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Freedom of Contract Versus Public Regulatory Control in Government Construction Contracts: A Legal Analysis Under Law No. 2 Of 2017 on Construction Services

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Abstract: The principle of freedom of contract is a fundamental doctrine in private law that grants parties autonomy to determine agreements. In Indonesian civil law, this principle is reflected in Article 1338 of the Civil Code, which affirms that legally concluded agreements bind the parties. However, its application is more complex in government construction contracts because they involve public resources and public policy. This study analyzes the application and limitations of contractual freedom in government construction agreements under Law No. 2 of 2017 on Construction Services. This research uses a normative juridical approach to examine statutory regulations, legal doctrines, and scholarly perspectives. The findings show that contractual autonomy operates as regulated autonomy rather than absolute freedom. Procurement regulations, administrative authority, technical standards, and public accountability mechanisms significantly influence the structure and implementation of construction agreements. These regulatory constraints produce several legal consequences, including limited negotiability of contractual clauses, potential invalidity of provisions exceeding administrative authority, and stronger requirements for regulatory compliance in determining contractual validity. The study further indicates that these limitations require a more structured approach to drafting government construction contracts, emphasizing standardized clauses, transparent procurement procedures, and clear risk allocation. Strengthening the balance between contractual flexibility and regulatory oversight is therefore essential to improve legal certainty, accountability, and efficiency in public infrastructure development.

Keywords: Construction Contracts, Construction Services Law, Freedom of Contract.

INTRODUCTION

Contract law plays a central role in regulating legal relationships arising from agreements. Through contracts, parties establish rights and obligations governing economic and administrative interactions. A key principle of contract law is freedom of contract, which

allows parties to determine agreement content and scope. Contractual freedom reflects classical liberalism, emphasizing individual autonomy and minimal state intervention (Arrowsmith, 2010; Fried, 2015; Poole, 2012).

Historically, the principle of freedom of contract developed during the rise of liberal economic thought in the eighteenth and nineteenth centuries. During this period, legal theorists and policymakers believed that individuals were best positioned to determine their own economic interests and that voluntary agreements between private actors would lead to efficient allocation of resources within the marketplace. Consequently, legal systems recognize contractual autonomy and enforce voluntarily assumed obligations (Atiyah, 1995). This doctrine became one of the cornerstones of modern civil law and common law systems and continues to shape contemporary contract law in many jurisdictions.

In Indonesia, the principle of freedom of contract is primarily derived from Article 1338 paragraph (1) of the Civil Code, which states that all agreements legally made shall bind the parties as law. This provision establishes the fundamental doctrine that legally concluded contracts possess binding force equivalent to statutory regulations for the parties involved (Subekti, 2005). The provision further implies that individuals are generally free to determine whether they wish to enter into an agreement, with whom they wish to contract, and what terms and conditions they wish to include in the agreement. In this sense, contractual freedom reflects the recognition of private autonomy in legal relationships and serves as an important mechanism for facilitating economic activity and legal certainty.

However, freedom of contract is not absolut. Even within classical contract theory, legal scholars have acknowledged that contractual autonomy must be balanced with broader societal interests, including fairness, justice, and public welfare. Modern legal systems therefore impose certain limitations on contractual freedom in order to prevent abuse, protect weaker parties, and ensure compliance with public policy objectives (Collins, 2003). In Indonesian contract law, such limitations are reflected in Article 1337 of the Civil Code, which provides that agreements are invalid if their content contradicts law, morality, or public order. This provision demonstrates that contractual freedom is subject to normative boundaries established by the legal system.

The limitations imposed on contractual freedom become particularly evident in legal relationships involving public institutions. When contracts involve government entities, they function as instruments of public administration. Government contracts must therefore satisfy not only the interests of the contracting parties but also broader public objectives such as transparency, accountability, efficiency, and the protection of public resources (Arrowsmith, 2014; Erridge & McIlroy, 2002; Thai, 2001). As a result, contractual autonomy in government agreements is frequently constrained by statutory regulations and administrative procedures designed to safeguard public interests.

