



JiHK is licensed under a Creative Commons Attribution 4.0 International license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.



doi DOI: 10.46924/jihk.v8i1.489

Legal Protection for Construction Service Providers in Electronic Procurement (LPSE) Tenders Against Government Default

Suparno Suparno^{1*}, Hafid Zakariya², & Hanuring Ayu Putri³

^{1,2,3}Universitas Islam Batik
Surakarta, Indonesia

Correspondence

Hafid Zakariya, Universitas Islam
Batik Surakarta, Indonesia, Jl. Agus
Salim No.10, Sondakan, Kec.
Laweyan, Kota Surakarta, Jawa
Tengah 57147, e-mail:
hafidzakariya@gmail.com

How to cite

Suparno, Suparno., Zakariya,
Hafid., & Putri, Hanuring Ayu.
2026. Legal Protection for
Construction Service Providers in
Electronic Procurement (LPSE)
Tenders Against Government
Default. *Jurnal Ilmu Hukum Kyadiren*
8(1), 626-643.
<https://doi.org/10.46924/jihk.v8i1.489>

Original Article

Abstract

The rapid expansion of infrastructure development through Indonesia's Electronic Procurement Service (LPSE) has intensified the need for effective legal protection for construction service providers against local government default arising from delayed or unpaid contractual obligations. This study examines the legal framework governing contractor protection, analyzes the contractual liability of local governments as project owners, and evaluates the effectiveness of preventive and remedial legal protection mechanisms. Using an empirical legal research method with a socio-legal approach, the study investigates the implementation of legal protection in government construction procurement in Klaten Regency. The findings reveal that, despite a comprehensive legal framework incorporating the principles of equality and multiple dispute resolution mechanisms, implementation remains ineffective due to unequal bargaining power, inadequate payment guarantees, and limited use of the Dispute Board. Strengthening contractual safeguards, payment security, government accountability, and dispute resolution mechanisms is essential to ensure legal certainty and sustainable public procurement.

Keywords: *Legal Protection, Construction Services, Government Default, Local Government, Electronic Procurement Service (LPSE)*

Abstrak

Peningkatan pembangunan infrastruktur melalui sistem Layanan Pengadaan Secara Elektronik (LPSE) menuntut adanya kepastian dan perlindungan hukum bagi pelaku usaha jasa konstruksi, khususnya terhadap risiko wanprestasi pemerintah daerah berupa keterlambatan atau kegagalan pembayaran berdasarkan kontrak kerja konstruksi. Penelitian ini bertujuan menganalisis pengaturan perlindungan hukum, tanggung jawab hukum pemerintah daerah sebagai pengguna jasa, serta efektivitas perlindungan hukum preventif dan represif dalam penyelesaian sengketa konstruksi. Penelitian ini menggunakan metode penelitian hukum empiris dengan pendekatan sosio-legal untuk menganalisis implementasi perlindungan hukum dalam kontrak jasa konstruksi pada pengadaan pemerintah melalui Layanan Pengadaan Secara Elektronik (LPSE) di Kabupaten Klaten. kerangka hukum telah menyesuaikan asas kesetaraan dan berbagai mekanisme penyelesaian sengketa, namun implementasinya belum efektif akibat ketimpangan posisi tawar, lemahnya jaminan pembayaran, dan belum optimalnya penerapan Dispute Board. Dapat disimpulkan bahwa penguatan klausul kontrak, jaminan pembayaran, akuntabilitas pemerintah daerah, dan optimalisasi mekanisme penyelesaian sengketa diperlukan untuk mewujudkan kepastian dan perlindungan hukum, dan keberlanjutan iklim pengadaan jasa konstruksi.

Kata kunci: *Perlindungan Hukum, Jasa Konstruksi, Wanprestasi, Pemerintah Daerah*

1. INTRODUCTION

Infrastructure development is a fundamental driver of economic growth, regional competitiveness, and public welfare. Its successful implementation depends on the availability of professional and accountable construction services supported by a robust legal framework that ensures legal certainty. In government-funded construction projects, the legal relationship between the government, as the project owner, and the construction service provider is established through a construction contract that defines the rights and obligations of both parties. Law Number 2 of 2017 on Construction Services stipulates that the provision of construction services must be governed by the principles of legal certainty, equality, justice, and a balanced allocation of rights and obligations to support effective and sustainable infrastructure development.

As part of the implementation of good governance, public procurement of construction services is conducted through Indonesia's Electronic Procurement Service (LPSE), which is designed to enhance transparency, efficiency, accountability, and fair competition among business entities.¹ The LPSE system provides equal opportunities for contractors to participate in competitive bidding processes. However, the effectiveness of the system depends not only on transparent contractor selection but also on the legal certainty of contract performance after the successful bidder has been awarded the contract.² In practice, contractual disputes continue to arise, particularly those involving the failure of local governments to fulfill their payment obligations to construction service providers.

From a legal perspective, the relationship between local governments and construction service providers is governed by private law and is subject to the principle of *pacta sunt servanda* embodied in Article 1338 of the Indonesian Civil Code. Under this principle, local governments and contractors occupy equal legal positions as parties to a civil contract and are equally bound to perform their contractual obligations. In practice, however, local governments often exercise greater bargaining power through the use of standard-form contracts and their broader administrative authority. This imbalance becomes particularly apparent when government default occurs in the form of delayed or unpaid contract payments resulting from regional budget limitations or administrative inefficiencies.³ Such defaults impose significant financial burdens on

¹ Mohammad Sholeh and Kesi Widjajanti, "Penerapan Good Governance Pada Pelaksanaan Pengadaan Barang Dan Jasa Secara Elektronik (e-Procurement) Di Lingkungan Pemerintah Provinsi Jawa Tengah," *Jurnal Riset Ekonomi Dan Bisnis* 16, no. 3 (2023): 266–79, <https://doi.org/10.26623/jreb.v16i3.6844>.

