

## Shifting Concept of Balance of Administrative Responsibility Between Users and Construction Service Providers

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### ABSTRACT

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The principle of equality, as stipulated in Article 2 of Law Number 2 of 2017 concerning Construction Services, requires a balanced position between construction service users and service providers in fulfilling rights, obligations, and risk allocation. However, in practice, this principle often remains normative and is not fully implemented in construction contracts in Indonesia. This study aims to analyze the shifting concept of administrative responsibility between service users and construction service providers, as well as its implications for legal certainty and justice in construction projects. This research employs a normative juridical method with statutory and conceptual approaches, examining relevant laws, regulations, and construction contract practices. The findings reveal that administrative responsibility in construction contracts tends to be asymmetric, with service providers bearing disproportionate risks and sanctions compared to service users. This imbalance is reflected in mechanisms such as fines, variation order authority, force majeure procedures, unilateral contract termination, licensing burdens, and the application of administrative sanctions. These conditions increase financial and administrative risks for service providers, weaken the integrity of administrative law, and create potential disputes in the construction sector. Therefore, strengthening the principle of balanced administrative responsibility is essential to ensure justice, legal certainty, and sustainable development in the national construction industry.



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### Introduction

Article 2 of Law Number 2 of 2017 concerning Construction Services establishes one of the fundamental principles governing construction activities in Indonesia, namely the principle of equality. This principle requires that construction service users and service providers occupy a balanced position in terms of rights, obligations, and risk allocation. Ideally, such balance ensures fairness, legal certainty, and efficiency in the implementation of construction projects. However, in practice, this principle often remains normative and has not been fully realized in contractual relationships within the construction sector.

The reality of construction contract practices in Indonesia demonstrates a persistent imbalance in administrative responsibility between service users and service providers. In many cases, contracts are structured as standard or adhesion contracts, where one party—typically the service user, particularly in government projects—holds significantly stronger bargaining power. This asymmetry enables service users to unilaterally determine contractual clauses, often resulting in provisions that impose heavier administrative burdens on service providers while granting flexibility and discretion to service users.

This imbalance is particularly evident in the allocation of risks and sanctions. Service providers frequently face strict administrative requirements and punitive sanctions, such as cumulative delay penalties, performance bond disbursement, and blacklisting, which can threaten their financial stability and business continuity. Conversely, when service users fail to fulfill their obligations—such as delays in payment, land acquisition issues, or indecision in project design—the mechanisms for accountability and compensation

are often unclear, weakly regulated, or difficult to enforce. As a result, service providers are placed in a vulnerable position, bearing disproportionate risks without adequate legal protection.

The asymmetry of administrative responsibility not only creates contractual injustice but also has broader implications for the construction industry. Economically, service providers must manage uncertain financial risks that may disrupt cash flow and project sustainability. From a technical perspective, excessive administrative pressure may shift the focus of contractors from ensuring construction quality to merely complying with administrative requirements in order to avoid sanctions. This condition increases the likelihood of construction failures, ultimately posing risks to public safety and infrastructure reliability.

Furthermore, the imbalance in administrative responsibility often leads to prolonged disputes in construction projects. Disputes may arise from unclear contractual provisions, unilateral decisions by service users, or differing interpretations of administrative obligations. In some cases, these disputes escalate into legal conflicts or administrative sanctions that may be perceived as criminalization of contractors. Such conditions undermine trust in the construction sector and weaken the competitiveness of the national construction industry, particularly in the context of increasing infrastructure development and global competition.

From a legal perspective, this issue reflects a gap between normative legal principles and their implementation in practice. While the principle of equality is formally recognized in legislation, its application in construction contracts does not always align with the principles of fairness, proportionality, and good governance. The use of administrative discretion by public officials, especially in government procurement projects, further complicates the situation. Instead of promoting flexibility and efficiency, such discretion may lead to maladministration when exercised without proper accountability, thereby reinforcing the imbalance between the parties.

Previous studies on construction law and contract risk allocation have highlighted the importance of proportionality and fairness in contractual relationships. However, limited attention has been given to the specific issue of shifting administrative responsibility and its impact on legal certainty within the Indonesian construction sector. This indicates the existence of a research gap that necessitates a more focused analysis of how administrative responsibilities are distributed and how such distribution affects the balance between service users and service providers.

