

Analysis of the Causes of Deviations in the Implementation of Construction Work Contracts Based on Verdict

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ABSTRACT

Construction Work is the whole or part of the activities that include the construction, operation, maintenance, demolition, and rebuilding that are regulated in a Construction Contract. In the implementation of the Construction Contract, several problems cause deviations. This research aims to analyze the causes of deviations in a Construction Contract based on verdict. The research data was obtained from the Supreme Court Repository page by searching for a verdict related to the implementation of construction contracts. The limitation of this research is a case that has been decided in the District Court in West Sumatra for the last ten years. The search results obtained nine verdicts. The Rich Picture Diagram (RPD) is used to analyze the data. Validation and refinement are carried out using the interview method based on the results of secondary data analysis. The outcome of this research is the causes of deviations that are prejudicial to one of the parties and thus fall under civil law, such as The occurrence of delays caused by Contractor negligence during implementation, Contractor achievements not paid by the Owner, negligence of the Planner Consultant, the state of the land is not by the drawing plan, continuous heavy rain that disrupts the work, exchange rate strengthen sharply, the Owner has not completed land acquisition, the Contractor is not given the opportunity 50 days of completion; Disputes caused by: Owner made unilateral changes to Technical Specifications, Supervisory Consultant's mistake in reporting progress.

Keywords: *Construction Contract Issues; Disputes Under a Construction Contract; Construction Contract; Construction Law Case.*

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INTRODUCTION

According to Law No. 2/2017, paragraph 3 explains that Construction Work is the whole or part of activities that include building construction, operation, maintenance, demolition, and rebuilding. The implementation of construction activities is a multiparty process involving the project owner (central or local government), contractors as implementers, consultants as field supervisors, and auditors [1]. Construction projects have several components that must be realized so that the project can run according to the predetermined planning, which can be completed on time, within budget, and meet the planned specifications and the satisfaction of the parties involved in the project implementation [2]. To plan, implement and supervise the implementation of construction projects, such as buildings, highways, and airfields, a written form of engagement between service users and service providers is required in the form of a contract, known as a construction work contract or construction agreement [3].

According to Law No.2 of 2017 concerning Construction Services, article 1, paragraph 8 states that the Construction Contract is the entire contract document that regulates the legal

relationship between Service Users and Service Providers in the implementation of Construction Services. The main principle in making and preparing a construction contract must be based on equality and clarity. Equivalent means that the contracting parties have the same status and interests. The primary purpose of making a construction contract is that the agreements made by both parties are legally binding [4].

Thus, the construction contract is an important document in the project, where all matters related to rights and obligations and risk allocation are regulated in the contract. All types of construction activities, ranging from planning, implementation, and construction supervision, are included in the contract. The importance of the contract is also important; the most significant project loss is caused by the failure to manage the construction work contract. So, it is hoped that all those listed in the contract fully understand the contents of the contract so that the problems and risks can be resolved properly according to the capabilities of each party [5].

The construction industry is prone to conflicts and disputes due to its complexity, competitive environment, and complicated project documents (drawings, specifications, contract terms). In this complex environment, various professions, each with their own goals and desires for maximum profit, collaborate to build a structure [6]. In practice, it is necessary to pay attention to the maker of an agreement that has been valid in the eyes of the law to carry out, complete and maintain the work that has been written in the contract so that problems and deviations do not occur. However, it does not rule out the possibility that the implementation of construction work may cause problems.

The fundamental point of this dispute is the termination of the contract, where the termination of a construction contract is a legal status that ends the exercise of rights and obligations arising from it. The event that ends a construction contract relationship has important legal implications in determining whether the relationship and legal ties between the Owner and Contractor remain or end. [7].

In the Indonesian dictionary, dispute means opposition or conflict. Conflict can mean opposition or opposition between one person and another [8]. Disputes in construction projects occur in connection with the implementation of a construction service business between related parties [9]. The dispute referred to here is in the civil field listed in Law No.2 of 2017.

BANI (Badan Arbitrase Nasional Indonesia/Indonesia National Board of Arbitration) noted that in the last five years, disputes regarding the occurrence of losses of one party due to the implementation of the construction work contract have occupied the first position. According to BANI, this problem was triggered by differences in interpretation that led to disputes between Service Users and Service Providers.