² Irfan Syafar and Realizhar Adillah Kharisma Ramadhan, "Pengadaan Barang/Jasa Pemerintah Dalam Perspektif Hukum Administrasi Negara," *Indo-MathEdu Intellectuals Journal* 6, no. 3 (2025): 3851–57, <https://doi.org/10.54373/imeij.v6i3.3327>.

³ Muhammad Al-Haadi Nugraha et al., "Limits of Government Authority in Business Dealings with Business Entities: A Comparative Study of the Public Contract Regimes of Indonesia and the Netherlands," *Jurnal Akta* 13, no. 1 (2026): 234–49, <https://doi.org/10.30659/akta.v13i1.50396>.

construction service providers, disrupt business continuity, and undermine legal certainty in the implementation of public procurement contracts.

Although Law Number 2 of 2017 on Construction Services and Government Regulation Number 22 of 2020 provide several dispute resolution mechanisms—including mediation, conciliation, arbitration, and the Dispute Board—their practical effectiveness remains limited. Many construction service providers are reluctant to pursue formal legal remedies because of concerns that litigation or arbitration may adversely affect their opportunities to participate in future government procurement projects.

Previous studies on legal protection in construction contracts have demonstrated that the legal relationship between project owners and contractors is founded on the principles of freedom of contract, contractual balance, legal certainty, and good faith. Nevertheless, in government procurement conducted through the Electronic Procurement Service (LPSE), the practical application of these principles continues to face significant challenges, particularly where local governments dominate the drafting and implementation of contractual provisions. Consequently, legal protection for construction service providers remains inadequate, especially in cases involving government default through delayed or non-payment of contractual obligations.

Setiawan and Markoni argue that construction contracts should be based on a balanced distribution of rights and obligations in accordance with the Indonesian Civil Code and Law Number 2 of 2017 on Construction Services. Their study emphasizes the importance of legal certainty in preventing contractual disputes but does not specifically examine the legal liability of local governments for delayed payments within the LPSE procurement framework.⁴ Similarly, Ramadhani et al. investigate the legal protection available to construction service providers in cases of unilateral contract termination. Their findings indicate that ambiguities in pre-termination procedures weaken legal protection; however, the study does not address situations in which the government maintains the contractual relationship while failing to fulfill its payment obligations.⁵

Furthermore, Adzan distinguishes legal protection into preventive and repressive forms. Preventive legal protection is achieved through transparent procurement procedures, regulatory certainty, and equitable contract drafting, whereas repressive legal protection is implemented through litigation, arbitration, and alternative dispute

⁴ Budi Setiawan and Markoni Markoni, “Perlindungan Hukum Para Pihak Dalam Perjanjian Jasa Konstruksi,” *Jurnal Cinta Nusantara* 2, no. 2 (2024): 1–13, <https://doi.org/10.63754/jcn.v2i02.36>.

⁵ Khaulah Sayu Ramadhani et al., “Perlindungan Hukum Bagi Penyedia Atas Pemutusan Sepihak Kontrak Konstruksi Dalam Pengadaan Barang Dan Jasa Pemerintah,” *Equivalent: Jurnal Ilmiah Sosial Teknik* 6, no. 1 (2023): 1–18, <https://doi.org/10.59261/jequi.v6i1.168>.

resolution (ADR).⁶ However, the study does not assess the effectiveness of these mechanisms in resolving disputes arising from delayed payments under local government construction contracts. Similarly, Gusra emphasizes the importance of the principles of contractual balance, legal certainty, and good faith through clearly drafted contractual provisions but does not examine legal protection in cases involving delayed payments caused by regional budget constraints.⁷

More recent research by Basri et al. identifies several persistent challenges in the implementation of construction contracts, including unequal bargaining power, the extensive use of standard-form contracts, and delayed payments. Although the study recommends regulatory harmonization and more balanced contractual arrangements, it does not analyze the legal liability of local governments in their capacity as private law entities.⁸ Likewise, Iqbal et al. focus primarily on legal protection against bid-rigging practices in public procurement,⁹ while Pranoto et al. examine the application of force majeure clauses in construction contracts.¹⁰ Neither study addresses government default resulting from delayed contractual payments. Similarly, Kriswandaru et al. highlight the importance of good governance, contractual clarity, and effective dispute resolution mechanisms but do not specifically investigate the legal protection available to construction service providers participating in LPSE tenders who suffer losses due to local government payment defaults.¹¹

The existing body of literature has generally focused on legal protection in construction contracts, contract termination, force majeure, and normative dispute resolution mechanisms. However, no previous study has comprehensively examined the legal liability of the Klaten Regency Government, acting as the project owner in LPSE procurement, for payment default. In particular, prior research has not integrated the principles of equality before the law, the government's status as a private legal entity in contractual relationships, the effectiveness of both preventive and remedial legal protection, and the implementation of Law Number 2 of 2017 on Construction Services together with Government Regulation Number 22 of 2020.

⁶ Mohammad Adzan, "Perlindungan Hukum Pelaku Usaha Dalam Sengketa Kontraktual Pengadaan Barang Dan Jasa Konstruksi Pemerintah Ditinjau Dari Aspek Hukum Perdata," *Jispendiora: Jurnal Ilmu Sosial Pendidikan Dan Humaniora* 3, no. 3 (2025): 164–84, <https://doi.org/10.56910/jispendiora.v3i3.3091>.

⁷ Dara Ayu Gusra, "Perlindungan Hukum Terhadap Para Pihak Dalam Kontrak Pengadaan Jasa Konstruksi Milik Pemerintah" (Universitas Jambi, 2025), <https://repository.unja.ac.id/74570/>.

⁸ Hasan Basri et al., "Perlindungan Hukum Terhadap Pengguna Jasa Dan Penyedia Jasa Pekerjaan Jasa Konstruksi Dalam Tahap Pelaksanaan Konstruksi," *Judge: Jurnal Hukum* 11, no. 2026 (2026): 2454–62, <https://doi.org/10.54209/judge.v6i11.2592>.

