

Reconstructing Legal Protection for Construction Service Providers in Construction Contracts Based on Pancasila Justice

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Abstract: Legal protection for construction service providers in construction contracts remains inadequate despite the enactment of Law Number 2 of 2017 on Construction Services. The existing regulatory framework imposes extensive obligations on service providers while failing to establish effective legal consequences for service users who delay contractual payments, thereby creating an imbalance of rights and obligations. This study aims to examine the regulatory weaknesses in the legal protection of construction service providers and to propose a reconstruction of the legal framework grounded in the principles of Pancasila justice. Employing a normative legal research method, the study analyzes statutory regulations, legal doctrines, judicial principles, and conceptual approaches to identify inconsistencies within the current legal regime. The findings reveal that the existing framework does not adequately ensure equitable contractual protection, as Article 47 lacks explicit provisions imposing sanctions on service users for late payments. These deficiencies are reflected in three interrelated dimensions: legal substance, which fails to provide balanced sanction mechanisms; legal structure, characterized by the absence of an independent and competent construction contract audit institution; and legal culture, where procurement practices continue to prioritize the lowest bid over fairness, professionalism, and service quality. To address these shortcomings, this study proposes a reconstruction of Article 47 by introducing mandatory payment obligations within agreed contractual periods, accompanied by enforceable sanctions in the form of material and immaterial compensation for unjustified payment delays. The proposed reconstruction integrates the values of Pancasila justice, emphasizing balance, proportionality, good faith, and social justice as fundamental principles of contractual relations. The study contributes to the development of construction contract law by offering a justice-oriented regulatory model that strengthens legal certainty, enhances contractual fairness, protects

construction service providers, and promotes a more equitable legal system in Indonesia's construction services sector.

Keywords: Construction Contracts; Construction Service Providers; Legal Protection; Pancasila Justice; Regulatory Reconstruction.

INTRODUCTION

The construction sector plays a strategic role in promoting national economic development by supporting infrastructure expansion, investment growth,¹ employment opportunities, and public welfare. Every construction project is founded on a contractual relationship that defines the reciprocal rights and obligations of construction service users and providers. In Indonesia, this relationship is principally governed by Law Number 2 of 2017 concerning Construction Services,² which recognizes the Construction Work Contract as the primary legal instrument governing project implementation. Such contracts regulate the scope of work, payment mechanisms, project schedules, quality standards, risk allocation, guarantees, and dispute settlement procedures. In principle, construction contracts are intended to establish legal certainty and contractual balance so that each party receives equal legal protection throughout the project lifecycle.³ However, the practical implementation of these contracts demonstrates that legal certainty does not always translate into substantive justice, particularly for construction service providers who frequently occupy a weaker bargaining position despite bearing substantial financial and operational responsibilities.⁴

Construction service providers commonly assume considerable financial risks before receiving contractual payments.⁵ At the commencement of a project,

¹ Olabode Emmanuel Ogunmakinde, Temitope Egbelakin, and William Sher, 'Contributions of the Circular Economy to the UN Sustainable Development Goals through Sustainable Construction', *Resources, Conservation and Recycling* 178 (March 2022): 106023, <https://doi.org/10.1016/j.resconrec.2021.106023>.

² Serta Denius Daeli, 'Pertanggung Jawaban Hukum Bagi Penyedia Jasa Konstruksi Dan Pengguna Jasa Konstruksi Dalam Kegagalan Bagunan', *Jurnal Ilmu Ekonomi, Pendidikan Dan Teknik* 2, no. 3 (May 2025): 122–29, <https://doi.org/10.70134/identik.v2i3.732>.

³ Nibrosu Rohid et al., 'Reconstructing the Legal Enforcement Framework for Digital Activism in an Era of Technological Disruption', *Nusantara: Journal of Law Studies* 5, no. 2 (July 2026): 881–901, <https://doi.org/10.66325/nusantaralaw.v5i2.236>.

⁴ Tri Widiyono and Md Zubair Kasem Khan, 'The Legal Philosophy and Justice Values in the Acquisition of Land Rights In Indonesia: A Normative Legal Research', *International Journal of Law Reconstruction* 6, no. 2 (October 2022): 278–98, <https://doi.org/10.26532/ijlr.v6i2.26841>.

⁵ Sam Bolton et al., 'Late Payment to Subcontractors in the Construction Industry', *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 14, no. 4 (November 2022): 04522018, [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000552](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000552).

providers are generally required to submit performance guarantees, mobilize labor and equipment, procure construction materials, and finance operational expenditures using their own capital or external financing. These obligations are often fulfilled long before payment is received from the service user. The financial burden becomes even more significant when service providers have entered contractual relationships with subcontractors, suppliers, and financial institutions. Delays in payment by service users consequently generate a chain of contractual and financial consequences that extend beyond the principal contractor, affecting subcontractors, suppliers, workers, and other stakeholders involved in project execution. Such circumstances frequently expose construction service providers to default claims, even though the initial breach arises from the service user's delayed payment.

This imbalance is particularly evident in projects involving subcontracting arrangements. Small and medium-sized enterprises serving as subcontractors generally possess limited bargaining power when negotiating construction contracts. Standard-form contracts are predominantly drafted by principal contractors or project owners,⁶ leaving subcontractors with little opportunity to negotiate payment terms or risk allocation. Payment clauses frequently stipulate that subcontractor payments are contingent on the principal contractor receiving payment from the project owner first. Consequently, subcontractors may complete their contractual obligations in accordance with agreed specifications while remaining unable to obtain timely payment because the principal contractor has not yet received funds from the service user. This practice not only undermines contractual fairness but also violates the principle of equality before the law by disproportionately shifting commercial risks to economically weaker parties.