Problems that cause losses to one of the parties in the construction work contract can be pursued through two patterns: through the Court and out of Court. Out-of-court settlements can be reached by consultation, negotiation, mediation, conciliation, and expert judgment. If the parties have carried out the five methods but one of the parties does not reach an agreement, then the party who feels aggrieved in the implementation of the contract can file a lawsuit with the District Court in the place where the contract or object is located [10]. While some cases can be resolved amicably without significant problems, others may have more complex issues, resulting in a much longer settlement process if an agreement is eventually reached [11].

Observing the number of cases related to the construction contract every year, this research

analyzed the causes of deviations that are prejudicial to one of the parties in the implementation of the construction contract based on the verdict, especially those that occur in West Sumatra.

METHOD

Information obtained from the Supreme Court decision repository page <https://putusan3.mahkamahagung.go.id/> using the keywords “construction-contract”. The criteria chosen in this secondary data search include:

- Classification The cases selected are civil laws that the District Court
- has decided;
- The cases were collected over the last ten years for more accurate results. This was chosen because the timeframe is not too long, more data is obtained, and the applicable regulations have not changed significantly;
- These are cases from the District Courts throughout West Sumatra. There are 15 District Courts located in West Sumatra.

During the data collection, the important thing is whether the verdict is related to implementing the Construction Contract and whether it matches the specified criteria. When it is found that the verdict is not associated with the requirements, the verdict will be removed from the list. After secondary data is collected, the data identification process is carried out. At this stage, all secondary data that has been collected is then grouped according to the type of case. Then, identification is carried out by sorting out information about:

1. A person who became the Defendant,
2. Construction problems carried out in the implementation of the construction contract, which is the subject matter of the case,
3. Types of deviations made,
4. The results of the verdict issued by the Judge, along with the legal basis for the Judge's verdict. This is to help facilitate the data analysis stage.

After the Secondary data has been identified, the next stage is data analysis. At the data analysis stage, it is modelled in a Rich Picture Diagram (RPD). A Rich Picture Diagram is a form of data delivery in the form of images related to the problem situation that occurs in a case to assist researchers in analyzing data in research [12]. RPD is used to support subsequent analysis that leads to theory building. The RPD, which was developed for each case study, allowed for the assessment of the storyline, which then developed a thorough analysis of the case studies [13]. Thus, a Rich Picture Diagram (RPD) is an ideal tool to illustrate complex problem situations that are easy to read from many points of view [14]. The RPD shows how a case progresses from the beginning of the case to the Judge's decision. The issues that arise in a case and how the judges view the decision are all described in the RPD. This makes it easier to analyze and determine the results of the research.

After data analysis, validation is carried out using the interview method. The interview method is carried out by asking several questions related to the analysis results. Interview respondents include judges, lawyers, and experts, and the Respondent is an expert in handling cases of irregularities in construction work contracts. The number of interviewees is justified when it is sufficient and reaches suitability until it reaches data saturation, where no useful information is obtained [15]. Interview results are used to validate and refine the results of secondary data analysis in drawing results and conclusions.

The interview process was conducted on 30 May - July 02, 2024. Interviews were conducted face-to-face or online. The results of the interviews were documented in a transcript matrix as well as in the form of recordings during the interview process by first asking permission from the interviewees to record during the interview process. After the data is validated by the interview method, the causes of deviations in the implementation of construction contracts in terms of civil law can be described. In the results of this research, statements from several interviewees are also presented so that it can be confirmed that the research outcome is valid. From the results of the analysis, conclusions can then be drawn. The conclusion aims to provide information and opportunities for readers to know more precisely about the research results.

RESULTS AND DISCUSSION

From the results of collecting data on District Court Verdicts in West Sumatra from the Supreme Court Repository page (<https://putusan3.mahkamahagung.go.id/>), the results obtained are nine civil laws related to Construction Contracts. Of the 9 cases, there are two problems that result in deviations from the Construction Contract that fall into the civil law in the District Court in West Sumatra. These problems are late work and disputes during contract implementation.

