

REVEALING THE LEGAL STRENGTH OF UNWRITTEN AGREEMENTS FOR SUBCONTRACTORS IN TURNKEY PROJECTS ACCORDING TO THE CONSTRUCTION SERVICES LAW

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ABSTRACT

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This research aims to analyze the legal status and protection for subcontractors with unwritten agreements in turnkey projects in Indonesia, especially in the context of the Construction Services Law. Through a normative juridical approach, this research evaluates relevant legal provisions and identifies deficiencies in legal protection for subcontractors, especially in terms of payment and dispute resolution. The findings show that although the Construction Services Law provides a broad framework, there are gaps in the recognition and protection of unwritten agreements. This creates risks for subcontractors, given the difficulty in proving the existence of the agreement. Practical implications of these findings include the need to increase legal awareness and contract management practices in the construction industry. It is also recommended to develop industry standards or best guidelines for managing unwritten agreements. This research recommends further research on alternative dispute resolution mechanisms and evaluation of the effectiveness of new regulations in various jurisdictions.

INTRODUCTION

In the context of development and construction project management, the use of subcontractor services has become common practice, especially in turnkey project models where the main contractor is responsible for carrying out all aspects of the project from start to finish. The importance of construction services in this context lies not only in the technical and physical aspects of the buildings produced, but also in the legal and contractual interactions between the various parties involved. The dynamics of subcontract agreements, especially unwritten ones, are very important in this case because they involve aspects of trust, quality and risk management in the project.

The practice of subcontracting allows prime contractors to access certain specialties and share risks in a more efficient manner. However, Martin and Benson (2021) emphasize that the quality of the relationship between the main contractor and subcontractors, which is often built on the basis of unwritten agreements, plays a crucial role in determining project success. Legal issues arising from these unwritten agreements, such as recognition and legal protection for subcontractors, become very relevant. Arifin, Sediati, Hendristianto, and Arifin (2023) in their research on "The Validity and Legal Protection of Construction Services Partnership Agreements" in the USM Law Review Journal, stated that the validity of partnership agreements in construction services, including those that are not written, requires a clear legal framework for provide adequate legal protection to all parties, especially subcontractors.

The existence and recognition of unwritten agreements in the implementation of turnkey projects, therefore, raises important questions about how current construction law and practice regulates and protects subcontractor rights. This research aims to explore these aspects, with the hope of providing new insights and recommendations that can improve legal protection for subcontractors and facilitate more effective and fair project management for all parties involved.

In the context of turnkey projects in the construction industry, one of the main challenges faced by subcontractors is the recognition and existence of unwritten agreements. Although the practice of subcontracting is very common on large projects, many agreements are made without formal written documents, leading to legal uncertainty and potential losses for subcontractors. The main issues related to these unwritten agreements include the difficulty in proving the existence of the agreement, the terms of the agreement, and the responsibilities of each party. Additionally, without written documents, subcontractors often face challenges in demanding payment and compensation for work performed, as well as in resolving disputes that may arise during or after project completion. This lack of clarity not only affects the financial and operational stability of subcontractors but also poses risks to the smooth running of the project as a whole.

This research aims to examine in depth the legal issues related to the recognition and existence of unwritten agreements for subcontractors in the implementation of turnkey projects, with a particular focus on existing and potential legal protections. The main objective of this research is to identify and analyze the relevant legal framework, including the Construction Services Act and other related regulations, that can provide protection for subcontractors. Furthermore, this research aims to propose policy recommendations and best practices that can strengthen the legal position of subcontractors, ensure fair recognition of unwritten agreements, and facilitate dispute resolution in a more efficient and effective way. Through this aim, the research aims to contribute to the legal literature and practice in the construction industry, as well as increase awareness and understanding of the importance of legal protection for subcontractors, which in turn will contribute to sustainability and fairness in construction projects.