⁹ Muhammad Iqbal Iqbal et al., "Perlindungan Hukum Bagi Pihak Yang Dirugikan Akibat Terjadinya Persekongkolan Tender," *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 3 (2025): 1805–24, <https://doi.org/10.38035/rj.v7i3.1446>.

¹⁰ Hari Pranoto et al., "Perlindungan Hukum Bagi Kontraktor Dalam Kontrak Kerja Konstruksi Akibat Terjadinya Keadaan Kahar Di Banyuwangi," *Amar: Jurnal Ilmiah Hukum* 1, no. 1 (2023): 1–25.

¹¹ Althea Serafim Kriswandaru et al., "Memahami Aspek Hukum Dalam Proyek Konstruksi: Perlindungan Bagi Pihak Terlibat: Penelitian," *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan* 4, no. 4 (2026): 22876–84, <https://doi.org/10.31004/jerkin.v4i4.5775>.

Accordingly, this study aims to analyze the legal protection afforded to construction service providers participating in LPSE tenders in Klaten Regency against the risk of local government default in the form of delayed or unpaid contractual obligations. It further examines the legal status of local governments as private legal entities in construction contracts, analyzes their civil law liability for contractual default, and evaluates the effectiveness of preventive and remedial legal protection mechanisms under Law Number 2 of 2017 on Construction Services and Government Regulation Number 22 of 2020.

2. RESEARCH METHODOLOGY

This study employs an empirical legal research method using a socio-legal approach to examine the implementation of legal protection in government construction procurement contracts conducted through Indonesia's Electronic Procurement Service (LPSE) in Klaten Regency. The socio-legal approach is intended to assess the consistency between the applicable legal framework (law in the books) and its practical implementation (law in action), particularly with respect to local government liability for contractual default arising from delayed or unpaid obligations to construction service providers.

The research integrates statutory, conceptual, case, and empirical approaches to provide a comprehensive analysis of the legal issues under investigation. Primary data were collected through semi-structured interviews with key stakeholders, including officials from the Procurement of Goods and Services Unit (UKPBJ) and LPSE, Commitment-Making Officials (PPK), officials from the Public Works and Spatial Planning Agency (PUPR), construction service providers, legal practitioners, and academic experts. Participants were selected using purposive sampling based on their expertise and direct involvement in government construction procurement.

Secondary data were obtained from relevant legislation, government regulations, judicial decisions, scholarly books, and peer-reviewed journal articles. Data collection was conducted through document analysis, an extensive literature review, in-depth interviews, and the examination of relevant official documentation. The credibility and reliability of the findings were ensured through source and methodological triangulation.

The collected data were analyzed using a qualitative descriptive approach involving data reduction, data display, interpretation, and conclusion drawing. This analytical framework enabled the study to identify the practical shortcomings of the existing legal framework and to formulate a more effective model of legal protection for construction service providers in government procurement contracts.

3. RESEARCH RESULT AND DISCUSSION

3.1. Legal Protection Framework for Construction Service Providers in LPSE Procurement in Klaten Regency

The implementation of the Electronic Procurement Service (LPSE) system in Klaten Regency has significantly improved transparency, accountability, and fair competition during the contractor selection process. All stages of public procurement—including procurement planning, tender announcements, bid submission, administrative evaluation, technical assessment, financial evaluation, and contract award—are conducted electronically, thereby reducing opportunities for discriminatory practices and undue intervention that are inconsistent with the principles of public procurement. This digital procurement system has strengthened the principles of transparency and efficiency, which constitute the primary objectives of electronic government procurement. Nevertheless, the findings of this study indicate that the legal certainty established during the tender process has not been fully reflected in the implementation of construction contracts.

Legal disputes arise predominantly after the execution of the construction contract. During contract implementation, the local government, acting as the project owner, continues to occupy a dominant position relative to the construction service provider. This imbalance is reflected not only in the widespread use of standard-form contracts drafted primarily by the government but also in the performance of contractual payment obligations. Although Law Number 2 of 2017 on Construction Services mandates that construction procurement be governed by the principle of equality, this principle has not been effectively realized in practice because local governments retain substantially greater administrative authority and bargaining power than construction contractors.

A construction contract establishes a legal relationship (*rechtsbetrekking*) that creates reciprocal rights and obligations for both parties. As the project owner, the local government is entitled to receive construction work that complies with the agreed technical specifications, quality standards, budget, and completion schedule. In return, it bears the principal contractual obligation to pay for work that has been completed and verified by the supervising consultant in accordance with the project's physical progress. Conversely, the construction service provider is obligated to execute the project in compliance with applicable technical standards, Construction Safety, Security, Health, and Sustainability (K4) requirements, and the agreed implementation schedule. Correspondingly, the contractor possesses the fundamental contractual right to receive timely payment in accordance with the contract value. In practice, however, these economic rights are the most vulnerable to infringement due to delays in budget disbursement and lengthy administrative procedures within local government institutions.

The findings reveal that the most common form of contractual default is not contract termination but delayed payment for construction work that has already been completed and formally certified as meeting the required technical standards. Local governments frequently justify payment delays on the basis of regional budget limitations, changes in budget disbursement schedules, revisions to administrative documentation, or delays in internal verification procedures. From the perspective of Indonesian contract law, however, such administrative or financial constraints do not extinguish the government's contractual obligations. Once a construction contract has been executed, the local government acts as a private legal entity and is therefore bound by Article 1338 of the Indonesian Civil Code, which embodies the principle of *pacta sunt servanda*. Accordingly, any payment delay that is not attributable to the contractor constitutes a breach of contract and gives rise to legal consequences, including the obligation to compensate the contractor for losses, statutory interest, or other damages as provided under Article 1243 of the Indonesian Civil Code.