This tension is evident in construction services. Construction projects are crucial for national development as they create infrastructure supporting economic growth (Doloi, 2013; Nguyen et al., 2004). These projects involve large investments, complex requirements, and safety risks. Therefore, governments have developed regulatory frameworks for construction activities in order to ensure quality standards, safety compliance, and effective project management (Hughes et al., 2015).

In Indonesia, the legal framework governing construction services has undergone significant reform in recent decades. One of the most important legislative developments in this field is the enactment of Law Number 2 of 2017 concerning Construction Services. This law replaced previous regulations and introduced a more comprehensive framework for regulating construction activities, including licensing requirements, professional certification, contractual arrangements, dispute resolution mechanisms, and oversight procedures. The legislation aims to strengthen the professionalism, accountability, and competitiveness of the

construction industry while ensuring that construction projects contribute to national development and public welfare.

In construction services, contracts form the legal foundation between project owners and contractors. Construction contracts regulate the rights and obligations of parties involved in planning, designing, executing, and supervising construction projects (Ling et al., 2004). These agreements typically address issues such as project specifications, payment arrangements, risk allocation, timelines, dispute resolution mechanisms, and quality assurance requirements (Xia et al., 2011). Due to technical and financial complexity, contracts ensure project efficiency and in accordance with agreed standards (Hughes et al., 2015).

Government construction contracts occupy a particularly important position within this regulatory framework. In many cases, infrastructure projects are financed using public funds and implemented through contractual arrangements between government agencies and private contractors. These agreements serve as legal instruments through which public institutions engage private sector expertise to deliver infrastructure development projects. However, because these contracts involve public resources and public interests, they must be regulated in a manner that ensures accountability, transparency, and fairness in the procurement process (Thai, 2009).

Government involvement introduces additional legal considerations in construction contracts. Government entities are bound by administrative law principles that regulate their authority and decision-making processes. Public officials entering into contracts must act within the scope of their legal authority and comply with procurement regulations established by the state. Failure to comply with such regulations may result in legal consequences, including the invalidation of contractual provisions or the imposition of administrative sanctions (Sutedi, 2012).

Therefore, freedom of contract in government construction contracts is more restricted than in private agreements. While the parties may still negotiate certain contractual terms, their autonomy is restricted by statutory requirements governing procurement procedures, contract formation, and project implementation. For example, government construction contracts must typically follow standardized procurement procedures designed to promote competition, prevent corruption, and ensure fair opportunities for contractors to participate in public projects. These procedures often include tender processes, evaluation mechanisms, and standardized contract clauses that limit the extent to which parties can freely determine contractual terms.

Technical and professional standards also influence government construction contracts. Construction activities involve engineering design, material specifications, safety requirements, and environmental considerations that must comply with nationally recognized standards. These standards are established to ensure that construction projects meet acceptable levels of quality, safety, and sustainability. Consequently, construction contracts must incorporate technical provisions that align with regulatory standards and professional guidelines (Hughes et al., 2015).

In addition to technical requirements, government construction contracts are also subject to oversight mechanisms designed to ensure accountability in the use of public funds. Infrastructure projects financed by government budgets must adhere to strict financial management rules, including budget allocation procedures, project monitoring systems, and audit requirements. These mechanisms are intended to prevent misuse of public funds and ensure that infrastructure development projects deliver tangible benefits to society (Thai, 2009).

These frameworks show that freedom of contract cannot be applied without restriction in government construction contracts. Instead, contractual autonomy must operate within a structured legal environment defined by statutory regulations, administrative procedures, and

professional standards. This regulatory approach reflects the recognition that infrastructure development projects have significant implications for public welfare and therefore require careful legal supervision.

Despite these limitations, freedom of contract remains relevant. Even within a regulated framework, contracting parties retain a degree of flexibility in determining specific aspects of their contractual relationship. For instance, parties may negotiate payment schedules, risk allocation mechanisms, dispute resolution procedures, and project management arrangements. These contractual elements allow parties to tailor agreements to the unique characteristics of individual construction projects while still complying with applicable legal regulations.