RESEARCH METHODS

The normative juridical approach is the main methodology in this research, where the focus is on the analysis of legal norms contained in laws and regulations that are relevant to the provision of construction services in Indonesia. In this context, Law Number 2 of 2017 concerning Construction Services and Government Regulation Number 29 of 2000, which is the implementing regulation of the previous Law, namely Law Number 18 of 1999, are crucial secondary sources for research. Law Number 2 of 2017 specifically regulates important aspects in the provision of construction services, including classification, qualification, certification, procurement, supervision and dispute resolution in construction services, all of these aspects have significant implications for the position and legal protection of subcontractors in turnkey construction projects. This approach involves the study and interpretation of laws and regulations, doctrine and jurisprudence that are relevant to the research topic (Varavenko & Ostroukhova, 2021). Through a normative juridical approach, this research aims to understand, explain and analyze the legal framework that regulates and provides protection for subcontractors, especially in the context of unwritten agreements.

The type of data used in this research includes applicable legal texts as well as interpretation and analysis of them in legal literature, court decisions and other related legal documents. Data collection was carried out through document studies to collect all relevant regulations, policies and legal cases. Data analysis was carried out by comparing, interpreting and applying these legal norms to cases or situations of unwritten agreements between main contractors and subcontractors in the context of construction services. Analysis is carried out systematically on these legal documents to identify, interpret and apply legal principles that apply to specific cases or situations (Surahyo, 2018).

Thus, this normative juridical approach allows research to provide in-depth insight into the ways in which existing laws and regulations support or may limit the rights and obligations of subcontractors in construction projects, as well as provide recommendations for the development of more effective and fair legal policies or practices for subcontractors. Through this approach, the research aims to contribute to the development of better legal policies and fairer and more equitable construction service delivery practices.

The normative analysis in this research is directed at understanding and evaluating the provisions contained in the Construction Services Law, especially Law Number 2 of 2017, as well as other related documents that are relevant to the research problem regarding unwritten agreements between main contractors and subcontractors in the implementation of turnkey

construction projects. This research focuses on legal aspects governing classification, qualification, certification, procurement, supervision and dispute resolution in construction services, as well as their implications for legal protection for subcontractors.

The analysis method begins with data collection through literature studies to identify and collect relevant legal documents, including Law Number 2 of 2017 and PP Number 29 of 2000 as implementing regulations. Next, an in-depth study of the text of the law is carried out to understand the scope, purpose and application of the regulated provisions. This research interprets and analyzes these provisions in the context of the research problem, paying particular attention to how relevant laws and regulations provide recognition and protection to subcontractors, especially in the context of unwritten agreements.

By using a normative analysis approach, this research seeks to identify gaps or shortcomings in regulations that may hinder effective legal protection for subcontractors. This analysis aims to provide recommendations for improving regulations or developing new legal policies that can strengthen the position and legal protection for subcontractors in the construction industry, especially in dealing with problems related to unwritten agreements which often give rise to uncertainty and potential conflicts.

Thus, it is hoped that this normative analysis can provide an important contribution to a better understanding of the legal dynamics that apply in construction services in Indonesia, especially in relation to legal protection for subcontractors, and provide a strong basis for the development of more effective and effective legal policies and practices. fair in the future.

Contract and Agreement Theory

In building a theoretical framework for the analysis of contracts and agreements, including unwritten agreements, in the context of Indonesian positive law, traditional and contemporary contract theories provide an important foundation. Contract theory, which refers to an agreement between two or more parties that is legally binding, includes a variety of basic principles that have evolved over time. One of the important principles in contract law is the principle of consensualism, which emphasizes that a contract is formed based on mutual agreement between the parties, not depending on a particular form for its validity, which is very relevant when discussing unwritten agreements.

Apart from that, the concept of the principle of freedom of contract which allows parties to determine the contents of the contract freely, as long as it does not conflict with law, morality and public order, is another foundation in contract theory. This reflects the flexibility and autonomy of the parties in making contracts, including unwritten agreements that often arise in business practices and other economic activities.

In the Indonesian context, Law Number 2 of 2017 concerning Construction Services underlines the importance of these aspects in arranging contracts in the construction sector. Research by Djumikasih et al. (2021) propose that divine principles, which include the values of justice and truth originating from religious teachings, be integrated into national contract law, indicating the importance of moral and ethical values in contract making, including in the context of unwritten agreements.

The combination of these theories in the analysis of Indonesian positive law regarding contracts and agreements shows the complexity and dynamics of contract law which is not only based on the text of the law but also on the ethical and moral values that are the basis of Indonesian society. This analysis enriches understanding of how contracts and agreements, including unwritten ones, are interpreted and applied in legal practice in Indonesia.