In these cases, there are also allegations of deviations made in the form of default and unlawful acts. Default disputes are regulated in Article 1243 of the Civil Code (KUHPerdara), which reads, "reimbursement of costs, losses and interest for non-fulfilment of an obligation become obligatory, if the debtor, although it has been declared negligent in fulfilling the obligation, or does not fulfil the obligation, or if something that must be given or done can only be given or done in a time that exceeds the time specified".

Unlawful acts are different from defaults. An Unlawful Act is an obligation arising from the law due to human actions that violate the law and are regulated in the Civil Code [16]. Regulations regarding unlawful acts are contained in Article 1365 of the Civil Code, which reads, "Every act that is against the law and causes harm to another person obliges that person to compensate for the loss due to his fault". From the research results, there were seven judgments related to Default cases and two judgments related to unlawful acts cases.

- RPD from the Cases.

From the 9 Verdict, two examples of verdicts relating to Default and Unlawful Acts were selected. An illustration of the RPD for cases related to Default is viewable in Figure 1, and for cases related to unlawful acts can be seen in Figure 2.

1. Default Case RPD (Verdict Number: 27/Pdt.G/2019/PN Pyh)

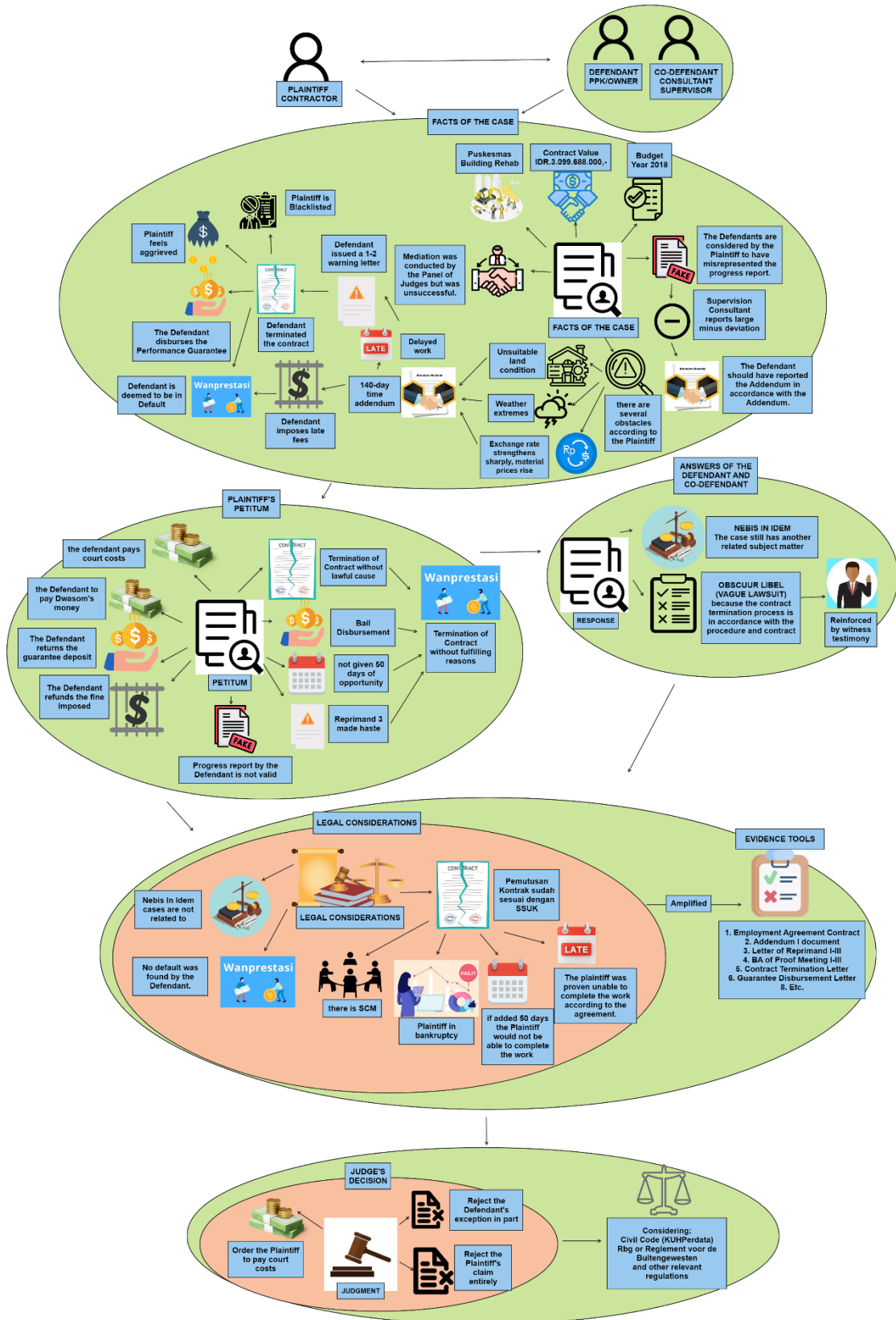


Figure 1, Default Case RPD

2. Unlawful Act Case RPD (Verdict Number: 16/Pdt.G/2019/PN Pmn)

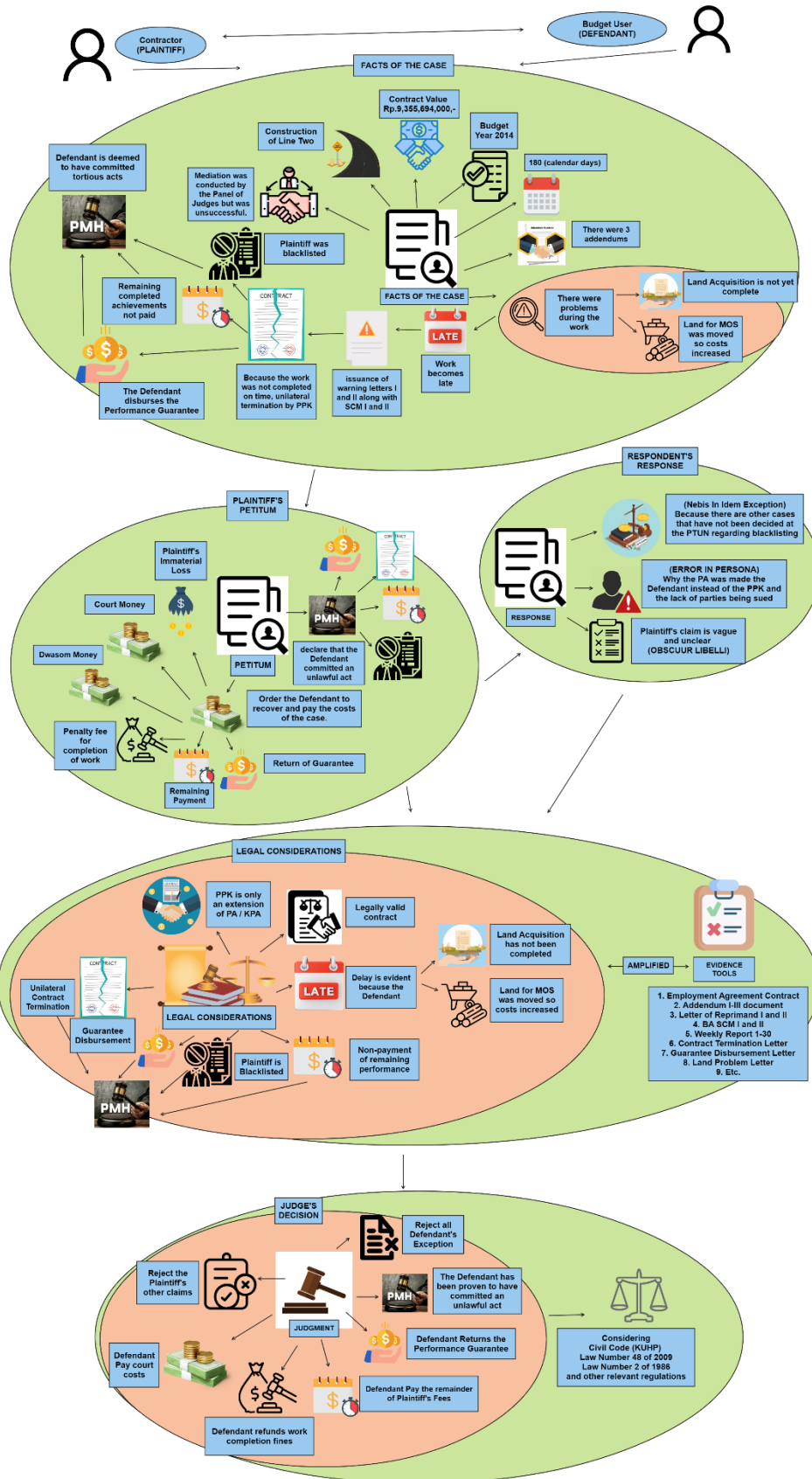


Figure 2, Unlawful Act Case RPD

- Case Review

Of the nine verdicts that entered the realm of the District Court in West Sumatra, it was found that the Plaintiff was the Contractor and the Defendant was the Owner. The Contractors sued the Owners because of the contract's termination, which the Contractor considered to have violated the agreed agreement to the detriment of their party.