Although Indonesian contract law recognizes⁷ the principles of freedom of contract, good faith, proportionality, and *pacta sunt servanda*,⁸ their practical implementation in construction contracts remains problematic. Article 47 of Law Number 2 of 2017 governs the essential terms of construction work contracts, including rights, obligations, payment arrangements, guarantees, dispute-resolution mechanisms, and sanctions for contractual violations. Nevertheless, the existing provision does not expressly impose firm legal consequences upon

⁶ Valerie Voon Kher Yiing et al., 'An Analytical Exploration of Construction Contract Terms from Legal Cases', *International Journal of Research and Innovation in Social Science* 10, no. 2 (March 2026): 5277–5294, <https://doi.org/10.47772/IJRISS.2026.10200389>.

⁷ Dona Budi Kharisma et al., 'The Nature of Fairness in Contracts: An Electronic Contract Perspective', *Jurnal Hukum Novelty* 16, no. 1 (April 2025): 85–100, <https://doi.org/10.26555/jhn.v16i1.29650>.

⁸ Muhammad Sulaiman, Novritsar Hasitongan Pakpahan, and Arif Rachman Putra, 'Analysis of the Validity and Effectiveness of Electronic Contracts in Legal Protection of Digital Transactions in Indonesia', *Journal of Social Science Studies* 3, no. 1 (January 2023): 41–46.

service users who delay contractual payments without legitimate justification. As a result, contractual obligations imposed upon service providers are accompanied by enforceable sanctions, whereas corresponding obligations imposed upon service users remain relatively weak in terms of legal enforceability. This asymmetrical regulatory design creates an imbalance between contractual rights and obligations and diminishes the effectiveness of legal protection available to construction service providers.

The deficiencies within the existing legal framework cannot merely be understood as technical shortcomings in contract regulation but should also be viewed as manifestations of broader structural problems within Indonesia's construction legal system.⁹ From a legal perspective, statutory provisions inadequately regulate sanctions for delayed payment by service users. From a legal perspective, there remains no fully independent institution capable of conducting professional construction contract audits to objectively determine contractual compliance before disputes escalate into litigation or arbitration. Meanwhile, from a legal culture perspective, procurement practices continue to emphasize the lowest-price principle rather than fairness, professional capability, sustainable partnerships, and equitable risk distribution. Consequently, construction contracts frequently serve as instruments of commercial efficiency rather than mechanisms for achieving justice between contracting parties.

Within the Indonesian legal system,¹⁰ justice cannot be interpreted solely through formal compliance with statutory provisions. As the philosophical foundation of the state, Pancasila requires that legal regulation embody humanity, equality, cooperation, proportionality, and social justice. The values contained in the Second and Fifth Principles of Pancasila demand that contractual relationships provide balanced legal protection rather than merely protecting economically dominant parties.¹¹ Therefore, legal reconstruction should not only improve regulatory certainty but also integrate Pancasila justice as the normative foundation governing contractual relationships in the construction sector. Such an approach recognizes that contractual justice extends beyond procedural legality and encompasses substantive fairness capable of protecting legitimate interests of both service users and service providers.

⁹ Gianina Elizabeth Adiwinata et al., 'Lien Rights: The Invisible Pillar Urgently Needed in Indonesia's Construction Security System Regulation', *Journal of Judicial Review* 27, no. 2 (December 2025): 659–694, <https://doi.org/10.37253/jjr.v27i2.11939>.

¹⁰ Andri Winjaya Laksana et al., 'Rehabilitative Sentencing for Narcotics Addicts within the Framework of National Law and Maqasid Syari'ah', *El-Mashlahah* 16, no. 1 (May 2026): 1–22, <https://doi.org/10.23971/el-mashlahah.v15i2.10409>.

¹¹ Ismawati and Suud Sarim Karimullah, 'Consumer Protection in the Digital Era: An Analysis of Consumer Protection in E-Commerce', *Nusantara: Journal of Law Studies* 3, no. 02 (December 2024): 68–80, <https://doi.org/10.5281/zenodo.17376951>.

Several previous studies have examined legal issues relating to construction contracts, yet significant gaps remain. First, Slamet¹² emphasized that careful drafting of construction contracts is essential to prevent disputes arising from ambiguous contractual clauses, unequal bargaining positions, and inconsistent legal interpretation. While this study successfully highlights the importance of sound contractual drafting, it primarily focuses on preventive legal techniques and does not critically examine the structural inadequacies of statutory protection governing delayed payment by service users. Consequently, it provides limited guidance regarding the need for legislative reconstruction within Indonesia's construction law framework.

Second, research conducted by Arifin¹³ and colleagues examined partnership agreements in construction projects and concluded that written agreements should regulate reciprocal rights and obligations, comply with statutory requirements, and accommodate various partnership models, including subcontracting and joint operations. Although this research contributes to understanding contractual cooperation in construction projects, its analysis remains centered on contractual validity and partnership mechanisms, rather than on the unequal distribution of legal risks faced by construction service providers and subcontractors under standard-form contracts. The study also does not investigate how existing statutory provisions inadequately protect service providers against delayed contractual payments.

Third, previous scholarship on subcontracting practices¹⁴ has generally identified the weak bargaining position of subcontractors and the prevalence of standard-form agreements within the construction industry. These studies predominantly analyze contractual inequality from the perspective of private contract law and bargaining theory. However, they rarely connect contractual imbalance with deficiencies in the regulatory framework established under Law Number 2 of 2017, nor do they propose comprehensive legal reconstruction grounded in Indonesia's constitutional philosophy of Pancasila justice. As a result, existing literature has not sufficiently explored how legal reform can systematically reconcile contractual certainty with substantive justice through statutory reconstruction.