Legal Protection Theory

In discussions about the principles of legal protection for subcontractors in construction services, especially in situations of unwritten agreements, legal theory provides a basis for understanding how the law can protect the rights of subcontractors. Legal protection for subcontractors, who often do not have written agreements with the main contractor, is important in maintaining fairness and balance in the construction industry.

Zhang Xian-ji (2010) emphasized that strict contract management in construction projects is an important means to legally protect interests and achieve project goals. This shows the importance

of understanding and applying contract law to protect the interests of subcontractors. According to Yun (2023), subcontractors' compensation claim rights in construction contracts depend on the determination of "work completion" by the Supreme Court. This research underlines the importance of interpreting the concept of "work completion" in fulfilling subcontractors' compensation claim rights, highlighting the need for legal clarity in the protection of subcontractors' rights.

Furthermore, Cho (2020) proposed improving the contract change order system for subcontract fairness in public construction projects, pointing out that subcontractors often face difficulties because such procedures are not appropriately reflected in construction work subcontracting standards. This study provides direction for improving the subcontracting system, such as strengthening subcontractor rights and ensuring access to information related to subcontracting, which can improve fairness and protection for subcontractors.

In this context, a deep understanding of contract and agreement theory and its application in Indonesian positive law is key to offering effective legal protection for subcontractors. Recognition of unwritten agreements and application of fair legal protection principles can strengthen the legal position of subcontractors and support more transparent and fair business practices in the construction industry.

RESULTS AND DISCUSSION

Interpretation of the Construction Services Law

The Construction Services Law in Indonesia, especially Law Number 2 of 2017, establishes a framework for providing construction services, which includes aspects of classification, qualification, certification, procurement, supervision and dispute resolution. Although this law provides a strong legal basis for the operation of the construction industry, in-depth analysis shows that legal protection for subcontractors, especially in relation to unwritten agreements, still requires special attention.

Zhang Xian-ji (2010) stated the importance of contract management in construction projects as a means of protecting interests legally. In the context of subcontractors, this emphasizes the need for clear and fair mechanisms to resolve disputes and regulate employment relationships, which are often based on unwritten agreements. Cho (2020) further highlighted that the contract change order system for subcontract fairness in public construction projects needs to be improved to strengthen subcontractors' rights and ensure access to subcontract-related information.

Analysis of the Construction Services Law shows that while the law provides a general framework for construction services, specific details regarding the legal recognition and protection of unwritten agreements are often not explicit. This raises the question of how subcontractors can ensure the protection of their rights in practice, especially when dealing with issues of payment, work completion and dispute resolution.

To address this issue, a more inclusive interpretation of the Construction Services Law is needed that explicitly recognizes and provides protection to subcontractors regarding unwritten agreements. In addition, more specific implementing regulations may need to be developed to outline dispute resolution mechanisms, rights to payment, and work completion procedures for subcontractors.

A review of the literature shows that implementing best practices and increasing transparency in the negotiation and execution of subcontracts can help in reducing legal uncertainty and increasing fairness in the construction industry. Chi and Mackay (2015) emphasize the importance of strategic negotiation of subcontracts to improve project performance and value, indicating the need for better mechanisms for negotiating and implementing agreements, including unwritten ones.

In order to increase legal protection for subcontractors in the context of the Construction Services Law, this research suggests several strategic steps, including:

1. Increased legal awareness among subcontractors regarding their rights under the Construction Services Law.
2. Development of more specific regulations or implementation guidelines that explain the rights and obligations of subcontractors, including in the context of unwritten agreements.

3. Strengthening efficient and fair dispute resolution mechanisms to handle issues arising from unwritten agreements.
4. Increased transparency and communication between main contractors and subcontractors to ensure that all parties understand their rights and obligations.

Impact on Subcontractors

In evaluating the legal implications of unwritten agreements for subcontractors, it is important to recognize that while this practice allows for flexibility and speed in the completion of construction projects, it also creates significant risks and uncertainties for subcontractors. Unwritten agreements often make it difficult for subcontractors to claim payment or compensation for work performed, due to the lack of concrete documentary evidence.

Rights in construction contracts are highly dependent on the determination of “work completion” as determined by the Supreme Court. The interpretation of this concept indicates the need for legal clarity to ensure that subcontractors' rights can be protected and enforced effectively, especially in situations where employment agreements are not written.