The problem that became the forerunner of the termination of the contract began with the delay in work carried out by the Contractor. However, the thing that is the basis for the delay is, according to the Contractor is not solely due to their negligence. Delays are also caused by the many materials that arrive late in the field. In addition, delays also occurred due to the negligence of the Planning Consultant, so a lot of work had to be reviewed on the design. Other things that caused delays were extreme weather and the sharpening of the exchange rate, which caused material prices to rise.

Then, according to the Contractor, the delay occurred due to unfinished land acquisition, so their mobilization was disrupted, and the land for Material on Site (MOS) had to find a new place. Another case that occurred where, according to the Contractor who contributed to the problem of delay, was the Supervisory Consultant, who was considered to have been wrong in providing a work progress report, so there was a large minus deviation. As a result, the Contractor was subject to reprimands up to the third reprimand.

The termination of the contract also occurred due to the Owner not giving an additional 50 days to the Contractor as the applicable regulations when the decision was made, namely those written in the Presidential Regulation of the Republic of Indonesia number 16 of 2016 concerning Procurement of goods and Services and Ministerial Regulation Number 243 / PMK.05 / 2015 concerning amendments to the Minister of Finance Number 194 / PMK.05 / 2014 that for project implementers who have not been able to complete their work until the specified time can still be given an opportunity for 50 days and can be extended by 40 working days. This resulted in the Contractor not completing the work. Next, the root of the problem so that the termination of the contract occurs due to the Owner who stops work in the field even though the work is running correctly.