These findings demonstrate a substantial gap between the normative legal framework and its practical implementation in government construction contracts. Compared with its predecessor, Law Number 18 of 1999, Law Number 2 of 2017 significantly strengthens the legal framework by clarifying the distribution of authority among the central, provincial, and district or municipal governments, introducing the concept of Construction Safety, Security, Health, and Sustainability (K4), and reinforcing dispute resolution through the establishment of the Dispute Board mechanism. Despite these substantive regulatory improvements, the effectiveness of implementation remains limited. Administrative inefficiencies, inadequate coordination among regional government agencies, and weaknesses in regional budget management continue to impede the realization of effective legal protection for construction service providers, thereby undermining the legal certainty that the statutory framework seeks to achieve.

The findings of this study support those of Setiawan and Markoni, who argue that effective legal protection in construction contracts depends on maintaining a balance between the rights and obligations of the contracting parties.¹² However, the present study demonstrates that this imbalance is attributable not only to the substantive provisions of the contract but also to administrative practices adopted by local governments during contract implementation. Accordingly, the principal source of legal uncertainty arises not at the contract formation stage but during contract performance, when the government acts as the project owner.

The findings also corroborate Adzan's argument regarding the importance of both preventive and remedial legal protection in government procurement contracts.¹³

¹² Setiawan and Markoni, "Perlindungan Hukum Para Pihak Dalam Perjanjian Jasa Konstruksi."

¹³ Adzan, "Perlindungan Hukum Pelaku Usaha Dalam Sengketa Kontraktual Pengadaan Barang Dan Jasa Konstruksi Pemerintah Ditinjau Dari Aspek Hukum Perdata."

Nevertheless, this study shows that preventive legal protection based solely on statutory regulations is insufficient to safeguard the economic rights of construction service providers. Contractual provisions governing payment schedules frequently lack adequate payment security mechanisms, leaving contractors without effective financial protection when budget disbursements are delayed.¹⁴ Accordingly, preventive legal protection should be strengthened through mechanisms such as escrow accounts, government-backed payment guarantees, or mandatory allocation of project funds before the commencement of contract performance.

Furthermore, the findings extend those of Basri et al., who identified delayed payments as one of the principal causes of disputes in construction contracts.¹⁵ The present study demonstrates that payment delays affect not only the contractual relationship between the parties but also generate broader economic consequences. These include disruptions to contractors' cash flow, increased operational expenses, delayed payments to subcontractors and suppliers, and diminished capacity to compete in subsequent public procurement opportunities. Consequently, local government payment default has systemic implications for the sustainability and competitiveness of the regional construction services industry.

Legal protection in construction service contracts should not be evaluated solely on the basis of the existence of statutory regulations; rather, it must be assessed according to the effectiveness of legal norms in securing the contractual rights of the parties. From the perspective of the theory of legal protection (*rechtsbescherming*), the law serves not only as a mechanism for resolving disputes after contractual violations occur but also as a preventive instrument designed to minimize economic losses from the earliest stages of contract formation.¹⁶ Therefore, the principle of equality embodied in Law Number 2 of 2017 should be operationalized through contractual provisions that ensure balanced bargaining power, secure payment mechanisms, equitable risk allocation, and accessible dispute resolution procedures that contractors can utilize without concern over administrative retaliation or exclusion from future procurement opportunities.

The findings further indicate that, although the legal framework governing the protection of construction service providers participating in LPSE procurement in Klaten Regency is normatively comprehensive, its practical effectiveness is significantly constrained by deficiencies in contract administration and implementation. The recurring occurrence of local government default in the form of delayed payments

¹⁴ Hana Nurhalimah and Arif Firmansyah, "Tanggung Jawab Developer Dalam Payment Guarantee Akibat Wanprestasi Debitur KPR Rumah Indent," *Jurnal Riset Ilmu Hukum* 2, no. 1 (2022): 6–11, <https://doi.org/10.29313/jrih.v2i1.634>.

¹⁵ Basri et al., "Perlindungan Hukum Terhadap Pengguna Jasa Dan Penyedia Jasa Pekerjaan Jasa Konstruksi Dalam Tahap Pelaksanaan Konstruksi."

¹⁶ Mohamad Widadun Ni'am et al., "Strategi Perancangan Kontrak Yang Baik Sebagai Instrumen Pencegahan Sengketa," *Jurnal Media Akademik* 3, no. 6 (2025): 1–18, <https://doi.org/10.62281/v3i6.1991>.

demonstrates that the statutory principle of equality between the contracting parties has not been fully realized in practice.

Accordingly, strengthening legal protection requires more than legislative reform. It also necessitates comprehensive improvements in the governance of government construction contracts through the establishment of enforceable payment guarantee mechanisms, enhanced accountability of Commitment-Making Officials (PPK), the adoption of more balanced and equitable contractual provisions, and the optimization of dispute resolution mechanisms as effective instruments of legal protection. These findings further demonstrate that the success of the Electronic Procurement Service (LPSE) should be evaluated not only by the transparency and fairness of the tender process but also by the legal system's ability to ensure the timely, equitable, and legally certain fulfillment of contractors' contractual rights.

3.2. Legal Liability of Local Governments as Project Owners Under Construction Contracts

Once a construction contract has been executed, the local government no longer acts solely as a public authority exercising governmental powers but also assumes the legal status of a private legal entity governed by the principles of contract law. This change in legal capacity arises from the establishment of a contractual legal relationship (*rechtsbetrekking*), which creates reciprocal rights and obligations between the project owner and the construction service provider. Under Law Number 2 of 2017 on Construction Services, local governments and contractors occupy equal legal positions, reflecting the statutory principle of equality that governs the provision of construction services.

