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Strengthening Legal Protection for Construction Service Providers Amid Corruption and Legal Uncertainty

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Abstract

This study analyzes the legal protection for building construction service providers amid corruption in state infrastructure projects. It highlights the significant issue of budget misuse in corruption cases, as reported by Indonesia Corruption Watch (ICW) in 2022. A major obstacle is the inadequacy of Law Number 2 of 2017, which fails to sufficiently protect construction service providers who primarily act as implementers without control over the budget. Additionally, the law removes criminal penalties for failure to complete projects, causing legal uncertainty and violating the principle of justice in the 1945 Constitution. Using a sociological juridical approach, the findings suggest a need to revise regulations to clearly separate the responsibilities of construction providers and budget authorities. For Indonesia to strengthen its legal system based on Pancasila and justice, the research calls for regulatory reforms to protect construction service providers from legal exploitation and ensure a more coherent national legal framework.

Keywords

Legal Protection, Construction Service Providers, Corruption, Regulatory Reform, Legal Uncertainty.

1. Introduction

Efforts to improve social development and economic activities throughout Indonesia, it is undeniable that the position of public infrastructure is important. Development cannot run smoothly if the infrastructure is not good (Junef, 2021). This is because every aspect of social and economic life has its own special supporting infrastructure, which is the largest unit and main tool in various national strategic development activities. Based on existing experience, development often occurs inefficiently and ineffectively because it is not in accordance with regional aspirations, does not match regional potential and regional problems, and deviations are technical and non-technical in nature which of course cause various social impacts that are not small. The importance of infrastructure development as the main means for realizing the development of national life development in multi-dimensions. The importance of the position of national infrastructure development both at the level of big cities and at the regional level, automatically also shows that construction service providers are the driving force for implementing infrastructure development which is no less important (Priyanta & Zulkarnain, 2023). The construction services sector is one of the strategic sectors in supporting the achievement of national development (Svensson, 2005).

The development of construction services has become an important and strategic public agenda considering the rapid developments in the context of globalization and liberalization, poverty and inequality, democratization and regional autonomy, and damage and natural disasters. In addition, the development of construction services cannot be separated from the context of the political, cultural, economic, and bureaucratic transformation process (Edward et al., 2023). In order to realize the optimization and professionalism of the role of quality building construction service providers, the mechanism for appointing building construction service providers in an infrastructure development project is appointed through a project auction. Project auctions often create loopholes for corruption and bribery for officials who determine the winner of the project auction. In reality, in order to pass one of the contractors, the Construction Official (PPK) and the Head of Procurement of Goods and Services of the Labuhanbatu Regency Education Office asked for a sum of money with the promise of passing contractors who provided many benefits in the form of money to the Construction Official (PPK) and the Head of Procurement of Goods and Services of the Labuhanbatu Regency Education Office (Kusriyah, 2021).

Other corruption cases that often ensnare contractors, apart from bribery cases in project tenders, are cases of inflating infrastructure development budgets. Based on the 2022 Corruption Cases Monitoring Trends Report conducted by Indonesia Corruption Watch, it is known that ICW found that the most dominant modus operandi that emerged throughout 2022 was budget misuse. This study focuses on legal protection for building construction service providers involved in alleged corruption in state infrastructure development, with the aim of realizing justice. The main problems raised are the inability of current regulations to achieve justice, weaknesses in their implementation, and the need for justice-based regulatory reconstruction. The study aims to analyze the causes of injustice in regulations, identify weaknesses in their implementation, and offer solutions in the form of fairer regulatory reconstruction. Theoretically, this study is expected to provide an update on scientific conceptual thinking regarding legal protection for construction service providers in the context of alleged corruption, so that it can become a basis for more effective and equitable regulatory reform.

2. Literature Review

The reconstruction process, it is important to consider events, phenomena, history, and concepts of thought that have been issued. Repairing things that have collapsed and strengthening joints that have weakened. Third, including some updates without changing the original character and characteristics (Eddy et al., 2023). If reconstruction is associated with the concept or idea or idea about law, it means that legal reconstruction is interpreted as a process to rebuild or rearrange ideas, ideas or concepts about law. Public regulation focuses on the public and its problems (Agustina et al., 2024). Public regulation discusses how these issues and problems are constructed and defined, and how all of them are placed on the regulatory agenda and political agenda. Meanwhile, regulatory analysis is a study of public regulation that aims to integrate and contextualize models and research from these disciplines that contain problem and regulatory orientations (Barnawi & Abdullah, 2023).