Based on this background, this study seeks to examine the shifting concept of administrative responsibility between construction service users and service providers. The research focuses on identifying forms of imbalance in construction contracts, analyzing their implications for legal certainty and justice, and evaluating their impact on the integrity of administrative law. By employing a normative juridical approach, this study aims to contribute to the development of a more balanced and equitable framework for construction contracts in Indonesia.

Ultimately, strengthening the principle of balanced administrative responsibility is essential to ensure not only fairness between contracting parties but also the sustainability and competitiveness of the construction industry. A more equitable distribution of rights and obligations, supported by clear legal mechanisms and accountable administrative practices, will help minimize disputes, enhance legal certainty, and promote good governance in construction services.

## **Method**

This research employs a normative juridical approach, in which law is conceptualized as a set of written norms contained in statutory regulations (law in books) as well as principles that guide appropriate human behavior. This type of research focuses on analyzing legal norms governing the balance of administrative responsibility between construction service users and service providers.

The approaches used in this study include the statutory approach and the conceptual approach. The statutory approach is carried out by examining relevant laws and regulations, including Law Number 2 of 2017 concerning Construction Services, Law Number 30 of 2014 concerning Government Administration, Law Number 11 of 2020 concerning Job Creation, as well as related government regulations and presidential regulations governing construction contracts and procurement of goods and services. Meanwhile, the conceptual approach is used to analyze legal doctrines, principles, and theories related to administrative responsibility, proportionality, and equality in contractual relationships.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations relevant to the research topic. Secondary legal materials consist of legal

literature such as books, journal articles, and previous research related to construction law, administrative law, and contract law. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references that help clarify legal concepts and terminology.

Data collection is conducted through library research (document study) by reviewing and analyzing legal documents and relevant literature. The collected legal materials are then analyzed qualitatively using a descriptive-analytical method. This analysis aims to interpret and evaluate the extent to which the principle of balanced administrative responsibility has been implemented in construction contracts and to identify existing legal issues and inconsistencies.

Through this method, the study seeks to provide a comprehensive understanding of the imbalance in administrative responsibility and its implications for legal certainty, fairness, and the integrity of administrative law in the construction sector.

## Results and Discussion

The imbalance and disproportionality of administrative responsibility between construction service users and service providers in the implementation of construction contracts remain a significant source of legal problems in the construction sector. This imbalance is reflected in several aspects of contractual practice that demonstrate the unequal distribution of rights, obligations, and risks.

### Inequality in the Mechanism for Imposing Fines and Compensation

The imbalance between service users and service providers is often not explicitly visible but is embedded within complex administrative procedures. Construction contracts commonly stipulate liquidated damages for service providers, often calculated at a rate of 1/1000 of the contract value per day of delay. However, the compensation mechanism for service providers in cases of delayed payments is frequently unclear or inadequately regulated.

Service users, particularly in government projects, are often protected by bureaucratic financial procedures, where delays in payment are treated as part of administrative processes rather than contractual breaches. In contrast, delays by service providers are immediately categorized as breaches of contract, resulting in financial penalties. This disparity reflects a lack of proportionality and fairness in the allocation of contractual risk.

### Variation Order Clauses as the Prerogative of Service Users

Variation orders are a common occurrence in construction projects due to changes in planning, technical specifications, or project conditions. These changes often result in adjustments to work volume, scheduling, and overall project costs. However, in practice, the authority to determine and approve variation orders tends to be dominated by service users.

The process of confirming design changes and determining compensation is frequently treated as the prerogative of service users, leaving service providers with limited bargaining power. As a result, service providers are often required to implement changes without adequate negotiation or assurance of fair compensation. This condition creates an imbalance in contractual relationships and undermines the principle of mutual agreement in contract law.

### Inequality in Force Majeure Management

Force majeure clauses in construction contracts are intended to provide protection for both parties in the event of extraordinary circumstances beyond their control. However, the administrative procedures governing force majeure are often disproportionately burdensome for service providers.

For instance, contracts may require service providers to report force majeure events within a very limited timeframe, such as 24 hours, accompanied by formal documentation from relevant authorities. Failure to comply with these administrative requirements may result in the loss of entitlement to time extensions. Conversely, service users are often exempt from similar administrative accountability when project disruptions arise from government policies or budgetary constraints.