From the perspective of contract law, the government's status as the project owner does not confer any privilege to disregard its contractual obligations. Pursuant to Article 1338 of the Indonesian Civil Code, every lawfully executed agreement is binding upon the parties as the law governing their contractual relationship. Accordingly, local governments are legally required to perform all contractual obligations in good faith, including the timely payment for work completed and certified by the supervising consultant and the Commitment-Making Official (*Pejabat Pembuat Komitmen* or PPK). Consequently, payment delays attributable to administrative procedures, changes in budgetary policies, or limitations in regional budget allocations do not relieve the government of its contractual liability to construction service providers.

The findings indicate that the most common form of contractual default in government construction projects is not the rejection of completed work but rather delayed payment for work that has fully satisfied the agreed technical specifications, quality standards, and project schedule. In Klaten Regency, such payment delays are generally associated with lengthy administrative verification procedures, revisions to

financial documentation, changes in budget allocations, and delays in the disbursement of regional budget funds. Although these circumstances are frequently characterized as administrative issues, they nevertheless constitute contractual non-performance because the obligation to make timely payment is one of the government's principal obligations under a construction contract.

From the perspective of the theory of legal liability, the liability of local governments arises from the causal relationship between governmental acts or omissions and the losses sustained by construction service providers. This causal link becomes evident when delayed payments disrupt contractors' cash flow, increase financing costs, delay payments to employees and subcontractors, and diminish contractors' capacity to participate in future government procurement projects. The resulting harm extends beyond administrative inconvenience and produces substantial economic consequences that directly threaten the sustainability and competitiveness of construction service businesses.

The legal liability of local governments under construction contracts may be categorized into two distinct forms: contractual liability and official liability. Contractual liability arises when the government fails to perform obligations expressly stipulated in the construction contract, particularly the obligation to make payments in accordance with the agreed contractual schedule. In such circumstances, the government may be required to compensate the contractor for losses, including damages, statutory interest, or penalties for late payment, as provided under Article 1243 of the Indonesian Civil Code. By contrast, official liability arises when the contractor's losses result from actions or omissions of government officials acting within the scope of their official authority, including Commitment-Making Officials (Pejabat Pembuat Komitmen or PPK), Budget User Authorities (Kuasas Pengguna Anggaran or KPA), and Budget Users (Pengguna Anggaran or PA). Where such actions are undertaken in the lawful exercise of official functions, the resulting legal responsibility is attributable to the office and, ultimately, to the local government institution itself.

However, where delayed payment or financial losses suffered by a construction service provider result from an abuse of authority (*détournement de pouvoir*), arbitrary administrative action, or violations of the principles of good governance, legal liability may shift from institutional responsibility to the personal liability of the public official concerned. This distinction has significant implications for administrative law because it differentiates institutional misconduct from individual wrongdoing. Accordingly, the allocation of liability should be determined through an assessment of both the source of the loss and the scope of the official's lawful authority.¹⁷

The findings of this study reinforce the conclusion reached by Basri et al. that delayed payment is one of the most common forms of contractual breach leading to

¹⁷ Ridwan HR, *Hukum Administrasi Negara* (PT. RajaGrafindo Persada, 2019).

disputes in the implementation of construction contracts.¹⁸ However, the present study demonstrates that delayed payment is not merely a contractual default; it also reflects the failure of local governments to uphold the principles of accountability in regional financial management. Consequently, government default should be understood not only as a matter of private contract law but also as an issue that directly affects the quality of good governance and public financial administration.

The findings further extend the work of Adzan concerning preventive and remedial legal protection in government construction procurement.¹⁹ While that study emphasized the importance of comprehensive regulatory frameworks and accessible dispute resolution mechanisms, the present research demonstrates that the existence of legal rules alone does not ensure that local governments will fulfill their contractual obligations. Rather, the principal obstacle lies in the ineffective implementation of legal norms, particularly in relation to payment administration and financial management of public construction projects. In this respect, legal certainty depends not only on the quality of legislation but also on the effectiveness of governmental administration and institutional compliance.

The results of this study also differ from those reported by Ramadhani et al., whose analysis primarily focused on legal protection in cases involving unilateral contract termination.²⁰ By contrast, the present study finds that the form of contractual breach causing the greatest harm to construction service providers is not contract termination but the continuation of contractual performance without the timely fulfillment of the government's payment obligations. This situation creates a more complex form of legal uncertainty because contractors remain legally obligated to complete the project despite not receiving the payments to which they are contractually entitled.

The legal liability of local governments under construction contracts should therefore be understood as a practical manifestation of the principles of good faith, legal certainty, and equality of the contracting parties. These principles govern not only the negotiation and formation of the contract but also every stage of its performance until the contractual relationship is fully discharged.²¹ Consequently, local governments cannot rely on administrative procedures or regional budget constraints as legitimate grounds for delaying contractual payments, since such conduct is inconsistent with the principle of *pacta sunt servanda*, which constitutes the cornerstone of contract law.

The effectiveness of local government liability is closely linked to the quality of contractual governance established during the planning and drafting stages.

¹⁸ Basri et al., "Perlindungan Hukum Terhadap Pengguna Jasa Dan Penyedia Jasa Pekerjaan Jasa Konstruksi Dalam Tahap Pelaksanaan Konstruksi."

¹⁹ Adzan, "Perlindungan Hukum Pelaku Usaha Dalam Sengketa Kontraktual Pengadaan Barang Dan Jasa Konstruksi Pemerintah Ditinjau Dari Aspek Hukum Perdata."

²⁰ Ramadhani et al., "Perlindungan Hukum Bagi Penyedia Atas Pemutusan Sepihak Kontrak Konstruksi Dalam Pengadaan Barang Dan Jasa Pemerintah."

²¹ Seng Hansen, *Manajemen Kontrak Konstruksi* (Gramedia Pustaka Utama, 2017).