In analyzing the regulatory process as a model consisting of input (articulation of interests), process functions (aggregation of interests, regulation making, implementation of regulations and regulatory decisions) and regulatory functions (extraction, regulation and distribution). The output of regulation is returned to the political system in the domestic and international environment. Based on the various explanations above, it can be concluded that it is necessary to reformulate the regulation of terrorism prevention based on Pancasila, the Opening of the 1945 Constitution of the Republic of Indonesia, Article 28D of the 1945 Constitution of the Republic of Indonesia, Law Number 31 of 1999, Law Number 20 of 2001, and Law Number 39 of 1999, the basis. The legal order is an order or rule that is very close to the event of shifting between *das sollen* and *das sein* in society. The shift between customary rules and other rules can be seen in the positive law of the state which is made by an institution appointed by the community and is indeed assigned by the community to create a legal rule. The legal vacuum so that society often demands the creation of regulations that are able to cover the legal vacuum, this is clearly closely related to the certainty that the law is not an ideal order and is also not related to community customs (Darusman et al., 2020).

The concept of justice is very difficult to find a benchmark because what is fair for one party is not necessarily felt by the other party. The word justice comes from the word just, which means it can be accepted objectively. Furthermore, according to Aristotle, there are several definitions of justice, including equality-based, distributive, and corrective justice. Equality-based justice is based on the principle that the law binds everyone, so that the justice to be achieved by the law is understood in the context of equality. The equality referred to here consists of numerical equality and proportional equality.

This is very important, because with the existence of legal certainty it will greatly affect the authority of the judge and the electability of the court itself. Because the judge's decision that contains elements of legal certainty will contribute to the development of science in the field of law. This is because the judge's decision that already has permanent legal force, is no longer the opinion of the judge himself who decides the case, but is already the opinion of the court institution and becomes a reference for society in everyday interactions (Wantu, 2012). The crime of corruption in the regulations mentioned above is defined with a focus on the actions of a person who commits a crime or violation to obtain personal gain, gain for others, or gain for an entity that is detrimental to state finances, regional finances, the state economy, the regional economy, agencies that receive assistance from state/regional finances, or other legal entities that utilize capital or leniency from the community. This crime is also carried out by abuse of office or position. This crime is regulated in articles 41 to 50 of the Government Regulation in Lieu of Law perpu, as well as articles 209, 210, 418, 419, and 420 of the Criminal Code.

Social change with broad participation in a society intended for social and material progress (including greater freedom, justice and other valued qualities) for the majority of the people through greater control they gain over their environment. According to Rahardjo (2004) legal protection is an effort to protect a person's interests by allocating a Human Right of power to him to act in the interests of his interests. According to Taduri legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social life between fellow human beings.

3. Research methods

The research method used in this study is sociological legal research. This method attempts to describe and interpret the research object according to the actual situation, with the aim of systematically describing the facts and characteristics of the research object being studied precisely. The data or materials obtained are then further analyzed to obtain in-depth results (Sunggono, 2006). The data sources used in this study were taken from primary data and secondary data. Primary data is data obtained directly from the first source related to the problem to be discussed. The obtained data in this study includes various relevant sources, such as laws and regulations, scientific books, research results, and other documents that function as complements to primary data. Several important regulations used as references include the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999. Data collection techniques are carried out through literature studies, namely collecting information from written and visual sources, such as legal regulations, scientific works, official documents, books, magazines, archives, personal documents, and relevant photos. This literature study aims to understand the concepts, theories, and legal provisions related to the construction of a criminalization system in cases of assisting in bribery based on the value of justice.