The balance between contractual freedom and regulation reflects modern contract law development. Rather than viewing contractual autonomy and government regulation as mutually exclusive concepts, contemporary legal theory recognizes that both elements can coexist within a coherent legal framework. Contractual freedom enables parties to design efficient and flexible agreements, while regulatory oversight ensures that such agreements do not undermine public interests or legal norms (Collins, 2003).

In the Indonesian context, this balance is particularly relevant in the implementation of Law Number 2 of 2017 concerning Construction Services. The law establishes general principles governing construction activities, including professionalism, independence, openness, partnership, safety, and sustainability. These principles guide the implementation of construction projects and shape the contractual relationships between service users and service providers. At the same time, the law recognizes the importance of contractual arrangements as the legal foundation for cooperation between parties involved in construction projects.

The interaction between autonomy and regulation raises questions about the limits of freedom of contract within government construction contracts. While the Civil Code recognizes the binding force of agreements, the Construction Services Law and procurement regulations impose various constraints on contractual arrangements involving government entities. Understanding how these legal principles interact is essential for ensuring legal certainty and effective governance in infrastructure development.

Furthermore, examining the application of the freedom of contract principle in government construction contracts is particularly important in the context of Indonesia's ongoing infrastructure development initiatives. In recent years, the Indonesian government has prioritized infrastructure expansion as a key component of national economic development. Large-scale construction projects involving transportation networks, public facilities, and urban development have been implemented across the country. These projects often rely on contractual arrangements between government institutions and private contractors, making the legal framework governing construction contracts highly relevant to national development objectives.

Given the complexity of these contractual relationships, legal scholars and practitioners must carefully analyze how contractual freedom operates within the regulatory framework governing construction services. Such analysis can help identify potential legal challenges, clarify the rights and obligations of contracting parties, and contribute to the development of more effective legal mechanisms for managing infrastructure projects.

The interaction between contractual autonomy and statutory regulation raises important legal questions regarding the extent to which the principle of freedom of contract can be effectively applied in government construction contracts. While the Civil Code recognizes the binding force of agreements and affirms the autonomy of contracting parties, the regulatory framework governing construction services introduces various legal constraints that shape the formation and implementation of such contracts. These constraints arise from procurement regulations, administrative authority, technical standards, and mechanisms of public accountability that are designed to ensure transparency, fairness, and responsible management

of public resources. Consequently, government construction contracts cannot be viewed solely as private agreements but must also be understood as legal instruments embedded within a broader system of public governance.

In light of these considerations, a clearer understanding of how contractual autonomy operates within the regulatory structure of construction law becomes essential. This study therefore examines the application of the principle of freedom of contract in government construction agreements within the framework of Law Number 2 of 2017 concerning Construction Services. Specifically, the research seeks to analyze how this principle is implemented in government construction contracts and to identify the legal limitations that shape its practical application. Through this analysis, the study aims to clarify the relationship between contractual autonomy and regulatory oversight, thereby contributing to a deeper understanding of the legal dynamics governing government construction contracts in Indonesia.

METHOD

This study employs a normative juridical research approach, which focuses on examining legal norms, principles, and regulations governing construction contracts within the Indonesian legal system. Normative legal research emphasizes the analysis of statutory provisions, legal doctrines, and scholarly interpretations in order to understand how legal principles are formulated and applied in specific regulatory contexts (Marzuki, 2019). In this research, the normative approach is used to analyze the implementation of the principle of freedom of contract in government construction agreements as regulated under Law Number 2 of 2017 concerning Construction Services.

The research uses primary, secondary, and tertiary legal materials, each serving a specific analytical function in addressing the research objectives. Primary legal materials include statutory regulations and binding legal instruments relevant to construction contracts, particularly the Indonesian Civil Code and Law Number 2 of 2017 on Construction Services. These materials provide the normative legal framework used to examine the formal regulation of contractual autonomy and the statutory limitations imposed on government construction agreements.