The foregoing studies demonstrate that previous research has primarily focused on contractual drafting, partnership arrangements, and bargaining

¹² Sri Redjeki Slamet, 'Kesempurnaan Kontrak Kerja Konstruksi Menghindari Sengketa', *Lex Jurnalica* 13, no. 3 (2016), <https://doi.org/10.47007/lj.v13i3.1773>.

¹³ Zaenal Arifin et al., 'Keabsahan Dan Perlindungan Hukum Perjanjian Kemitraan Jasa Konstruksi', *JURNAL USM LAW REVIEW* 6, no. 1 (February 2023): 65–78, <https://doi.org/10.26623/julr.v6i1.6095>.

¹⁴ Wiwin Budi Pratiwi and Murti Ayu Hapsari, 'Comparative Study of Outsourcing in Indonesia: What Can Indonesia Learn from Outsourcing in Japan', 24 December 2022, 53–61, https://doi.org/10.2991/978-2-494069-65-7_6.

imbalance in construction contracts. However, limited scholarly attention has been devoted to reconstructing the legal framework governing construction contracts through the perspective of Pancasila justice. The existing literature has also not comprehensively analyzed the interaction among legal substance, legal structure, and legal culture in creating unequal legal protection for construction service providers. Accordingly, an important research gap exists regarding the need to redesign Article 47 of Law Number 2 of 2017 to establish balanced legal obligations, enforceable sanctions for delayed payment, and effective legal protection that promotes equitable contractual relationships.

The novelty of this study lies in three principal contributions. First, it develops an integrated analysis of legal protection by simultaneously examining legal substance, legal structure, and legal culture as interconnected dimensions that influence contractual justice in construction services. Second, it proposes a normative reconstruction of Article 47 of Law Number 2 of 2017 by introducing explicit obligations requiring service users to complete contractual payments within agreed periods and by establishing enforceable sanctions in the form of material and immaterial compensation for unjustified payment delays. Third, unlike previous studies that primarily rely on conventional contract law principles, this research positions Pancasila justice as the philosophical and normative foundation for reconstructing legal protection, thereby advancing a justice-oriented regulatory model that emphasizes proportionality, good faith, equality, and social justice.

Based on these considerations, this study addresses the following research question: How should the legal protection framework for construction service providers in construction contracts be reconstructed, based on the principles of Pancasila justice, to establish balanced contractual relationships and effective legal certainty? This research is expected to contribute both theoretically and practically. Theoretically, it enriches the development of Indonesian construction contract law by integrating Pancasila justice into the reconstruction of legal protection for construction service providers. In practice, the proposed regulatory model provides recommendations for legislators, policymakers, construction industry stakeholders, legal practitioners, and dispute resolution institutions to reformulate construction service regulations that strengthen legal certainty, improve contractual balance, ensure timely payment obligations, and create a more equitable construction legal system consistent with the constitutional values of Pancasila.

METHOD

This study employs normative legal research using a statutory,¹⁵ conceptual, and philosophical approach to examine the adequacy of legal protection for construction service providers in the implementation of construction contracts. Normative legal research is considered appropriate because the study focuses¹⁶ on identifying normative deficiencies within the existing legal framework and formulating a reconstruction of legal regulations grounded in the principles of Pancasila justice. The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law Number 2 of 2017 concerning Construction Services, and other relevant laws and regulations governing construction contracts and contractual obligations. Secondary legal materials include scholarly books, peer-reviewed journal articles, legal commentaries, court decisions, and opinions of legal experts relating to construction law, contract law, legal protection, and Pancasila justice. In contrast, tertiary legal materials comprise legal dictionaries, encyclopedias, and other authoritative reference sources. Data were collected through comprehensive library research by systematically identifying, reviewing, classifying, and documenting legal materials relevant to the research objectives and the proposed reconstruction of the regulatory framework.

The collected legal materials were analyzed qualitatively¹⁷ using descriptive-analytical and prescriptive legal analysis. The descriptive analysis was conducted to identify weaknesses in the existing regulatory framework from the perspectives of legal substance, legal structure, and legal culture. In contrast, the prescriptive analysis was employed to formulate a reconstruction of Article 47 of Law Number 2 of 2017, incorporating balanced payment obligations and enforceable sanctions for delayed payments in line with the values of Pancasila justice. The analytical process involved legal interpretation, comparative evaluation of legal doctrines, systematic interpretation of statutory provisions, and legal reasoning to develop coherent normative arguments. To ensure the validity and reliability of the findings, this study applied source triangulation by cross-examining statutory provisions, legal doctrines, judicial reasoning, and academic literature, as well as theoretical triangulation through the integration of

¹⁵ Jaidun Jaidun, 'The Legislative Function of the House of Representatives to Prevent and Eradicate of Corruption', *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 001 (December 2023): 78–91, <https://doi.org/10.31941/pj.v21i1.3216>.

¹⁶ Widayati Widayati et al., 'The Challenges of Using the Omnibus Law Method in Indonesia's Legal System', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 17 October 2025, 459–477, <https://doi.org/10.24090/volksgeist.v8i2.13382>.

¹⁷ Anugrah Reskiani et al., 'Konstruksi Pemikiran Pembaharuan Hukum Kewarisan Islam Di Indonesia (Studi Yurisprudensi Mahkamah Agung)', *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 2022): 39–51, <https://doi.org/10.31958/juris.v21i1.5564>.

contract law principles, legal protection theory, and the philosophical values of Pancasila justice. These validation techniques strengthen the consistency, credibility, and normative accuracy of the proposed regulatory reconstruction.