This imbalance indicates that force majeure provisions are not implemented in a manner consistent with the principles of fairness and equality.

### **Unilateral Contract Termination and Disbursement Clauses**

Construction contracts in Indonesia frequently grant service users the authority to unilaterally terminate contracts when service providers are deemed to have failed to meet administrative or performance targets. A particularly problematic aspect is the ability of service users to unilaterally disburse performance bonds without requiring judicial verification or independent assessment.

Such provisions place service providers in a vulnerable position, as decisions are often based on subjective evaluations by contract officials. Although standard operating procedures exist to regulate termination processes, these procedures function as internal administrative guidelines and do not override higher legal norms.

The practice of unilateral termination contradicts fundamental principles of contract law, particularly the principle of mutual agreement and *pacta sunt servanda*. It also creates legal uncertainty and increases the likelihood of disputes, thereby negatively affecting the investment climate in the construction sector.

### **Administrative Burden of Licensing and Land**

In principle, responsibility for land acquisition and basic permits should rest with the service user. However, many construction contracts include clauses that shift these risks to service providers by assuming that they fully understand site conditions and administrative requirements.

As a result, when delays occur due to unresolved land issues or bureaucratic licensing processes, service providers remain responsible for maintaining project timelines. This situation is exacerbated by complex administrative procedures and lengthy permit processes, which often lead to project delays and increased costs.

Additionally, land disputes and social conflicts further complicate project implementation, imposing additional financial and administrative burdens on service providers. These conditions demonstrate a misallocation of responsibility that contradicts the principle of proportionality.

### **Disparity in Sanctions Imposition**

The imbalance in bargaining power between service users and service providers is also reflected in the application of administrative sanctions. In practice, sanctions are more frequently and more severely imposed on service providers, including written warnings, financial penalties, suspension of activities, and blacklisting.

On the other hand, violations committed by service users—such as delayed payments, failure to provide land, or unilateral design changes—are rarely subject to administrative sanctions and are often treated merely as civil disputes.

This disparity is further reinforced by the discretionary authority of public officials, which may be used to justify sanctions against service providers while overlooking administrative failures on the part of service users. Such practices undermine the principles of fairness and accountability in administrative law.

### **Discretion in Waiving Substantive Procedures**

The implementation of risk-based licensing under recent regulatory reforms has led to a tendency to overlook substantive administrative requirements in pursuit of development targets. In the construction sector, this is reflected in the issuance of work orders or permits before all administrative prerequisites, such as environmental approvals, have been fully satisfied.

Public officials often justify such actions on the basis of urgency, particularly in national strategic projects. However, when legal or technical issues arise, the responsibility is disproportionately transferred to service providers. This practice represents an abuse of administrative discretion and violates the principles of proportionality and good governance.

### **Impact on the Integrity of Administrative Law**

The cumulative effect of these imbalances is the erosion of the integrity of administrative law within the construction sector. When administrative sanctions are applied selectively and disproportionately, the legal system fails to function as a mechanism for ensuring fairness and accountability.

Moreover, the misuse of discretion by public officials can lead to maladministration and weaken public trust in government institutions. If the imbalance between service users and service providers persists, the credibility of the construction procurement system will continue to decline.

Therefore, achieving a balance in administrative responsibility is essential not only for protecting the rights of service providers but also for maintaining the legitimacy and effectiveness of administrative law in supporting sustainable development.

## Conclusion

The shift in the concept of balance of administrative responsibility between service users and construction service providers can be seen from the imbalance in the mechanism for imposing fines and compensation, the clause on work changes (variation orders) becoming the prerogative of service users, the imbalance in the management of force majeure, the clause on unilateral contract termination and disbursement, the administrative burden of permits and land, the disparity in imposing sanctions, the discretion in ignoring substantive procedures and the impact on the integrity of administrative law.

## Suggestion

So that there is no shift in concept administrative accountability and to maintain a balance in imposing sanctions on service users and recipients of construction services, it is recommended that the position of service users and service providers in construction contracts be made balanced by applying the principle of proportional balance as regulated in the General Principles of Good Governance regulated in Law Number 30 of 2014 concerning Good Governance.

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