regulated in Law Number 2 of 2017 concerning Construction Services and Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services. However, Sureng & Asri A. (2024) assess that these regulations are still general in nature and do not provide strong legal certainty for service providers, especially in dealing with abuse of authority by service users in terminating contracts. This condition indicates a legal vacuum that needs to be filled to ensure dispute resolution mechanisms and fair compensation. Therefore, strengthening the legal position of service providers is an urgent need in creating equitable contractual relationships.

Previous academic studies have highlighted similar issues. Ramadhani E. et al. (2024) found that differing interpretations of contract termination clauses by contract-making officials (PPK) often create loopholes for abuse of authority. Furthermore, research by Najmifaza ND & Barokah (2025) demonstrated weak compensation mechanisms for contractors harmed by unilateral termination. While these studies make valuable contributions to understanding the administrative and procedural aspects, there is limited research examining legal protection for contractors against unilateral termination by the employer under construction contracts from a comparative international legal perspective, including the application of contractual justice principles in other countries such as the UK, the European Union, and China (Allen, 2023; Chen, 2021).

Kurniawati (2024) examined the procedural aspects of unilateral termination in government procurement, identifying systemic issues in the oversight of PPK decisions and the lack of independent review mechanisms. Putra (2015) analyzed the legal framework governing construction contracts and concluded that Indonesian contract law has not adequately evolved to address the power imbalances inherent in modern construction procurement. Tangkudung (2024), while focusing on transportation services, identified similar patterns of weak legal protection for service providers against unilateral termination by users, suggesting that this issue transcends specific sectors and reflects broader systemic problems in Indonesian contract law.

While these studies make valuable contributions to understanding the administrative and procedural aspects, a critical research gap exists: there is limited research examining legal protection from a comparative international legal perspective, including the application of contractual justice principles in other countries such as the UK, the European Union, and China (Allen, 2023; Chen, 2021). None of the existing Indonesian studies have systematically compared the national legal framework with international best practices, analyzed the theoretical foundations of balanced contractual protection models, or proposed comprehensive legal reforms grounded in comparative legal analysis. Furthermore, previous research has not adequately explored how principles of good faith, proportionality, and equitable remedies—well-established in Western and East Asian legal systems—could be adapted to Indonesia's civil law tradition and specific socio-economic context.

Globally, the development of modern contract law emphasizes the importance of the principles of fairness and equitable treatment between parties. Allen (2023) explains that the UK Consumer Rights Act 2015 and the EU Directive 2019/633 on unfair trading practices have established comprehensive frameworks protecting weaker parties in contractual relationships.

These frameworks mandate that contracts termination must be based on objectively verifiable grounds, require advance written notice with detailed justification, and impose mandatory compensation obligations calculated according to standardized formulas. The European Court of Justice has consistently held that termination clauses must be interpreted in accordance with the principle of proportionality, meaning that the consequences of termination must be proportionate to the breach that triggered it. Wang J. & Li H. (2024) explain that the European Union legal system has strengthened protection for service providers through the application of the principles of good faith and proportionality in contract termination.

Meanwhile, in China and South Korea, protection is provided through affirming the obligation of service users to provide compensation and mediation-based dispute resolution (Cho SK & Park, 2021). Chen (2021) documents that China's Civil Code (effective 2021) incorporates the doctrine of "substantial performance," which protects contractors who have substantially completed their obligations from unilateral termination due to minor breaches. Chinese law further requires that any contract termination be accompanied by full compensation for completed work, materials procured, and reasonable profit expectations. Similarly, Cho and Park (2021) demonstrate that South Korea's Framework Act on the Construction Industry mandates a three-stage dispute resolution process—negotiation, mediation, and arbitration—with automatic suspension of termination pending resolution, thereby preventing service users from creating facts on the ground through precipitous termination. This demonstrates a research gap in Indonesia, where the national legal system has not fully adopted the principle of contractual justice that places parties on an equal footing.

This significant divergence between Indonesia's legal framework and international best practices raises critical research questions: 1. What are the fundamental weaknesses in Indonesia's current legal protection system for service providers facing unilateral contract termination? 2. How do the principles of contractual justice, good faith, and proportionality operate in the legal systems of the European Union, China, and South Korea to protect service providers? 3. What specific legal reforms and institutional mechanisms are necessary to establish a balanced contractual protection model in Indonesia's construction sector?

Based on the above description, this research aims to comprehensively examine the ideal form of legal protection by service users in the construction sector. The main objective of this article is to analyze the normative basis, legal implementation practices, and weaknesses of the existing legal protection system, to formulate alternatives based on the principle of fair contractual balance. Specifically, this research seeks to: (1) identify and critically analyze the normative gaps and implementation failures in Indonesia's current legal framework governing contract termination; (2) conduct comparative legal analysis of protection mechanisms in the European Union, China, and South Korea to extract transferable principles and practices; (3) develop a theoretically grounded and contextually appropriate balanced contractual protection model for Indonesia; and (4) formulate specific policy recommendations including proposed legislative amendments, institutional reforms, and procedural improvements.