RESULTS AND DISCUSSION

The Regulation of Legal Protection for Construction Service Providers Has Not Yet Reflected Pancasila Justice

Indonesia embraces Pancasila as the philosophical foundation of the state and the ultimate source of all legal norms. Consequently, every statutory regulation is expected to embody the values enshrined in Pancasila, particularly humanity, equality, cooperation, and social justice. As the *grundnorm* of the Indonesian legal system, Pancasila serves not only as a constitutional foundation but also as the normative benchmark for evaluating whether legislation has achieved substantive justice. Although Indonesia has continuously reformed its legal system to respond to social and economic developments, many legal norms remain influenced by the Dutch civil law tradition inherited during the colonial period. While this legacy has contributed to the development of modern contract law, its emphasis on formal legal certainty has not always been compatible with the Indonesian legal philosophy, which prioritizes social harmony, collective responsibility, and the principle of *gotong royong* (cooperation).

Within the context of national development, the procurement of goods and services is not merely an administrative activity intended to fulfill governmental needs.¹⁸ Rather, it constitutes a strategic instrument for achieving sustainable economic development and improving public welfare. Government-financed construction projects are expected to generate broad social benefits while ensuring fairness for all parties involved. Accordingly, construction contracts entered into between service users and construction service providers should not be viewed solely as commercial agreements but also as legal instruments that embody the constitutional values of Pancasila. The principles of justice, equality, proportionality, and mutual benefit should therefore govern the contractual relationship between the parties throughout the planning, implementation, and completion of construction projects.

The legal relationship between construction service users and providers is principally governed by the Construction Work Contract, as stipulated in Law Number 2 of 2017 concerning Construction Services, which replaced Law Number 18 of 1999. As a civil contract, the Construction Work Contract establishes reciprocal rights and obligations, regulates project implementation,

¹⁸ Sarmad Dalaf Hanoosh et al., 'Patent Protection for Artificial Intelligence: Contemporary Legal Challenges and Regulatory Perspectives', *Nusantara: Journal of Law Studies* 5, no. 2 (July 2026): 937–965, <https://doi.org/10.66325/nusantaralaw.v5i2.322>.

allocates contractual risks, determines payment mechanisms, and provides procedures for dispute resolution. Ideally, these contractual provisions should create a balanced legal relationship in which both parties receive equal protection and bear proportional responsibilities. However, the practical implementation of construction contracts demonstrates that this balance has not yet been fully achieved, particularly regarding the legal protection afforded to construction service providers.

The financial collapse of PT Istaka Karya (Persero) illustrates the consequences of inadequate legal protection for construction service providers.¹⁹ As a state-owned enterprise operating in the construction sector, PT Istaka Karya experienced severe financial distress, ultimately leading to bankruptcy. One of the primary causes of this condition was the prolonged delay in government payments to the construction service user. Despite successfully carrying out infrastructure development projects, including road and bridge construction across various regions, the company was unable to obtain payment within the agreed contractual period. Consequently, its cash flow deteriorated significantly, affecting its operational capacity and financial sustainability.

The delayed payments triggered a chain reaction throughout the construction industry, and without receiving payment from the project owner, PT Istaka Karya faced increasing difficulties meeting its financial obligations to workers, subcontractors, suppliers, and financial institutions. As outstanding liabilities accumulated, the company faced mounting debt, declining liquidity, and an inability to continue project implementation effectively. These circumstances demonstrate that delayed payment by service users does not merely constitute a contractual issue but may also threaten the continuity of construction businesses and disrupt the broader construction ecosystem.

From a legal perspective, the government,²⁰ as the construction service user, is equally bound by the contractual obligations agreed upon in the Construction Work Contract. Failure to fulfill payment obligations within the agreed period constitutes a form of contractual default that should give rise to legal consequences, including compensation for losses suffered by the injured party. Nevertheless, in practice, construction service providers—particularly

¹⁹Bambang Irawan, Adhayanto Oksep, And Hidayat Muhammad Fajar, 'Analisis Tanggung Jawab Pengguna Jasa Atas Terjadinya Wanprestasi Yang Timbul Dari Kontrak Kerja Konstruksi (Studi Tunda Bayar Pada Dinas Pekerjaan Umum Dan Penataan Ruang Kota Tanjungpinang)' (Masters, Universitas Maritim Raja Ali Haji, 2025), <https://lib.umrah.ac.id/>.

²⁰ Muhammad Doing et al., 'Strengthening the Constitutional Law System (Legal Challenges and Strategies in Handling the Social, Economic and Political Crisis in Indonesia)', *Journal Equity of Law and Governance* 5, no. 1 (August 2024): 113–122, <https://doi.org/10.22225/elg.5.1.10260.113-122>.

state-owned enterprises often experience considerable difficulty in enforcing these rights because of the complex relationship between government procurement policies, public financial administration, and contractual accountability. This imbalance weakens service providers' bargaining position and diminishes the practical effectiveness of contractual protections.

The regulatory weakness underlying this imbalance can be identified in Article 47 of Law Number 2 of 2017 concerning Construction Services. The provision requires construction work contracts to regulate the rights and obligations of the parties and provides that service providers may be subject to contractual penalties if they fail to complete the work within the agreed timeframe. However, the same provision does not establish explicit sanctions for service users who delay or fail to make contractual payments. As a result, the law creates an asymmetrical system of legal responsibility: service providers are exposed to clear and enforceable sanctions for non-performance, whereas service users may delay payment without facing equivalent legal consequences. Such an arrangement fails to provide equal legal protection and ultimately puts construction service providers at a disadvantage.

This regulatory asymmetry is inconsistent with the constitutional values embodied in Pancasila, particularly the Fifth Principle, "Social Justice for All Indonesian People." Pancasila justice requires that contractual relationships be founded upon equality, proportionality, reciprocity, and mutual responsibility rather than the dominance of one party over another. In a balanced contractual framework, legal consequences should apply equally to both parties. If construction service providers are required to pay delay penalties for failing to meet contractual deadlines, service users should likewise be subject to enforceable sanctions for failing to fulfill their payment obligations without lawful justification. Equal accountability is essential to ensuring that contractual justice is realized not only formally but also substantively.