Construction contracts that fail to incorporate explicit provisions on payment guarantees, compensation for delayed payment, or procedures for claiming contractual losses place construction service providers in a disproportionately vulnerable position when government default occurs.²² Accordingly, construction contracts should extend beyond technical specifications and project implementation requirements by incorporating robust financial protection mechanisms, including secure payment provisions, escrow account arrangements, automatic compensation for delayed payments, and clearly defined sanctions for contractual breaches committed by the project owner.

The findings indicate that the legal liability of local governments as project owners is firmly established under the Indonesian Civil Code, Law Number 2 of 2017 on Construction Services, and Government Regulation Number 22 of 2020. Nevertheless, the practical effectiveness of this legal framework continues to be constrained by an administrative approach to government project management that frequently prioritizes bureaucratic procedures over contractual compliance.

This study confirms that local governments should consistently be regarded as private legal entities when performing construction contracts. Consequently, all legal consequences arising from contractual default—including liability for damages, statutory interest, and compensation for delayed payment—should be imposed in a proportionate and consistent manner. Strengthening the accountability of Commitment-Making Officials (Pejabat Pembuat Komitmen or PPK), harmonizing regional financial management with the principles of contract law, and improving liability provisions in construction contracts constitute essential measures for enhancing legal certainty, ensuring equitable legal protection, and strengthening the confidence of construction service providers in Indonesia's Electronic Procurement Service (LPSE) system.

3.3. Effectiveness of Preventive and Remedial Legal Protection and Dispute Resolution Mechanisms

From a normative perspective, Indonesia's legal framework governing construction services has undergone substantial development. Compared with Law Number 18 of 1999, which primarily regulated general contractual relationships, Law Number 2 of 2017 significantly expands the scope of legal protection by reinforcing the principle of equality, introducing Construction Safety, Security, Health, and Sustainability (K4) standards, providing a clearer allocation of authority between the central and regional governments, and establishing the Dispute Board as a preventive dispute resolution mechanism. These reforms reflect a fundamental shift from a dispute resolution model

²² Aluf Ra'syiah Rabah, "Legal Responsibilities of Commitment-Making Officer of Default by the Government Procurement Contracts," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, no. 3 (2024): 256–68.

focused primarily on post-dispute remedies toward a legal framework emphasizing proactive risk management throughout the contract lifecycle.

Preventive legal protection constitutes the primary mechanism for minimizing contractual disputes before they arise. Such protection is realized through the preparation of construction contracts that adhere to the principles of legal certainty, balanced rights and obligations, transparency, and good faith.²³ In construction procurement conducted through Indonesia's Electronic Procurement Service (LPSE) in Klaten Regency, contract preparation generally complies with applicable statutory requirements and standardized government procurement documents. Nevertheless, the findings reveal that most contracts continue to rely on standard-form provisions drafted predominantly by the project owner, thereby significantly limiting the opportunity for construction service providers to negotiate contractual terms. Consequently, the statutory principle of equality established under Law Number 2 of 2017 has not been fully reflected in the substantive provisions of construction contracts.

The principal weakness of preventive legal protection lies in the absence of effective contractual safeguards for payment security. Most construction contracts merely establish payment schedules linked to project progress without incorporating mechanisms to protect contractors against delays in the disbursement of regional government funds. As a result, when local governments encounter administrative or fiscal constraints, construction service providers bear the full financial consequences despite having completed the contracted work in accordance with the required technical specifications. These findings indicate that the current preventive legal protection framework remains primarily oriented toward safeguarding the interests of the project owner rather than protecting the economic rights of construction contractors.

Contract administration and project supervision constitute essential components of preventive legal protection. Oversight performed by supervising consultants and Commitment-Making Officials (Pejabat Pembuat Komitmen or PPK) is intended to ensure that construction activities comply with the agreed technical specifications, project schedule, and quality standards. However, the effectiveness of this supervisory system continues to be constrained by several factors, including limited technical capacity among supervisory personnel, inadequate coordination among government agencies, insufficient supervisory budgets, and the limited integration of digital technologies into project monitoring. Consequently, delays frequently occur during the verification and certification of completed work, which subsequently postpone the government's payment obligations to contractors. These findings demonstrate that deficiencies in the supervisory framework not only compromise construction quality but also directly undermine the effectiveness of legal protection afforded to construction service providers.

²³ Kriswandaru et al., "Memahami Aspek Hukum Dalam Proyek Konstruksi."

Where preventive legal protection fails to avert contractual disputes, remedial legal protection becomes the principal mechanism for restoring the legal rights of the contracting parties. The findings indicate that Indonesia's legal framework provides a broad range of dispute resolution mechanisms, including negotiation, mediation, conciliation, arbitration, Dispute Boards, and judicial litigation. Although these mechanisms collectively provide a comprehensive legal framework for dispute resolution, their practical implementation at the local government level remains limited. Construction service providers generally prefer to resolve disputes through informal negotiations rather than formal legal proceedings because they are concerned that pursuing legal remedies may jeopardize their eligibility or competitiveness in future government procurement opportunities. Consequently, the mere existence of formal dispute resolution mechanisms does not necessarily provide contractors with sufficient confidence or practical assurance that they can effectively enforce their contractual rights.

The Dispute Board, which is more explicitly regulated under Government Regulation Number 22 of 2020, represents the dispute resolution mechanism best suited to the unique characteristics of construction contracts. Unlike arbitration or judicial litigation, which generally operate as reactive mechanisms after disputes have escalated into legal conflicts, the Dispute Board functions throughout the project lifecycle by monitoring potential disputes and providing independent professional recommendations before disagreements develop into prolonged contractual defaults. Despite these advantages, the implementation of the Dispute Board in local government construction projects remains limited. The principal obstacles include insufficient understanding among contracting parties regarding the role and authority of the Dispute Board, the absence of standardized operational procedures at the local government level, and the tendency of project owners to rely on administrative procedures rather than contractual dispute prevention mechanisms.