In addition, the occurrence of disputes during the implementation of work is one of the causes of problems in implementing construction contracts. The Owner made unilateral changes to the technical specifications, and the Owner was considered to have abused his power and authority. As a result of these problems, according to the Contractor, they experienced losses. Starting from the payment of achievements that the Owner does not fully pay. The Owner also disbursed the Implementation Guarantee because of the contract termination. Other losses experienced by the Contractor are in blacklist penalties so that the Contractor cannot participate in tenders during blacklist penalties. Other losses experienced are material and immaterial losses.

From these problems, the Plaintiffs made petitums including the discovery of irregularities committed by the Defendant, namely Default and Unlawful Acts. In cases of default, the plaintiffs felt that achievements had not been paid due to problems that occurred during the implementation of the construction work contract. As for cases that

fall into the form of unlawful acts, the Plaintiffs feel that their good name has been tarnished due to the unilateral termination of the contract so that they are included in the blacklist, while the things that are the problem of terminating the contract are not the fault of the Plaintiffs.

From the results of the petition, the Defendant can provide an answer that underlies why the petition cannot be accepted. The Defendant can also file a counterclaim against the Plaintiff, or a counterclaim, where the lawsuit filed by the Defendant is a counterclaim against the lawsuit filed by the Plaintiff against him. Defendant can also state that the delay that occurred was purely due to negligence on the part of Plaintiff or, in this case, the Service Provider, so that according to Defendant, who committed the default was Plaintiff itself but needs to be proven through evidence. This Petition and Answer will later become one of the considerations by the Judge in deciding the case. The pattern of problems that result in deviations in Civil laws can be seen in Figure 3.

- Consideration of the Judge's Decision

The responses submitted by the Defendant, which the Panel of Judges also considers, include the following:

- a. Error In Persona where the Plaintiff was wrong in listing the Defendant.