The current regulatory framework, however, continues to prioritize the interests of service users while placing disproportionate financial risks on construction service providers. Such inequality undermines legal certainty, weakens business sustainability, and discourages fair contractual practices within the construction industry. Therefore, the existing legal protection framework cannot yet be regarded as reflecting the values of Pancasila justice. A reconstruction of the regulatory framework is necessary to establish a more balanced system of rights and obligations, strengthen payment certainty, and ensure that both service users and construction service providers are subject to equivalent legal responsibilities. Through such reconstruction, construction contracts can function not merely as commercial instruments but also as legal

mechanisms that realize justice, legal certainty, and social welfare in accordance with the philosophical values of Pancasila.

Weaknesses in the Regulatory Construction of Legal Protection for Construction Service Providers in the Current Implementation of Construction Contracts

The effectiveness of legal protection for construction service providers cannot be assessed solely by examining statutory provisions. Rather, it must be evaluated within the broader legal system in which those regulations operate.²¹ Lawrence M. Friedman's²² legal system theory provides a comprehensive analytical framework by explaining that the effectiveness of law depends upon the interaction of three interconnected elements: legal substance, legal structure, and legal culture. A deficiency in any of these components will reduce the legal system's ability to achieve justice and legal certainty. In the context of construction contracts in Indonesia, the imbalance experienced by construction service providers is not merely the result of inadequate statutory provisions but also reflects institutional weaknesses and procurement practices that collectively undermine the realization of equitable contractual relationships.

From a legal perspective, Indonesian construction law continues to rely heavily on the general principles of contract law, as embodied in Articles 1320 and 1338 of the Indonesian Civil Code. Article 1320 establishes the legal requirements for a valid agreement, while Article 1338 recognizes the principle of freedom of contract by providing that a legally concluded agreement shall bind the parties as law and must be performed in good faith. These principles form the legal foundation of construction work contracts, under which service users and construction service providers voluntarily determine their respective rights and obligations. In theory, such contractual freedom should enable the parties to establish a balanced and mutually beneficial legal relationship. In practice, however, achieving equality between the contracting parties is often difficult because differences in bargaining power significantly shape the content of contractual clauses.

²¹ Anrizal Anrizal, Sami'an Sami'an, and Sarwono Hardjomuljadi, 'Legal Protection For Construction Service Providers in Cases of Building Failure', *LAW & PASS: International Journal of Law, Public Administration and Social Studies* 2, no. 5 (December 2025): 278–287, <https://doi.org/10.47353/lawpass.v2i5.53>.

²² Henny Saida Flora, Mac Thi Hoai Thuong, and Ratna Deliana Erawati, 'The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System', *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (April 2023): 113–125, <https://doi.org/10.29303/ius.v11i1.1169>.

Law Number 2 of 2017 concerning Construction Services²³ further regulates the obligations of construction service providers by requiring them to complete construction work within the agreed schedule, budget, and quality standards. The law also imposes numerous additional responsibilities, including the provision of advance payment guarantees, performance guarantees, quality guarantees, building failure guarantees, occupational safety obligations, and other contractual assurances intended to secure successful project implementation. These obligations demonstrate that the regulatory framework imposes a substantial legal and financial burden on construction service providers at every stage of the construction process.

Despite these extensive obligations, the statutory framework does not provide service providers with equivalent legal protection when service users fail to fulfill their contractual obligations. Although construction work contracts are required to regulate the rights and obligations of both parties, the law provides no clear normative standards ensuring that contractual clauses reflect proportionality and equality. As a consequence, service providers remain subject to detailed legal obligations and contractual sanctions, whereas service users' obligations, particularly those concerning timely payment, are regulated only in general terms, without corresponding enforcement mechanisms. This imbalance weakens service providers' bargaining position and shifts a disproportionate share of contractual risk onto the party responsible for carrying out the construction work.

The most significant weakness of the legal substance lies in Article 47 of Law Number 2 of 2017, which requires construction work contracts to contain provisions regarding payment procedures, rights and obligations, and dispute resolution mechanisms. Although these elements are formally regulated, the provision does not establish explicit legal consequences when service users delay or fail to make contractual payments. Consequently, construction service providers may incur delay penalties for failing to complete projects on schedule, while service users who fail to fulfill their payment obligations are not subject to equally binding sanctions. Such regulatory asymmetry undermines the principles of reciprocity, proportionality, and contractual fairness, ultimately reducing the effectiveness of legal protection available to construction service providers.

The weaknesses of the current legal framework are also evident from the perspective of legal structure, namely the institutional mechanisms responsible for implementing and enforcing construction law. Since the enactment of Law Number 2 of 2017, criminal provisions previously contained in construction

²³ Supriyadi Supriyadi, Mohammad Gufron Az, and Kadek Wiwik Indrayanti, 'Juridical Review of Construction Contract Disputes in Indonesia', *Jurnal Cakrawala Hukum* 13, no. 3 (December 2022): 325–336, <https://doi.org/10.26905/idjch.v13i3.8916>.

legislation have largely been removed, shifting legal accountability toward civil, administrative, and sector-specific legal mechanisms. While this reform was intended to encourage business certainty, it has also created practical challenges in resolving disputes involving delayed payments, contractual breaches, and irregularities in public construction projects. Existing institutions frequently lack the specialized expertise required to evaluate the complex technical, financial, and legal dimensions of construction contracts.²⁴

Law enforcement authorities²⁵ commonly encounter significant difficulties in proving contractual violations involving state-funded construction projects. Investigations often require detailed examination of financial transactions, procurement documentation, project implementation reports, cost overruns, material price mark-ups, fictitious subcontracting arrangements, and concealed financial flows. These technical complexities cannot be resolved solely through conventional legal analysis but require multidisciplinary expertise encompassing auditing, accounting, construction engineering, procurement management, and contract law. Without adequate institutional capacity, legal protection for construction service providers remains difficult to enforce effectively, even where contractual violations are apparent.