Secondary legal materials consist of academic books, journal articles, and scholarly commentaries on contract law, construction law, and public procurement. These sources are used to interpret the legal principles underlying contractual freedom, to analyze doctrinal debates concerning the limits of contractual autonomy in public sector agreements, and to contextualize the Indonesian regulatory framework within broader legal scholarship.

Tertiary legal materials, such as legal dictionaries and encyclopedias, are employed primarily to clarify legal terminology and support conceptual understanding of key doctrines discussed in the study. Through the combined use of these materials, the research is able to systematically analyze how the principle of contractual freedom operates within the regulatory framework governing government construction contracts.

This research relies on three categories of secondary legal materials. The first category includes primary legal materials, such as statutory regulations and legal instruments relevant to construction contracts, particularly the Indonesian Civil Code and Law Number 2 of 2017 on Construction Services. The second category comprises secondary legal materials, including books, academic journal articles, and scholarly commentaries discussing contract law, procurement law, and construction law. These materials provide theoretical perspectives and doctrinal interpretations relevant to the study of contractual freedom (Fried, 2015; Poole, 2012). The third category consists of tertiary legal materials, such as legal dictionaries and encyclopedias that support conceptual clarification and terminology.

To analyze the legal materials, this research adopts two main analytical approaches. The first is the statutory approach, which examines relevant legislation governing construction services and contractual relationships involving government institutions. The second is the conceptual approach, which explores legal doctrines and theoretical perspectives concerning the principle of freedom of contract and its limitations within public sector agreements (Collins, 2003). All legal materials collected in this study were analyzed using a qualitative descriptive-analytical method. This method aims to interpret legal provisions systematically and evaluate how the principle of freedom of contract operates within the regulatory framework governing government construction contracts in Indonesia.

RESULTS AND DISCUSSION

Results

Freedom of contract is a fundamental doctrine in civil law systems. This principle emphasizes that individuals or legal entities possess the autonomy to determine the formation, content, and implementation of agreements according to their mutual consent. In classical contract theory, the legitimacy of a contract derives from the voluntary agreement of the parties involved, reflecting the concept of private autonomy within legal relationships (Fried, 2015). The principle also reflects the idea that individuals are capable of regulating their own legal and economic interests without excessive interference from external authorities.

Within the Indonesian legal system, the principle of freedom of contract is explicitly recognized in Article 1338 paragraph (1) of the Civil Code, which stipulates that agreements legally formed shall bind the parties as law. This provision implies that contractual agreements have a binding force equivalent to statutory provisions for the parties involved. Consequently, once a contract has been validly concluded, each party is legally obligated to perform the rights and obligations stipulated within the agreement (Subekti, 2005). The doctrine of *pacta sunt servanda*, which requires parties to honor their contractual commitments, forms the foundation for the enforceability of contractual obligations.

Despite its fundamental role in contract law, the principle of freedom of contract is not absolute. Modern legal developments demonstrate that contractual autonomy must coexist with regulatory limitations designed to protect fairness, justice, and public interests. (Collins, 2003) argues that unrestricted contractual freedom may create unequal power relations between contracting parties, particularly in situations where one party possesses significantly greater bargaining power. Therefore, legal systems often impose restrictions on contractual freedom in order to ensure that agreements do not violate statutory provisions, public order, or moral values.

In the Indonesian Civil Code, such limitations are explicitly stated in Article 1337, which provides that agreements are invalid if their cause is contrary to law, morality, or public order. This provision illustrates that the principle of contractual freedom operates within a normative framework established by the legal system. Consequently, contractual autonomy must always be interpreted in relation to broader legal and societal considerations.