4. Research result

4.1. Legal Protection Regulations for Building Construction Service Providers

Criminal acts in infrastructure development or criminal acts of infrastructure corruption are criminal acts of corruption that are closely related to fraudulent acts or deception in the management and allocation of the state infrastructure development budget. Fraudulent acts in their development have similarities with criminal acts of fraud, so that fraud and cheating are often interpreted the same, namely in the form of bedrog acts. According to Nursya (2020), fraudulent acts are acts that are carried out intentionally to benefit one party (individual, company or institution) unfairly or unlawfully which results in losses for the other party. Meanwhile, based on Circular Letter Number 13/28/DPNP Concerning the Implementation of Anti-Fraud Strategies for general banks, the definition of fraud in this provision is an act of deviation or omission that is deliberately carried out to deceive, deceive, or manipulate banks, customers or other parties that occur in the bank environment and/or using bank facilities so that the bank, customer, or other party suffers losses and/or the perpetrator of the fraud obtains financial benefits either directly or indirectly (Prasetya & Waluyo, 2024).

The losses suffered by the community due to fraud are not only economic in nature and/or value alone but in fact the losses to the community are very large, and it is a much greater loss, namely the loss of public trust in the government. Based on the provisions of Article 120 of the Criminal Code, it is seen that the crime of fraud also includes the crime of fraud in the form of distributing or possessing, and

duplicating confidential documents and objects related to Indonesia's defense or security against external attacks. In the provisions of Article 383 of the Criminal Code, the type of criminal act committed is a criminal act related to trade in the form of an intentional act of handing over goods other than those designated to be purchased and providing the type, condition or quantity of goods handed over, using trickery (Widijowati, 2023).

Construction failure is a failure that can be caused by failure in the procurement process of goods or services, or failure can also occur during the construction process. Dispute resolution through certain institutions or agencies is the resolution of disputes through general courts or through institutions specifically established by law, namely the Consumer Dispute Resolution Agency (BPSK) (Samosir, 2018). The provisions above indicate that national development aims to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The implementation of Construction Services is carried out based on the principles of honesty and justice, benefits, equality, harmony, balance, professionalism, independence, openness, partnership, security and safety, freedom, sustainable development, and environmental awareness. The regulation of the implementation of Construction Services in this Law has been adjusted several times to accommodate the needs of the law that occur in empirical practice in society and the dynamics of legislation related to the implementation of Construction Services. The development of the increasingly complex Construction Services sector and the increasing level of competition in Construction Services services both at the national and international levels require a legal umbrella that can guarantee legal certainty and legal certainty in the field of Construction Services, especially protection for Service users, Service providers, construction workers, and the Construction Services community (Syamsudin, 2021).

The principle of legality is a very fundamental principle in criminal law which has the main objective of achieving legal certainty and preventing arbitrary actions by the authorities. In the Indonesian Criminal Code, the principle of legality is stated in Article 1 paragraph (1) of the Criminal Code which reads "No act may be punished except by the force of criminal provisions in existing laws that precede the act". The act of failing to build must be contrary to the established technical provisions. Done intentionally. This element clearly provides a limitation on acts of failing to build that can be punished and can only be resolved through civil and administrative efforts. In reality, this provision was abolished in Law Number 2 of 2017, resulting in the vagueness of criminal failure to build in building construction service regulations (Matnuh, 2021).

Based on the principle of *ultimum remedium*, the pattern of eradicating corruption by means of criminal sanctions has been considered ineffective because it does not stop corruption committed by other people. Punishing the perpetrator only stops the corruption committed by the person who was punished. Corruption committed by other people continues. Although punishing the perpetrator with severe criminal sanctions and even the death penalty as stipulated in Article 2 paragraph (2) of Law Number 31 of 1999 as amended by Law Number 20 of 2001, it will not be effective in preventing corruption (Situmorang, 2002). The Corruption Eradication Commission (KPK) is an institution specifically formed to eradicate corruption, but it has not been able to stop the rate of corruption. The implications of prioritizing and relying on the pattern of eradicating corruption with criminal law alone make officials reluctant to become officials in the procurement of goods and services, either as PPK or Procurement Service Unit (ULP)/Procurement Committee. The implications of this are on the absorption of the APBN/APBD. This has an impact on the hampering of development due to obstacles in the procurement process of goods and services. This obstacle is caused by the dilemma in the

implementation of criminalization which is sometimes not on target (Harjono et al., 2024).