These institutional deficiencies indicate the need for an independent construction contract audit²⁶ institution with authority to supervise construction projects throughout their entire lifecycle, beginning from procurement planning and contract formation through project implementation, payment verification, and completion. Such an institution would strengthen legal oversight by providing objective assessments of contractual compliance, verifying payment obligations, and identifying contractual irregularities before disputes escalate into prolonged litigation or arbitration. An independent supervisory mechanism would also reduce conflicts of interest, improve accountability in public procurement, and reinforce public confidence in the governance of construction services.

²⁴ Yulia Dessani, Bella Afrilia, and Sasmi Nelwati, 'Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia', *Hakamain: Journal of Sharia and Law Studies* 2, no. 1 (September 2023): 117–28, <https://doi.org/10.57255/hakamain.v2i1.319>.

²⁵ Agus Salim, Suryati Suryati, and Ruslan Yusoh, 'Law Enforcement Against Corruption In Indonesia: Between Expectation And Reality', *Realism: Law Review* 3, no. 2 (August 2025): 12–30, <https://doi.org/10.71250/rlr.v3i2.73>.

²⁶ Prasetyo Efendy, Sami'an Sami'an, and Sarwono Hardjomuljadi, 'Claim Audit by BPKP (Financial and Development Supervisory Agency) on Construction Contracts in BUMN', *International Journal of Law Policy and Governance* 4, no. 2 (July 2025), <https://doi.org/10.54099/ijlpg.v4i2.1236>.

The effectiveness of such an institution would depend largely upon the competence and professionalism of its auditors. Construction contract auditors should possess interdisciplinary expertise covering construction engineering, financial auditing, accounting, civil and administrative law, investigative techniques, procurement procedures, and evidentiary analysis. In addition to technical competence, auditors must demonstrate integrity, independence, analytical ability, professional judgment, and ethical responsibility to ensure that audit findings accurately reflect contractual realities. Strengthening institutional capacity is therefore an essential component of improving legal protection within Indonesia's construction services sector.

Beyond legal substance and institutional capacity, the effectiveness of legal protection is also influenced by legal culture, namely the attitudes and practices of stakeholders participating in construction activities. Procurement practices in Indonesia continue to prioritize the lowest bid as the primary criterion for selecting contractors. Although intended to promote budget efficiency, this procurement culture frequently encourages unrealistic pricing strategies, underestimation of project costs, reductions in construction quality, inadequate occupational safety measures, delayed project completion, and increased contractual disputes. In many cases, contractors submit excessively low bids to secure projects, even though they lack the financial or technical capacity to complete the work successfully. Such practices ultimately undermine both contractual performance and legal protection.

A procurement culture driven predominantly by price competition also affects contractual relationships after project implementation begins.²⁷ Contractors experiencing financial constraints due to unrealistic tender prices become increasingly dependent upon timely payments from service users to maintain cash flow and fulfill obligations to subcontractors, suppliers, and workers. When payments are delayed, the financial consequences rapidly spread throughout the construction supply chain, increasing the likelihood of contractual default, project delays, and business insolvency. These circumstances demonstrate that legal culture significantly influences the practical realization of contractual justice, regardless of the formal adequacy of statutory regulations.

Accordingly, the weaknesses in Indonesia's legal protection framework cannot be attributed to a single regulatory deficiency but rather arise from the interaction of inadequate legal substance, insufficient institutional support, and procurement practices that prioritize administrative efficiency over substantive

²⁷ Achmad Syabril Lessy, S. Sami'an, and Sarwono Hardjomuljadi, 'Realizing a Fair Competition in the Construction Procurement Process at the State Electricity Company: A Normative Review', *SIGn Jurnal Hukum* 6, no. 2 (2024): 418–432, <https://doi.org/10.37276/sjh.v6i2.403>.

fairness. These three dimensions reinforce one another in producing unequal legal protection for construction service providers. Therefore, meaningful legal reform requires a comprehensive reconstruction that simultaneously strengthens statutory provisions, establishes independent supervisory institutions, and promotes a procurement culture founded upon proportionality, professionalism, accountability, and the values of Pancasila justice. Only through such an integrated approach can construction contracts serve as legal instruments that ensure legal certainty, balanced contractual relationships, and equitable protection for all parties involved.

Regulatory Reconstruction of Legal Protection for Construction Service Providers in the Implementation of Construction Contracts Based on Pancasila Justice

As a constitutional state founded upon the rule of law,²⁸ Indonesia requires that every legal regulation uphold justice, legal certainty, and public welfare in accordance with the values of Pancasila. These constitutional ideals should also guide the regulation of construction services, given the construction sector's strategic role in supporting national development and economic growth. Consequently, legal protection for construction service providers should not be limited to regulating contractual obligations but should also ensure that contractual rights are effectively protected. A balanced legal framework must therefore guarantee payment certainty, a proportional allocation of rights and obligations, and accessible dispute-resolution mechanisms that provide equal protection to all contracting parties.

Within Indonesia's construction legal system,²⁹ the Construction Work Contract constitutes the principal legal instrument governing the relationship between service users and construction service providers.³⁰ Law Number 2 of 2017 concerning Construction Services requires every construction contract to contain essential contractual elements, including the identity of the parties, the scope of work, project duration, technical personnel, rights and obligations, payment procedures, default provisions, dispute resolution mechanisms, contract termination, force majeure, building failure, occupational safety, labor protection,

²⁸ Bambang Tri Bawono, Dwi Wahyono, and Andri Winjaya Laksana, 'Implementation of Rehabilitation For Drug Abuses According to Law Number 35 Of 2009 Concerning Narcotics', *Jurnal Hukum* 38, no. 1 (March 2022): 1–11, <https://doi.org/10.26532/jh.v38i1.20869>.