Among the available remedial mechanisms, mediation remains the most frequently utilized because it enables the parties to preserve their contractual relationship without engaging in lengthy adjudicative proceedings. Mediation offers several practical advantages, including relatively rapid resolution, lower costs, and the preservation of the parties' professional reputations. Nevertheless, its effectiveness depends largely on the good faith of the local government as the project owner. Where the government continues to justify payment delays on the basis of administrative procedures or regional budget constraints, mediation often fails to produce outcomes that adequately protect the contractual rights of construction service providers.

Arbitration offers the advantage of producing final and binding decisions rendered by arbitrators possessing specialized expertise in construction law and practice.²⁴ However, its use in disputes involving local government construction contracts remains relatively limited because of the high costs associated with arbitration and the perception among contractors that initiating arbitral proceedings may adversely affect their long-term business relationships with government agencies. Likewise, judicial litigation, although capable of providing legally enforceable judgments and a high degree of legal certainty, is generally regarded as a remedy of last resort (*ultimum remedium*). This perception is attributable to the lengthy duration of court proceedings, substantial litigation costs, and concerns that pursuing litigation may result in adverse administrative consequences, including unfavorable evaluations in future government procurement processes.

The findings of this study support those of Adzan, who argues that effective legal protection requires an integrated combination of preventive and remedial measures.²⁵ However, the present study demonstrates that the effectiveness of legal protection depends not merely on the existence of legal rules or formal dispute resolution mechanisms. Rather, it is strongly influenced by the willingness of construction service providers to utilize available legal remedies and by the commitment of local governments to perform their contractual obligations in good faith. Accordingly, the principal challenge lies not in the absence of legal mechanisms but in their inconsistent implementation within public procurement practice.

The findings also extend the work of Basri et al., who emphasized the need for regulatory harmonization and more balanced construction contracts.²⁶ This study suggests that regulatory harmonization should be accompanied by comprehensive reforms in contract governance, including the incorporation of more effective payment provisions, strengthened payment guarantee mechanisms, the use of escrow accounts, automatic compensation clauses for delayed payments, and the broader implementation of the Dispute Board as a preventive dispute avoidance mechanism throughout project execution. In this respect, legal protection should no longer be viewed solely as a reactive means of resolving disputes after they arise but should instead function as an integral component of contractual risk management.

The effectiveness of legal protection should therefore be assessed according to its capacity to maintain an equitable balance between the rights and obligations of the contracting parties throughout the entire contract lifecycle—from project planning and procurement through the Electronic Procurement Service (LPSE), contract execution,

²⁴ Erleni Erleni et al., “Kekuatan Mengikat Dari Keputusan Arbitrase Dihubungkan Dengan Sifat Final & Binding,” *Jurnal Consensus: Jurnal Ilmu Hukum* 3, no. 3 (2025): 111–16.

²⁵ Adzan, “Perlindungan Hukum Pelaku Usaha Dalam Sengketa Kontraktual Pengadaan Barang Dan Jasa Konstruksi Pemerintah Ditinjau Dari Aspek Hukum Perdata.”

²⁶ Basri et al., “Perlindungan Hukum Terhadap Pengguna Jasa Dan Penyedia Jasa Pekerjaan Jasa Konstruksi Dalam Tahap Pelaksanaan Konstruksi.”

payment, and ultimately dispute resolution. A legal protection system that relies primarily on remedial mechanisms inevitably places construction service providers at a disadvantage because their contractual rights can only be restored after financial losses have already occurred. Consequently, the legal protection framework governing construction services should increasingly adopt a preventive, risk-based approach founded on sound contract management, good governance, contractual transparency, and certainty in project financing.

The findings indicate that the effectiveness of legal protection for construction service providers participating in LPSE procurement in Klaten Regency requires significant improvement, particularly with respect to implementation. Although the existing legal framework provides relatively comprehensive preventive and remedial safeguards, its practical application has not been sufficient to ensure legal certainty when contractors encounter payment default by local governments. Accordingly, strengthening legal protection should focus on optimizing the role of the Dispute Board as a proactive dispute prevention mechanism, improving the drafting of contractual provisions, enhancing the quality of project supervision, reinforcing payment guarantee mechanisms, and strengthening the commitment of local governments to perform construction contracts in accordance with the principles of equality, good faith, and accountability. Ultimately, legal protection should serve not only as a mechanism for resolving contractual disputes but also as a means of promoting legal certainty, strengthening business confidence in Indonesia's Electronic Procurement Service (LPSE), and fostering a stable and sustainable investment climate within the construction sector.

4. CONCLUSION

Although Law Number 2 of 2017 on Construction Services and Government Regulation Number 22 of 2020 establish a comprehensive normative framework grounded in the principles of equality, legal certainty, and alternative dispute resolution, their practical implementation remains insufficient. This limitation is primarily attributable to persistent disparities in bargaining power between contracting parties, delayed payments by local governments, inadequate payment guarantee mechanisms, and the limited utilization of the Dispute Board as a preventive dispute resolution mechanism. As project owners under construction contracts, local governments act as private legal entities and are therefore legally obligated to perform all contractual obligations, including the timely payment of certified work. Accordingly, limitations in regional budget allocations cannot serve as a lawful justification for contractual default.

This study contributes to the development of construction contract law by advancing a legal protection framework grounded in contractual balance and risk management principles. However, the study is limited by its focus on a single

jurisdiction, namely Klaten Regency, and therefore does not provide a comparative analysis of implementation practices across other regions of Indonesia.

Accordingly, the findings suggest that the government should strengthen the governance of construction contracts by incorporating enforceable payment guarantee provisions, enhancing the role of the Dispute Board as a preventive dispute avoidance mechanism, increasing the accountability of Commitment-Making Officials (Pejabat Pembuat Komitmen or PPK), and harmonizing regional financial management practices with the principles of contract law. Future research should adopt broader empirical and comparative approaches across multiple jurisdictions to evaluate the effectiveness of legal protection mechanisms and to develop a more comprehensive model for reforming government construction contracts that is consistent with the principles of good governance and supports the long-term sustainability of investment in the construction sector.