This is because there are many loopholes for parties to commit corruption or as a means to bring down political opponents in power or as a means to assassinate the character of an official. The fact that procurement cases are often a means for someone in power politics can be seen from the fact that after the birth of a strict supervision system for procurement of goods for infrastructure development involving the Corruption Eradication Commission in this country, some officials were reluctant to become Commitment Making Officers or PPK (Widiarty & Fahim, 2024). Handling cases of irregularities in the procurement of goods and services should begin with identifying and classifying whether the irregularities fall within the realm of administrative law or civil law or criminal law. This identification and classification step is important to know which legal rules (*rechtsregel*) will be applied to the *in-concreto* case (Chandra, 2023). The characteristics of criminal acts of corruption cannot be equated with other conventional crimes. Corruption is always labeled a white collar crime because its actions always experience dynamics in their *modus operandi* from all sides so that they are said to be invisible crimes that are very difficult to detect. Therefore, the eradication pattern cannot only be carried out by giving severe punishment or the death penalty, criminal punishment is only the *ultimum remedium* (Pujiningrum et al., 2024).

The disappearance of criminal threats in the regulation of procurement services has very clearly shown that law enforcement in cases of failed building construction has been wrongly resolved through reporting complaints to the police (Wori et al., 2023). This is because most construction failures are often associated with fraud, embezzlement, and money laundering. This happened in Case Number 1551 K/PID/2014. In this case, the construction service provider was sued under general criminal law by the plaintiff and was found guilty by being sentenced to one month in prison. In the Tirtasani Royal Resort case after the replacement of Law No. 18 of 1999 with Law No. 2 of 2017, it is clear that the housing party cannot be continued considering that the criminal provisions in Law No. 2 of 2017 have been removed and administrative sanctions are prioritized first. Meanwhile, regarding Case Number 1551 K/PID/2014, the lawsuit was won considering that at that time it was still using Law No. 18 of 1999 which still contained criminal provisions.

Construction service providers, once again, are only the executors of state infrastructure development work ordered by authorized officials (Tamatompol, 2027). So, from a direct liability perspective, construction service provider corporations cannot be identified that state losses occur as a result of plans and actions in the form of participating or assisting authorized officials in committing corruption of state infrastructure development budgets which culminate in the failure to build state infrastructure and result in state losses (Widiyono, 2022).

4.2. Weaknesses in the Implementation of Legal Protection Regulations for Building Construction Service Providers

It has been previously stated that Law Number 2 of 2017 concerning Construction Services does not regulate criminal threats and the formulation of the crime of failure to build. This situation clearly has implications for uncertainty in the formulation of acts and punishment, this makes construction service business actors not have legal protection and legal certainty in running their businesses, especially when they are at risk of being involved in state infrastructure corruption cases (Saputri & Raffles, 2022). The legal vacuum in Law Number 2 of 2017 concerning Construction Services related to the crime of failure to build often causes construction service business actors who are faced with infrastructure corruption to also sink as perpetrators of corruption who carry out Article 3 in conjunction with Article 18 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001

concerning Corruption. This is clearly not true considering that the position of the construction service provider is not the party that has the power to manage and allocate the infrastructure development budget, the construction service actor is only a worker who works on the construction of state infrastructure with a budget that has been determined by the authorized official. Operationally, construction service providers are only allowed to carry out actions to seek economic profit from their service fees, which is included in the category of infrastructure development fraud as a type of corruption (Sayuti, 2024).

Proof of infrastructure corruption cases as seen in several cases above, only focuses on whether or not there is state loss in the development of state infrastructure. However, an in-depth investigation of the position of construction service providers as parties involved in corruption of state infrastructure development budgets is rarely carried out (Kombong et al., 2020). This can have an impact on service providers who only act as partners of the government in terms of implementing infrastructure development in the field. Given that partners are often involved in corruption cases even though partners do not hold authority and cannot be said to be able to authoritatively harm the state. This situation is clearly far from the expectations of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The explanation above shows that the system in the rules regarding criminal sanctions in corruption cases of procurement of goods for infrastructure development is experiencing problems (Wandik et al., 2023).