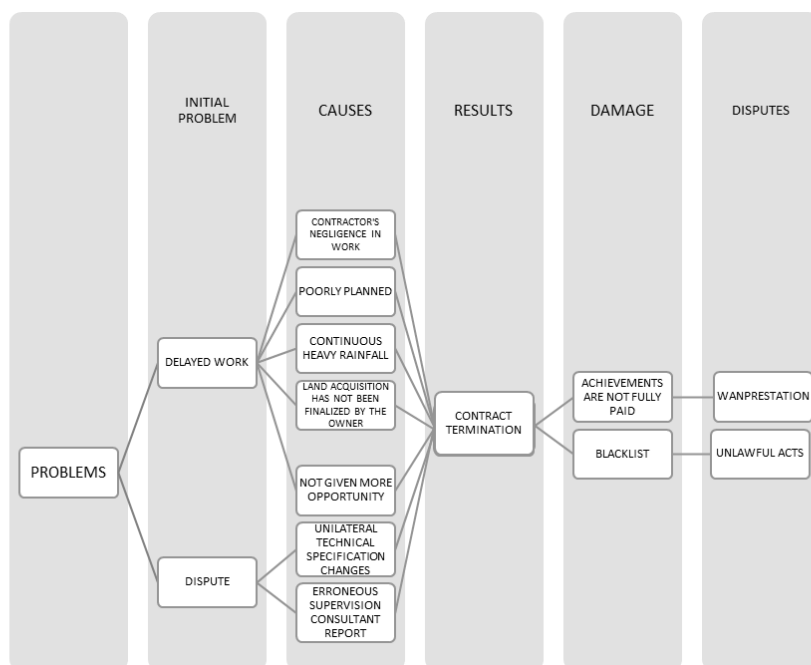


Figure 3, The pattern of problems that result in deviations in Civil laws

According to the Defendants and Co-Defendants, there was an error in linking the Defendants to the subject matter of the case.

- b. Obscur Libelli where the claim of the Plaintiff Side is considered unclear and unfounded.
- c. Nabies in Idem Exception where there is another related Case between the Plaintiff and the Defendant, so the Plaintiff's claim should not be accepted.

- d. Not the authority of the District Court. In some cases where, the case should not be the authority of the District Court but the PTUN (Pengadilan Tata Usaha Negara/ Administrative Court).

The Petition of the Plaintiff and the Defendant's Answer were also proven by witness testimony and evidence as a consideration for the Panel of Judges in deciding the case. This evidence is in the form of supporting letters and Witness statements. The interviewee also confirmed this. "*Evidence is in the form of letters about this object, and witnesses, statements, and experts can also be brought in. This expert depends on the type of case. Some must bring in experts, some are not necessary. There is no minimum number. The maximum for Civil law Witnesses is six people, but if all the answers are the same, usually two people are enough*". Some of the evidence that was corroborated in the trial included:

- a. Construction Works Contract;
- b. Daily Report Document;
- c. Weekly Report Document;
- d. Monthly Report Document;
- e. Technical Specifications and Drawings;
- f. Addendum Document;
- g. Warning Letter's Document;
- h. Record of Show Case Meeting;
- i. Withdrawal document;
- j. Disbursement Order document;
- k. Contract Termination Letter;
- l. Guarantee Disbursement Letter; and
- m. Other evidence relating to the contract.

Then, if seen based on the provisions of Article 1276 of the Indonesian Civil Code (KUHPerdata), the result of Default is the emergence of obligations for the party who does it, such as:

- a. Fulfill/execute the agreement;
- b. Fulfilling the contract with the obligation to pay compensation;
- c. Pay the compensation;
- d. Cancel the contract, and
- e. Cancel the contract accompanied by the payment of compensation.

- Judge's Decision

The Judge's Decision is obtained from the results of these Legal Considerations. Of the nine decisions, there were five in which the Defendant was proven to have committed Default and Unlawful Acts, then three were rejected, and one was unacceptable. The following are excerpts from the interviewees' statements regarding the form of the Judge's decision. "*The Court's decision comes in three forms: granted, rejected, or declared inadmissible. If unacceptable, it means that the formal requirements of the*

lawsuit are not met. If granted, it means that the Plaintiff can prove their claim. If rejected, the Plaintiff cannot prove their claim". From the research results of these 9 cases, the decisions that prove the Defendant or Owner Default are caused by unpaid achievements, but the termination of the contract has occurred.