The limitations on contractual freedom become particularly significant in contractual relationships involving government institutions. Government contracts are not merely private agreements between parties but also instruments through which public policies and administrative functions are implemented. As a result, such contracts must comply with statutory regulations governing public procurement, financial accountability, and administrative authority (Arrowsmith, 2014). These regulatory frameworks are intended to ensure transparency, fairness, and efficiency in the management of public resources.

Government construction contracts illustrate this regulatory complexity. Construction projects financed by public funds typically involve substantial financial investments and play a critical role in supporting national infrastructure development (Doloi, 2013; Love et al.,

2016). Consequently, governments establish detailed regulatory frameworks to ensure that construction activities are conducted safely, efficiently, and in accordance with technical standards (Hughes et al., 2015).

In Indonesia, the primary legal framework governing construction services is Law Number 2 of 2017 concerning Construction Services. This law was enacted to strengthen the governance of the construction sector by establishing clear legal standards for the planning, implementation, and supervision of construction activities. The law also aims to enhance the professionalism, competitiveness, and accountability of construction service providers in Indonesia.

One of the important aspects regulated by the Construction Services Law is the contractual relationship between service users and service providers. Construction contracts serve as the legal instrument through which parties define their respective rights and obligations in the implementation of construction projects. These agreements typically regulate matters such as project scope, technical specifications, payment mechanisms, risk allocation, and dispute resolution procedures (Hughes et al., 2015).

However, when construction contracts involve government entities as service users, the application of the freedom of contract principle becomes subject to several important limitations. These limitations arise from statutory regulations, administrative authority, technical standards, and public accountability requirements.

The first limitation relates to statutory regulations governing public procurement. Government construction contracts must comply with procurement regulations designed to ensure fairness, transparency, and competition in the selection of contractors. Procurement procedures typically involve public tenders, evaluation processes, and standardized contract formats that limit the discretion of government officials in negotiating contractual terms (Arrowsmith, 2010; Thai, 2001, 2009). These regulations are essential for preventing corruption, favoritism, and inefficiencies in the allocation of public resources.

The second limitation concerns administrative authority within government institutions. Public officials who represent government agencies in contractual negotiations must act within the scope of their legal authority. Any contractual provision that exceeds the legal authority of the public official may be considered invalid or unenforceable. This principle reflects the fundamental rule of administrative law that government actions must always be based on legal authority granted by statutory regulations (Sutedi, 2012).

Another important limitation relates to technical standards and safety regulations in construction projects. Construction activities involve engineering processes that require strict adherence to technical specifications and safety requirements (Love et al., 2016). National standards governing building design, materials, environmental protection, and occupational safety must be incorporated into construction contracts to ensure that projects meet acceptable levels of quality and safety (Hughes et al., 2015). As a result, parties cannot freely determine contractual provisions that contradict established technical regulations.

Furthermore, government construction contracts must comply with public accountability and financial management principles. Because these projects are financed through public funds, they are subject to strict monitoring, auditing, and evaluation mechanisms. These mechanisms aim to ensure that government spending on infrastructure development is conducted efficiently and transparently. Consequently, contractual arrangements must incorporate provisions that facilitate project supervision, financial reporting, and performance evaluation (Thai, 2009).

Although these limitations significantly restrict the autonomy of contracting parties, the principle of freedom of contract still retains relevance within government construction agreements. Contracting parties continue to possess discretion in determining certain contractual aspects that are not explicitly regulated by statutory provisions. For example,

parties may negotiate payment schedules, risk allocation mechanisms, dispute resolution procedures, and project management arrangements.

The ability to negotiate such contractual elements allows parties to adapt agreements to the specific characteristics of individual construction projects. Construction activities often involve unique technical challenges, geographical conditions, and financial considerations that require flexible contractual arrangements (Eriksson & Westerberg, 2011). Therefore, a certain degree of contractual autonomy remains necessary for ensuring efficient project implementation.

The interaction between contractual freedom and regulation reflects the evolution of modern contract law. Rather than adopting an absolute approach to contractual autonomy, contemporary legal systems recognize that contractual relationships operate within a broader regulatory framework designed to protect societal interests. Collins, (2003) describes this development as the transition from classical contract theory toward a more socially oriented approach to contract law.