The contract change order system should be improved to reflect fairness in subcontracting on public construction projects, highlighting that subcontractors often experience difficulties in the field due to procedures that do not reflect construction work subcontracting standards. This underlines the importance of transparency and strong legal protection mechanisms for subcontractors.

A clear example of the legal implications of unwritten agreements can be seen in cases where subcontractors face difficulties in demanding payment. In some situations, even though subcontractors have completed work according to verbal agreements with the main contractor, the absence of written evidence of those agreements makes it difficult for them to prove their claims. This often results in disputes that require significant time and expense to resolve.

To overcome this problem, stronger and more effective legal mechanisms are needed that can provide protection for subcontractors, such as increasing the use of written contracts, or, in the case of unwritten agreements, the application of legal principles that allow the recognition and enforcement of subcontractor rights based on evidence other than written documents.

RECOMMENDATIONS AND SOLUTIONS

Considering the challenges faced by subcontractors related to unwritten agreements in construction services, a series of policy recommendations and normative changes are needed that can increase clarity and fairness in the recognition and protection of subcontractors. A lack of written documentation often places subcontractors in a vulnerable position, particularly regarding payment claims and dispute resolution.

First, increased regulations guiding written contract practices in the construction industry should be considered as a key solution. Yun (2023) emphasized the importance of a clear interpretation of the concept of “work completion” to fulfill subcontractors' compensation claim rights, indicating the need for clarity in contractual agreements. In this regard, the introduction of a policy requiring written documentation for all agreements, including work and payment schemes, would provide a stronger basis for enforcing subcontractors' rights.

Second, Cho (2020) proposed improving the contract change order system to reflect fairness in subcontracting, highlighting the need for transparent and fair mechanisms to manage changes in the scope of work. The new policy should include clear procedures for work order changes that allow subcontractors to submit fair and timely compensation claims.

Third, the development of dispute resolution mechanisms that are efficient and easily accessible to subcontractors can help to overcome uncertainty and improve their legal protection. These mechanisms could include the establishment of construction industry-specific arbitration or mediation bodies aimed at resolving disputes quickly and effectively, reducing the need for lengthy and expensive legal processes.

Fourth, strengthening the right of access to information for subcontractors regarding main contracts and work conditions is another important step. This will ensure that subcontractors have a

complete understanding of their obligations and rights before commencing work, and can take preventative steps against potential disputes.

Fifth, education and training for subcontractors regarding legal aspects of contracts and negotiations is an important initiative that can increase their capacity to manage contractual risks. This training program should cover topics on how to negotiate fair contracts, how to ensure their rights are protected in unwritten agreements, and strategies for navigating construction disputes.

Through the implementation of these recommendations, it is hoped that a more transparent and fair business environment will be created for subcontractors in the construction industry, ensuring that they can operate with greater legal security and thereby, improving the overall sustainability of the industry.

CONCLUSION

The analysis in this research has revealed that the legal status and protection for subcontractors with unwritten agreements in turnkey projects poses several significant challenges. Although Indonesia's Construction Services Law provides a broad framework for regulation of the construction industry, there is a lack of explicit recognition and protection of unwritten agreements for subcontractors. This creates risks for subcontractors in terms of payment and dispute resolution, as evidence of unwritten agreements is often difficult to prove in practice.

Practical implications of these findings for stakeholders in the construction industry include the need to increase legal awareness and contract management practices among prime contractors and subcontractors. It is important for all parties to understand the importance of written documents in ensuring clarity of agreements, reducing potential disputes, and strengthening legal protection for subcontractors. In addition, the construction industry may need to consider developing industry standards or best practices guidelines for managing unwritten agreements and minimizing their risks.

For further research, it is recommended to explore more deeply alternative mechanisms for resolving disputes arising from unwritten agreements, including the use of arbitration or mediation as a more efficient dispute resolution method. Further research could also evaluate the effectiveness of new regulations or policies implemented in various jurisdictions to protect subcontractors' rights, as well as their potential application in the Indonesian legal context. Finally, given the crucial role of subcontractors in the construction industry, it is important to explore strategies and innovations in contract management that can support fairer and more productive working relationships between prime contractors and subcontractors.

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