REFERENCES

Journals

- Adzan, Mohammad. "Perlindungan Hukum Pelaku Usaha Dalam Sengketa Kontraktual Pengadaan Barang Dan Jasa Konstruksi Pemerintah Ditinjau Dari Aspek Hukum Perdata." *Jispendiora: Jurnal Ilmu Sosial Pendidikan Dan Humaniora* 3, no. 3 (2025): 164–84. <https://doi.org/10.56910/jispendiora.v3i3.3091>.
- Basri, Hasan, Rilawadi Sahputra, and Ariman Sitompul. "Perlindungan Hukum Terhadap Pengguna Jasa Dan Penyedia Jasa Pekerjaan Jasa Konstruksi Dalam Tahap Pelaksanaan Konstruksi." *Judge: Jurnal Hukum* 11, no. 2026 (2026): 2454–62. <https://doi.org/10.54209/judge.v6i11.2592>.
- Erleni, Erleni, Meidya Wulandari, Oktariani Oktariani, Ocky Yogananta, and Fery Arifandi. "Kekuatan Mengikat Dari Keputusan Arbitrase Dihubungkan Dengan Sifat Final & Binding." *Jurnal Consensus: Jurnal Ilmu Hukum* 3, no. 3 (2025): 111–16.
- Iqbal, Muhammad Iqbal, Misnar Syam, and Yasniwati Yasniwati. "Perlindungan Hukum Bagi Pihak Yang Dirugikan Akibat Terjadinya Persekongkolan Tender." *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 3 (2025): 1805–24. <https://doi.org/10.38035/rrj.v7i3.1446>.
- Kriswandar, Althea Serafim, Aris Krisdiyanto, Appolinaris Didien.T, Kemmala Dewi, and Alif Lombardoaji Sidiq. "Memahami Aspek Hukum Dalam Proyek Konstruksi: Perlindungan Bagi Pihak Terlibat: Penelitian." *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan* 4, no. 4 (2026): 22876–84. <https://doi.org/10.31004/jerkin.v4i4.5775>.
- Ni'am, Mohamad Widadun, Muhammad Azmi Robbani Jakfar, and Lucky Dafira Nugroho. "Strategi Perancangan Kontrak Yang Baik Sebagai Instrumen

- Pencegahan Sengketa.” *Jurnal Media Akademik* 3, no. 6 (2025): 1–18.
<https://doi.org/10.62281/v3i6.1991>.
- Nugraha, Muhammad Al-Haadi, Ridha Kurniawan, Nova Artika Sari, R. Imam Ghozali, and Edi Darmawijaya. “Limits of Government Authority in Business Dealings with Business Entities: A Comparative Study of the Public Contract Regimes of Indonesia and the Netherlands.” *Jurnal Akta* 13, no. 1 (2026): 234–49. <https://doi.org/10.30659/akta.v13i1.50396>.
- Nurhalimah, Hana, and Arif Firmansyah. “Tanggung Jawab Developer Dalam Payment Guarantee Akibat Wanprestasi Debitur KPR Rumah Indent.” *Jurnal Riset Ilmu Hukum* 2, no. 1 (2022): 6–11. <https://doi.org/10.29313/jrih.v2i1.634>.
- Pranoto, Hari, Agnes Pasaribu, and Rudi Mulyanto. “Perlindungan Hukum Bagi Kontraktor Dalam Kontrak Kerja Konstruksi Akibat Terjadinya Keadaan Kahar Di Banyuwangi.” *Amar: Jurnal Ilmiah Hukum* 1, no. 1 (2023): 1–25.
- Rabah, Aluf Ra’syiah. “Legal Responsibilities of Commitment-Making Officer of Default by the Government Procurement Contracts.” *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, no. 3 (2024): 256–68.
- Ramadhani, Khaulah Sayu, Ermanto Fahamsyah, and Mohammad Ali. “Perlindungan Hukum Bagi Penyedia Atas Pemutusan Sepihak Kontrak Konstruksi Dalam Pengadaan Barang Dan Jasa Pemerintah.” *Equivalent: Jurnal Ilmiah Sosial Teknik* 6, no. 1 (2023): 1–18. <https://doi.org/10.59261/jequi.v6i1.168>.
- Setiawan, Budi, and Markoni Markoni. “Perlindungan Hukum Para Pihak Dalam Perjanjian Jasa Konstruksi.” *Jurnal Cinta Nusantara* 2, no. 2 (2024): 1–13. <https://doi.org/10.63754/jcn.v2i02.36>.
- Sholeh, Mohammad, and Kesi Widjajanti. “Penerapan Good Governance Pada Pelaksanaan Pengadaan Barang Dan Jasa Secara Elektronik (e-Procurement) Di Lingkungan Pemerintah Provinsi Jawa Tengah.” *Jurnal Riset Ekonomi Dan Bisnis* 16, no. 3 (2023): 266–79. <https://doi.org/10.26623/jreb.v16i3.6844>.
- Syafar, Irfan, and Realizhar Adillah Kharisma Ramadhan. “Pengadaan Barang/Jasa Pemerintah Dalam Perspektif Hukum Administrasi Negara.” *Indo-MathEdu Intellectuals Journal* 6, no. 3 (2025): 3851–57.
<https://doi.org/10.54373/imeij.v6i3.3327>.

Thesis

- Gusra, Dara Ayu. “Perlindungan Hukum Terhadap Para Pihak Dalam Kontrak Pengadaan Jasa Konstruksi Milik Pemerintah.” Universitas Jambi, 2025.
<https://repository.unja.ac.id/74570/>.

Books

- Hansen, Seng. *Manajemen Kontrak Konstruksi*. Gramedia Pustaka Utama, 2017.
- Ridwan HR. *Hukum Administrasi Negara*. PT. RajaGrafindo Persada, 2019.