Therefore, this research is expected to provide theoretical contributions to the development of contract law in Indonesia by enriching academic discourse on contractual justice, good faith obligations, and the protection of weaker parties—concepts that have received insufficient attention in Indonesian legal scholarship. The research advances theoretical understanding of how civil law jurisdictions can effectively balance freedom of

contract with protection of vulnerable parties in asymmetrical contractual relationships, while generating practical recommendations for policymakers in strengthening legal certainty in the construction services sector. The findings will inform legislative reform efforts, guide judicial interpretation of existing laws, and provide practical guidance for construction industry stakeholders in drafting fairer contracts and resolving disputes more effectively. Ultimately, this research contributes to building a more equitable, transparent, and sustainable legal framework that supports the healthy development of Indonesia's construction sector while protecting the legitimate interests of all parties.

METHOD

This research applied a normative legal research method (doctrinal legal research), focusing on positive law, legal principles, and doctrines governing contractual relationships between the Contractor and the Employer in the construction sector. This approach was adopted to formulate normative solutions to legal problems arising from unilateral termination of construction contracts by the Employer, rather than merely describing empirical social conditions. The analysis examined legal norms in the Civil Code (KUHPerdata), Law Number 2 of 2017 concerning Construction Services, and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods and Services, which were compared with legal systems in other jurisdictions to understand the principle of contractual justice (Allen, 2023; Chen, 2021).

Data were collected through library research, analyzing legal documents, academic publications, and court decisions on contract termination disputes in the construction sector from national and international sources.

The research employed four integrative approaches: a statute approach to examine positive legal norms; a conceptual approach to explore relevant principles and theories; a case approach to assess law application in court decisions; and a comparative legal approach to evaluate protection mechanisms in other systems. These approaches explored the gap between ideal law (*das sollen*) and its implementation in practice (*das sein*) (Haekal FS & Marniati, 2025; Najmifaza ND & Barokah, 2025).

Legal materials were analyzed using descriptive-qualitative and prescriptive-normative methods. Descriptive analysis explained applicable norms and principles, while the prescriptive approach formulated recommendations for legal reform favoring justice for service providers. Comparisons with the legal systems of the European Union, China, and South Korea developed a balanced model of legal protection as an alternative to unilateral contract termination practices harming service providers (Sureng & Asri A., 2024; Wang J. & Li H., 2024).

RESULTS AND DISCUSSION

Results and Findings

The main findings of this study indicate several important things, namely:

1. National construction law does not contain explicit provisions affording specific legal protection to the Contractor in cases of unilateral termination of the construction contract by the Employer.

2. In construction project administration practice, contract termination is frequently exercised in a manner that undermines the principle of contractual fairness, resulting in substantial economic losses to the Contractor.
3. Developed jurisdictions, including the United Kingdom, the European Union, China, and South Korea, have adopted mandatory compensation mechanisms as a form of substantive legal protection for Contractors affected by unilateral termination.
4. Reform of Indonesian construction contract law is required to ensure a balanced and equitable legal position between the Employer and the Contractor

Accordingly, the findings of this study confirm that effective legal protection for Contractors under construction contracts should be grounded in the principles of proportionality, good faith, and fair compensation, rather than relying solely on formalistic and administrative regulatory frameworks.

Dynamics of Unilateral Contract Termination in Construction Practice

In national construction project practice, unilateral termination of construction contracts by the Employer remains a complex and recurring legal issue. According to data released by the Government Procurement Policy Institute (LKPP) in 2023, approximately 22% of procurement-related construction disputes in Indonesia involve unilateral termination actions that fail to comply with prescribed legal procedures (Riskawati, 2022). The primary causes of these disputes include unilateral interpretations of contractual provisions by the Employer and the absence of an objective evaluation mechanism to determine whether the Contractor has committed a contractual breach.

Ramadhani E. et al. (2024) explain that in many government procurement cases, contracts are often terminated not due to substantive breaches of contract, but rather due to differing administrative perceptions between the parties. Their empirical research, based on analysis of 45 contract disputes in South Sumatra, found that 68% of terminations were triggered by administrative discrepancies such as late submission of reports, minor deviations from specifications that did not affect functionality, or delays caused by factors beyond the contractor's control (such as late site access or delayed government approvals). In only 32% of cases did termination result from genuine material breach such as abandonment of work, use of substandard materials, or persistent failure to meet quality standards. This pattern suggests systematic misuse of termination powers for reasons unrelated to actual contract performance. In such situations, service providers often do not receive adequate compensation or even lose their right to payment for work partially completed. The research documented that 73% of terminated contractors received zero compensation, 18% received partial payment covering only direct material costs without labor or overhead, and only 9% received compensation approaching actual losses incurred. This contrasts sharply with the legal principle that even a party in breach is entitled to restitution for benefits conferred to prevent unjust enrichment of the other party. This situation illustrates the weak bargaining position of service providers in contractual relationships that should uphold the principle of equal bargaining (Haekal FS & Marniati, 2025).