In the context of Indonesian construction law, this balanced approach is evident in the regulatory framework established by Law Number 2 of 2017. The law recognizes the importance of contractual arrangements in organizing cooperation between construction service users and providers while simultaneously establishing legal standards designed to protect public interests.

The law also emphasizes several fundamental principles that guide the implementation of construction services, including professionalism, independence, openness, partnership, safety, and sustainability. These principles reflect the broader objective of ensuring that construction activities contribute to national development while maintaining high standards of quality and accountability (Ye et al., 2022).

From a practical perspective, the implementation of the freedom of contract principle in government construction contracts requires careful consideration of both private and public interests. On the one hand, contractors and government agencies require sufficient flexibility to negotiate contractual arrangements that reflect the specific requirements of each project. On the other hand, regulatory oversight remains necessary to ensure that public resources are managed responsibly and that construction projects comply with legal and technical standards.

Therefore, the application of contractual freedom in government construction contracts should be understood as a regulated autonomy rather than absolute independence. Contracting parties possess the ability to negotiate certain contractual terms, but such negotiations must occur within the boundaries established by statutory regulations and public policy considerations.

Ultimately, the interaction between contractual freedom and regulatory control in construction contracts illustrates the dynamic nature of modern contract law. As societies continue to develop complex economic and administrative systems, legal frameworks must adapt to ensure that contractual relationships remain both efficient and socially responsible. In this regard, the Indonesian Construction Services Law represents an important effort to balance private contractual autonomy with the need for effective public governance in infrastructure development.

Discussion

The discussion of the principle of freedom of contract within the framework of government construction contracts requires a comprehensive examination of both doctrinal and practical dimensions of contract law. The principle of freedom of contract, which has long been regarded as the foundation of private law, provides individuals and legal entities with the autonomy to determine the formation, content, and execution of agreements according to their mutual interests. However, in contemporary legal systems, particularly in sectors involving

public resources and administrative governance, the application of this principle cannot be understood in absolute terms. Instead, contractual freedom must operate within a structured legal framework that balances private autonomy with the protection of broader public interests.

Historically, the principle of freedom of contract emerged from classical liberal legal theory, which emphasized the importance of individual autonomy and minimal state intervention in economic transactions. In the nineteenth century, legal scholars and economists believed that voluntary agreements between private parties represented the most efficient mechanism for regulating economic relationships. Under this classical perspective, the role of the state was primarily limited to enforcing agreements rather than regulating their content (Atiyah, 1995). As long as the parties voluntarily consented to the terms of an agreement, the contract was presumed to reflect a fair and mutually beneficial arrangement.

This classical conception of contractual autonomy significantly influenced the development of modern contract law in both civil law and common law traditions. In many legal systems, the binding force of agreements is recognized as a fundamental principle that guarantees legal certainty and predictability in economic relations. The doctrine of *pacta sunt servanda*, which requires that agreements must be honored, remains a cornerstone of contract law and serves as the foundation for enforcing contractual obligations (Fried, 2015).

Within the Indonesian legal system, the principle of freedom of contract is embodied in Article 1338 paragraph (1) of the Civil Code, which stipulates that all agreements legally made shall bind the parties as law. This provision reflects the recognition of contractual autonomy as a fundamental element of civil law. The article implicitly affirms several key aspects of contractual freedom, including the freedom to determine whether or not to enter into a contract, the freedom to select contractual partners, and the freedom to determine the terms and conditions governing the agreement (Subekti, 2005).

Nevertheless, the development of modern legal systems has demonstrated that absolute contractual freedom is neither realistic nor desirable in all circumstances. In practice, economic disparities, unequal bargaining power, and the complexity of modern commercial transactions often create situations in which contractual autonomy may lead to unfair outcomes. For this reason, contemporary legal scholarship increasingly emphasizes the importance of balancing contractual freedom with regulatory oversight designed to protect weaker parties and ensure fairness in contractual relationships (Collins, 2003).