²⁹ Andri Winjaya Laksana et al., 'The Disparities in Punishment for Narcotic Addiction: Does It Reflect the Value of Justice?', *Jurnal Media Hukum* 32, no. 1 (May 2025): 134–150, <https://doi.org/10.18196/jmh.v32i1.25678>.

³⁰ Retno Kus Setyowati, 'Legal Politics in the Formation of a New Civil Procedure Law', *Jurnal Pembaharuan Hukum* 12, no. 1 (April 2025): 41–57, <https://doi.org/10.26532/jph.v12i1.42434>.

and environmental sustainability. These provisions demonstrate that construction contracts are intended not merely to regulate technical aspects of project implementation but also to establish legal certainty and accountability throughout the contractual relationship.

Despite the comprehensive nature of these contractual requirements, the existing regulatory framework has not yet achieved substantive contractual justice.³¹ Construction contracts impose extensive obligations on service providers, requiring them to complete projects in accordance with predetermined standards of quality, cost, and time while also complying with various technical, financial, and administrative requirements.³² Conversely, although service users are contractually required to fulfill their payment obligations, the statutory framework does not provide equally effective legal consequences when those obligations are breached. As a result, contractual reciprocity is weakened because legal accountability is applied asymmetrically, with service providers facing explicit sanctions for delayed performance while service users remain largely free from comparable legal consequences for delayed payment.

The principal weakness of the current legal framework lies in Article 47 of Law Number 2 of 2017,³³ which regulates the mandatory contents of construction work contracts but fails to establish enforceable sanctions for service users who delay or neglect contractual payments. Although payment procedures must be stipulated within the contract, the legislation does not prescribe mandatory legal consequences when payment obligations are violated. This regulatory omission creates a significant imbalance because delayed payments frequently result in substantial financial losses for construction service providers, thereby affecting their ability to pay subcontractors, suppliers, employees, and financial institutions. In practice, the economic consequences of delayed payment often extend far beyond the contractual relationship itself, disrupting the broader construction industry and threatening business continuity.

Addressing this regulatory gap requires a comprehensive reconstruction of the legal framework governing construction contracts. Such reconstruction should move beyond merely reaffirming contractual obligations and instead

³¹ Andri Winjaya Laksana et al., 'Criticism of Legal Protection for Victims of Drug Abuse: The Disharmony in Legal Substance Regulation', *Legality : Jurnal Ilmiah Hukum* 33, no. 1 (January 2025): 93–109, <https://doi.org/10.22219/ljih.v33i1.36680>.

³² Omar Fadhil, 'Examining the Potential and Difficulties of Third-Party Funding in Arbitration under Jordanian Law', *Al-Biruni Journal of Humanities and Social Sciences*, 8 November 2025, 1, <https://doi.org/10.64440/BIRUNI/BIR007>.

³³ Triono Eddy, Agustina Agustina, and Sagita Purnomo, 'Disparitas Dan Kekosongan Hukum Pidana Atas Kecelakaan Konstruksi Dan Kegagalan Bangunan Dalam Jasa Konstruksi', *Widya Yuridika: Jurnal Hukum* 6, no. 3 (November 2023): 507–518, <https://doi.org/10.31328/wy.v6i3.4735>.

establish clear normative standards that guarantee effective legal protection for construction service providers. One essential reform is the introduction of explicit legal provisions requiring service users to complete contractual payments within the agreed timeframe. Failure to comply with this obligation should automatically give rise to enforceable legal sanctions designed to restore the contractual balance and compensate the injured party for the losses suffered.³⁴

The proposed sanctions should not be limited to conventional contractual penalties but should comprehensively reflect the actual losses resulting from delayed payment. Material compensation may include reimbursement of additional operational costs, financing expenses, contractual interest, and other measurable financial losses incurred by construction service providers. At the same time, immaterial compensation may be imposed where delayed payment adversely affects business continuity, professional reputation, or other legitimate interests that cannot be measured solely in economic terms. Such a compensation framework would not only provide effective legal remedies but also encourage greater contractual discipline among service users, thereby reducing the incidence of unnecessary payment disputes.

The reconstruction proposed in this study is fundamentally grounded in the philosophy of Pancasila justice, which emphasizes that law should protect human dignity, promote equality, and achieve social welfare rather than merely enforce formal contractual obligations. Pancasila rejects legal relationships that disproportionately benefit parties with greater economic or political power while imposing excessive burdens on weaker parties. Accordingly, construction contracts should embody the principles of proportionality, reciprocity, good faith, and mutual responsibility. Construction service providers who have fulfilled their contractual obligations deserve legal protection equivalent to the obligations imposed on them throughout the project.

The values embodied in the Second Principle of Pancasila, which emphasizes just and civilized humanity, and the Fifth Principle, which guarantees social justice for all Indonesian people, provide an appropriate philosophical foundation for reconstructing legal protection within construction contracts.³⁵ These principles require that contractual justice be understood not merely as formal equality before the law but as substantive fairness achieved through a balanced distribution of rights, obligations, risks, and legal consequences.

³⁴ Ankur Mitra and Mark Mulville, 'Challenges and Opportunities for Automating Physical Compliance on Construction Sites', *Conference Papers*, ahead of print, 1 January 2023, <https://doi.org/https://doi.org/10.21427/APQ8-TN59>.

³⁵ Vincentius Setyawan, 'Pancasila As A Philosophical Basis Of Law Formation In Indonesia', *Nusantara: Journal of Law Studies* 2, no. 1 (March 2023): 1–8, <https://doi.org/10.5281/zenodo.17388726>.

Consequently, contractual sanctions should apply equally to both service users and service providers whenever either party fails to fulfill its contractual obligations without lawful justification.