This fact confirms that Indonesian positive law still allows broad interpretation for service users to unilaterally exercise their authority to terminate contracts. However, the principles of good faith and contractual fairness require that any contract termination be conducted objectively and transparently, and accompanied by proportional compensation (Sureng & Asri A., 2024). The principle of good faith (te goeder trouw, bona fides) is recognized in Article 1338(3) of the Civil Code, which mandates that contracts must be performed in good faith. However, Indonesian courts have been reluctant to apply this principle robustly to constrain arbitrary exercise of termination rights. A more vigorous application of good faith doctrine, as seen in European jurisdictions, would require that termination rights be

exercised only for legitimate purposes, with advance notice providing opportunity to cure, and in a manner that minimizes unnecessary harm to the other party. The principle of proportionality further requires that the severity of consequences (termination and forfeiture of payment) must be proportionate to the gravity of the breach that triggered it.

Legal Analysis of Weaknesses in Legal Protection for Service Providers

The results of a normative analysis of Law Number 2 of 2017 concerning Construction Services and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods and Services indicate that the existing national regulatory framework has not yet provided effective legal protection for the Contractor. Although Article 91 of the Construction Services Law regulates the termination of construction contracts, it fails to clearly stipulate the procedural mechanisms and the Contractor's entitlement to compensation in cases of unilateral termination by the Employer. This normative gap creates a legal gray area that may be exploited by the Employer to evade contractual liability and legal responsibility (Najmifaza ND & Barokah, 2025).

Kurniawati (2024) observes that the Indonesian procurement system continues to rely heavily on the discretionary authority of the Pejabat Pembuat Komitmen (PPK), without the support of an independent supervisory or review mechanism. Consequently, decisions to terminate construction contracts are frequently based on administrative or non-objective considerations rather than substantive contractual breaches. In addition, dispute resolution through the Indonesian National Arbitration Board (BANI) is widely regarded as inefficient due to its protracted procedures and high costs, which are often disproportionate to the value of the construction contract in dispute (Putra, 2015).

Accordingly, from a legal standpoint, it is essential to strengthen both preventive and repressive forms of legal protection for the Contractor. Preventive protection may be achieved through the formulation of balanced and standardized construction contract clauses, consistent with international best practices such as FIDIC-based contracts. Repressive protection, on the other hand, should be realized through the imposition of clear compensation obligations in favor of the Contractor where contract termination is affected without a valid legal or contractual basis.

Comparative Law: Lessons from the European Union and East Asia

Comparative studies show that legal systems in the European Union and East Asia have developed stronger protection mechanisms for contractually weaker parties. Allen (2023) explains that contract law in the UK and the European Union is based on the principles of good faith and proportionality, which require that any contract termination be based on clear legal grounds and accompanied by written notice to the injured party.

Wang J. & Li H. (2024) added that in the ASEAN region, especially in Singapore and Malaysia, contract termination clauses can only be enforced if there is a fundamental breach of contract. Therefore, contract termination cannot be carried out solely due to minor administrative errors.

Meanwhile, the legal systems of China and South Korea place weaker party protection as a key principle in contractual relationships. According to Chen (2021) and Cho SK & Park H J. (2021) , any unilateral contract termination in both countries must be accompanied by full compensation for the economic losses suffered by the Contractor. This principle is rooted in the doctrine of *equitable remedies*, which provides proportionate substantive justice to the injured party.

Reconstruction of the Legal Protection Model for Service Providers in Indonesia

The results of normative and comparative legal analyses indicate that the Indonesian legal system continues to place primary emphasis on administrative forms of protection, and has not yet achieved substantive legal protection oriented toward proportional justice for both contracting parties. Within the framework of modern construction contractual relationships, an equitable model of legal protection must ensure a balanced allocation of rights, obligations, and responsibilities between the Employer and the Contractor.

This research offers a balanced contractual protection model consisting of three main components:

1. Standardization of national construction contract clauses, which regulate the obligation to provide compensation and clarification mechanisms before contract termination is carried out.
2. Establishment of a construction contract mediation institution, which is independent, fast, and affordable in terms of cost, to be an effective alternative before resorting to arbitration.
3. Reform of national contractual law, through the adoption of the principles of good faith and equitable remedies as applied in the legal systems of the European Union and East Asia.

This model is expected to be able to close the gap between law in books and law in action, and ensure that every construction contract is implemented with the principles of fairness, transparency, and shared responsibility (Haekal FS & Marniati, 2025; Ramadhani E. et al., 2024).

CONCLUSION

This research confirms that unilateral termination of construction contracts by the Employer remains a significant issue in Indonesia's construction sector, with Law Number 2 of 2017 concerning Construction Services and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods and Services lacking clear provisions on limitations, procedures, and consequences, resulting in unequal positions that expose Contractors to financial losses and reputational harm. Legal protection remains predominantly administrative and formalistic, failing to uphold substantive principles of contractual fairness and good faith, unlike more balanced regimes in the UK, China, and South Korea that incorporate good faith, proportionality, and mandatory compensation. The study concludes that an ideal model should emphasize equitable rights and obligations, clear termination provisions, proportional compensation, and efficient dispute resolution to create a just, responsive system. For future research, empirical studies could examine the practical implementation of these proposed reforms through case analyses of post-legislative court decisions and stakeholder surveys in Indonesia's construction industry.

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