Basically, Service Users can terminate the contract against the Service Provider. Matters that can be the basis for Service Users in terminating the contract by LKPP (Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah / National Public Procurement Agency) Regulation Number 12 of 2021 [17] and by overriding Articles 1266 and 1267 of the Civil Code are:

- a. The Contractor is proven to have KKN (Korupsi, Kolusi, dan Nepotisme / Corruption, Collusion, and Nepotism);
- b. Complaints about procedural irregularities that indicate KKN and are declared true by the authorized institution;
- c. Contractor in Bankruptcy;
- d. Contractor in a condition of being sanctioned by the Black List;
- e. The Contractor fails to improve its performance for 3 (three) times;
- f. Contractor is unable to maintain the Performance Guarantee;
- g. The Contractor is negligent / Default in carrying out its obligations as a Service Provider within the agreed period;
- h. Based on research, it is determined that the Contractor will not be able to complete the work even if given the opportunity of time;
- i. After being given the opportunity of time, the Contractor is unable to complete the work;
- j. After being given a second chance, the Contractor is unable to complete the work;
- k. The Contractor terminates the work beyond the time stipulated in the SSKK (Syarat-Syarat Khusus Kontrak / Specific Contract Terms), and this termination of work is not stated in the quality program and is without the consent of both parties.

However, the Owner needs to pay attention to other matters before terminating the contract, especially whether there are still unpaid achievements by the Owner while the Owner has approved the achievement before the Contract Termination takes effect. So, suppose the Defendant or Co-Defendant who is the Owner is proven to have committed Default due to the existence of unpaid achievements. In that case, the party must pay several achievements that have been done by the Plaintiff or Contractor.

However, it does not rule out the possibility that the Contractor turns out to be the party that is proven to be in Default or commits an Unlawful Act. In several decisions that the Panel of Judges rejected, it was found that the Service Provider committed Default. The Contractor, who is the Plaintiff Party, is proven to have been negligent in performing its obligations or has been proven negligent in carrying out its obligations.

So even though, in this case, the Contractor was initially the Plaintiff Party, the Defendant Party can file a counterclaim if, according to the Defendant Party and according to the available evidence, the Plaintiff Party has committed Default or Unlawful Acts.

Another thing that makes the lawsuit inadmissible or rejected is that the District Court is not authorized to hear the lawsuit. Things that make the District Court not authorized to hear the lawsuit based on the decision data obtained because of the following things:

- a. There is a BANI decision that is final, legally binding and binding;
- b. Not by the object of the lawsuit in the District Court;
- c. The Plaintiff is in a state of bankruptcy, and
- d. The Plaintiff is not the party entitled to file the lawsuit.

Regarding the Plaintiff in bankruptcy or a BANI decision but still filing a lawsuit to the Court, the interviewee said that this might happen because the Plaintiff was not satisfied, so they still wanted to try to file a lawsuit to the Court. "*Because they feel dissatisfied and feel that the authority to handle is the Court, so they still want to file a lawsuit. Even though, for example, the BANI decision is binding and we as lawyers have explained this, they (our clients) still want to file a lawsuit to the Court, there is no problem. Well, some of those who are bankrupt feel that maybe the Judge can still have a different view so that even though they are in a bankrupt condition, the lawsuit can still be accepted*".

CONCLUSION

The causes of deviations that are prejudicial to one of the parties and thus fall under civil law include:

1. The occurrence of delays caused by: Contractor's negligence in carrying out the work, The Owner never paid Contractor's achievements, Improper planning that slowed down the work, The condition of the land is not in accordance with the drawing plan, Continuous heavy rain that disrupts the work, Kurs strengthened sharply resulting in price increases, Land acquisition has not been completed by the Owner so that the Contractor is challenging to continue the work, The Contractor was not given a 50-day completion opportunity;
2. Disputes were caused by the Owner's unilateral change in technical specifications and the supervision consultant's mistake in reporting progress.

These things result in the termination of the contract so that one party feels that there are unpaid or unprovided achievements (Default), blacklisted or tarnished the good name of one of the parties (Unlawful Acts).

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