The realization of Pancasila justice also requires effective and efficient dispute-resolution mechanisms.³⁶ While litigation remains an important legal remedy, construction disputes are often better resolved through deliberation, mediation, adjudication, or arbitration, as these mechanisms offer faster, more specialized solutions while preserving long-term business relationships. Nevertheless, regardless of the forum employed, dispute resolution should consistently prioritize the protection of legitimate contractual rights and ensure that construction service providers have meaningful access to legal remedies when payment obligations are violated. In this way, dispute resolution becomes an instrument for achieving substantive justice rather than merely resolving contractual disagreements.

Based on these considerations, this study proposes a reconstruction of Article 47 of Law Number 2 of 2017 concerning Construction Services by introducing a new normative provision stating that service users are legally obliged to make payment within the period agreed upon in the construction contract, and any unjustified delay shall result in enforceable sanctions in the form of material and/or immaterial compensation proportionate to the losses suffered by the construction service provider. The inclusion of this provision would establish greater contractual balance, strengthen legal certainty, promote good faith in contractual performance, and provide equal legal protection for both parties. More importantly, it would transform construction contracts into legal instruments capable of realizing the constitutional objectives of certainty, utility, and justice in accordance with the values of Pancasila.

The principal novelty of this research lies in its proposal to reconstruct Indonesia's construction services legislation by integrating Pancasila justice into the regulation of payment obligations in construction contracts. Unlike previous studies that primarily focus on contractual drafting, dispute resolution, or the principle of freedom of contract, this study advances a justice-oriented regulatory model by introducing explicit statutory obligations requiring service users to make timely payment, together with enforceable material and immaterial compensation for delayed payment. By integrating constitutional values with contemporary contract law, the proposed reconstruction offers a comprehensive legal framework that strengthens legal certainty, ensures proportional contractual

³⁶ Rusli Subrata, 'Can Alternative Dispute Resolution Mechanisms Revolutionize Conflict and Dispute Resolution In Indonesia?', *LITIGASI* 24, no. 1 (April 2023): 151–164, <https://doi.org/10.23969/litigasi.v24i1.7198>.

justice, and provides more effective legal protection for construction service providers in Indonesia's construction services sector.

CONCLUSION

This study concludes that the existing legal framework governing the protection of construction service providers in Indonesia has not yet fully embodied the principles of Pancasila justice. Although Law Number 2 of 2017 concerning Construction Services regulates the essential elements of construction work contracts, its implementation continues to produce an imbalance between the rights and obligations of service users and service providers. The principal weakness lies in Article 47, which imposes clear contractual responsibilities on construction service providers while failing to establish equivalent legal consequences for service users who delay contractual payments. This imbalance is further reinforced by deficiencies in the three dimensions of the legal system. From a legal perspective, the legislation does not provide enforceable sanctions for delayed payment by service users. From a legal perspective, there is no independent institution with adequate authority and technical competence to supervise and audit the implementation of construction contracts. Meanwhile, from a legal culture perspective, procurement practices continue to prioritize the lowest bid over fairness, professional capability, and sustainable contractual relationships. To address these shortcomings, this study proposes reconstructing Article 47 by introducing an explicit obligation requiring service users to make payments within the agreed contractual period, accompanied by enforceable sanctions, including material and immaterial compensation for unjustified payment delays. Such reconstruction is expected to strengthen legal certainty, establish balanced contractual relationships, and ensure that construction contracts serve as legal instruments that reflect the constitutional values of Pancasila justice.

This study contributes to the development of Indonesian construction contract law by offering a justice-oriented regulatory model that integrates the principles of legal certainty, proportionality, reciprocity, and social justice to protect construction service providers. Nevertheless, the present research is limited to a normative legal analysis and has not examined how the proposed regulatory reconstruction would operate in practice across different types of construction projects. Future studies are therefore encouraged to adopt empirical or socio-legal approaches by involving construction service providers, government procurement agencies, contractors, subcontractors, and dispute resolution institutions to evaluate the practical implementation and effectiveness of the proposed legal framework. Comparative research examining construction payment regulations in other jurisdictions may also provide valuable insights for

further legislative reform and contribute to the development of a more equitable, accountable, and sustainable legal system for construction services in Indonesia.

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AUTHOR CONTRIBUTIONS STATEMENT

Syamsiar Nurhayadi conceived the research idea, supervised the study, and contributed to the development of the research framework. Muhammad Ridwan Lubis contributed to the research design, data analysis, and interpretation of the findings. Dzaka Imtiyaz Iqbal conducted the literature review, collected research materials, and assisted in data validation. Andi Aina Ilmih contributed to the drafting of the manuscript, data interpretation, and critical revision of the intellectual content. Naavi'u Emal Maaliki assisted with methodology development, manuscript editing, and reference management. Mahmoud Ali Al-Sobh provided critical review, contributed to the theoretical framework, enhanced the academic quality of the manuscript, and approved the final version for publication. All authors have read and approved the final manuscript and agree to be accountable for all aspects of the work.

AI USAGE STATEMENT

The authors used artificial intelligence (AI)-assisted language tools solely to improve the readability, grammar, spelling, and overall clarity of the manuscript. The AI tools were not used to generate research ideas, collect or analyze data, interpret findings, or formulate the study's conclusions. All intellectual content, research design, data analysis, and scientific interpretations presented in this manuscript are the original work of the authors. The authors carefully reviewed, verified, and took full responsibility for the accuracy, integrity, and originality of the manuscript.

CONFLICT OF INTEREST

The authors declare that they have no known financial, professional, institutional, or personal conflicts of interest that could have influenced the work

reported in this manuscript. The authors further confirm that the research was conducted independently and that all findings, analyses, and conclusions presented in this article are free from any undue influence or competing interests.

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