In relation to the legal system, Hans Kelsen stated that a legal system is a continuous process that starts from the abstract to the positive and finally becomes real. In other words, according to Kelsen, a norm is made according to a higher norm and this higher norm is also made according to an even higher norm, and so on until the highest norm is not made by a norm anymore but is first determined by society (Mujianto et al., 2023). The order of norms starts from the Grundnorm (basic norm) which is abstract (relative) and is described in the Generalnorm (positive norm) and then individualized into the Concretenorm (real or concrete norm). From this explanation, it can be understood that basically Stufenbautheorie is a process of concretization (konkretisierung) therefore all legal norms from the highest legal norms to the lowest are a unity in a regular (samenhangende eenheid) and logical (logische stufenbau) arrangement, so that there is no conflict or contradiction.

The operationalization of the concept of the Indonesian rule of law is stated in the state constitution, namely the 1945 Constitution (UUD) which is the basic law of the state that occupies the position as the highest basic law of the state in the legal order of Indonesia. Under the 1945 Constitution there are various legal rules/statutory regulations that originate and are based on the 1945 Constitution. The statement that the basic values of Pancasila are the normative basis for the implementation of the Indonesian state is not yet a concrete statement. As a basic value that is abstract and normative, there needs to be a concretization of the statement above. This effort is to make the basic values of Pancasila the basic norms and normative sources for the preparation of positive state law (Setiaji & Ibrahim, 2018).

As a state based on law, all implementation and administration of the state should be based on and based on applicable laws and regulations. So, the operationalization of Pancasila as the basis (philosophy) of the state is realized by the formation of a national legal system in a legal order where Pancasila is the basic norm (Arum, 2023). For the Indonesian people, Pancasila is not something foreign. Pancasila consists of 5 (five) principles, stated in the fourth paragraph of the Preamble to the 1945 Constitution and is intended as the basis of the Republic of Indonesia. Although the Preamble to the 1945 Constitution does not explicitly mention the word Pancasila, it is already known that the 5 (five) principles referred to are Pancasila to

be intended as the basis of the state. A state of law is related to human rights. Because, one of the characteristics of a state of law is the guarantee of human rights.

Indonesia is a country based on law, as stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia. In practice, our minds generally jump to the “rule of law”. This means that the formulation in the Constitution is then practiced with the doctrines and principles contained in the rule of law. It seems that this is the right way and is the (only) way to practice a “country based on law” properly (Umam et al., 2023). As a country based on Pancasila, we use the concept of the “Pancasila law” system to accommodate various characteristic values that our legal system wants to accommodate, such as family, fatherhood, harmony, balance, and deliberation. These values are the roots of our legal culture.

5. Conclusion

Regulation of legal protection for building construction service providers aims to create legal certainty in the implementation of construction and protect all parties involved, including the community. Criminal acts in construction, such as corruption, are often caused by fraud or cheating, which can result in major losses, including the loss of public trust in the government. In the legal context, handling corruption cases requires a comprehensive approach, considering its nature as a white-collar crime that is difficult to detect. The importance of the principle of legality in criminal law regulations is balanced by the application of administrative sanctions as an initial step in resolving disputes. Changes to regulations through Law No. 2 of 2017 emphasize the role of administrative sanctions and eliminate direct criminal threats, except for serious violations. From a legal perspective, construction service providers as implementers cannot be considered directly responsible for corruption committed by authorized officials. The weakness in the implementation of regulations on legal protection for building construction service providers, especially in Law No. 2 of 2017, lies in the absence of criminal provisions for the crime of failed construction. This gap results in legal uncertainty and a lack of protection for construction business actors, who are often trapped in infrastructure corruption cases even though they only act as implementers of development without authority over the budget. A non-comprehensive legal system often fails to separate responsibilities between service providers and budget authority holders, thus violating the principle of justice as mandated in Article 28D paragraph (1) of the 1945 Constitution. According to Hans Kelsen, a legal norm must be logical and structured, but this regulation has not been able to reflect a coherent legal system. As a state based on the rule of law based on Pancasila, Indonesia needs to operationalize the values of justice and legal protection to create a system that guarantees legal certainty and avoids abuse of the law by certain parties.

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