The limitations on contractual freedom are particularly evident in sectors that involve public interests, such as construction services. Construction projects typically involve significant financial investments, complex technical requirements, and substantial risks related to safety and environmental sustainability. Moreover, construction activities often produce infrastructure that serves the broader community, including roads, bridges, public buildings, and other essential facilities. Because of these characteristics, the construction sector is subject to extensive legal regulation designed to ensure safety, quality, and accountability (Hughes et al., 2015).

In Indonesia, the legal framework governing construction services underwent significant reform with the enactment of Law Number 2 of 2017 concerning Construction Services. This legislation was introduced to modernize the governance of the construction sector and to enhance the professionalism and competitiveness of construction service providers. The law establishes comprehensive regulations governing construction planning, implementation, supervision, and dispute resolution. It also defines the rights and obligations of construction service users and providers, thereby providing a legal foundation for contractual relationships within the construction industry.

One of the most important elements of construction law is the construction contract itself. Construction contracts serve as the primary legal instrument through which parties regulate the implementation of construction projects. These contracts typically include provisions regarding

project scope, technical specifications, project schedules, payment arrangements, risk allocation, and dispute resolution mechanisms. In many respects, construction contracts represent highly sophisticated legal arrangements that must accommodate complex technical, financial, and managerial considerations.

However, when construction contracts involve government institutions as one of the contracting parties, the legal framework governing such agreements becomes significantly more complex. Government construction contracts differ from purely private agreements because they involve the use of public resources and the implementation of public policies. As a result, these contracts must comply not only with general principles of contract law but also with administrative regulations governing public procurement and financial management (Arrowsmith, 2014).

Public procurement regulations play a crucial role in shaping the structure of government construction contracts. These regulations are designed to ensure that government agencies select contractors through transparent and competitive procedures. The objective is to prevent corruption, favoritism, and inefficiency in the allocation of public resources. Consequently, procurement regulations often prescribe detailed procedures for tendering, bid evaluation, contract award, and project monitoring.

The existence of these procurement procedures inevitably limits the extent to which government agencies can exercise contractual autonomy. Unlike private entities, which may freely negotiate contractual terms with their chosen partners, government institutions must adhere to standardized procurement mechanisms that promote fairness and accountability. These mechanisms often include standardized contract templates and mandatory contractual clauses that restrict the ability of contracting parties to modify certain terms.

Another important factor influencing government construction contracts is the requirement of administrative legality. Government officials entering into contracts must act within the scope of authority granted to them by law. Any contractual agreement concluded outside the legal authority of the relevant official may be deemed invalid under administrative law principles. This requirement reflects the broader principle of legality in public administration, which holds that all government actions must be based on statutory authorization (Sutedi, 2012).

In addition to procurement regulations and administrative legality, technical standards also impose significant limitations on contractual freedom in construction contracts. Construction activities involve engineering processes that require strict compliance with technical specifications related to structural safety, material quality, environmental protection, and occupational health standards. These standards are typically established through national building codes and professional regulations. Consequently, construction contracts must incorporate technical provisions that align with these regulatory requirements.

The importance of technical regulation in construction contracts cannot be overstated. Construction failures resulting from inadequate technical standards can lead to severe consequences, including structural collapse, environmental damage, and loss of human life. For this reason, governments around the world impose stringent technical regulations on construction activities in order to protect public safety and ensure the durability of infrastructure (Hughes et al., 2015).

Another dimension that significantly influences government construction contracts is financial accountability. Infrastructure projects financed through public budgets must be managed in accordance with strict financial governance principles. Public financial management regulations typically require detailed budgeting procedures, monitoring mechanisms, and auditing processes to ensure that public funds are used efficiently and transparently. These requirements also influence the structure of construction contracts, which

must include provisions for financial reporting, performance evaluation, and project supervision (Thai, 2009).

Despite the various regulatory constraints described above, the principle of freedom of contract continues to play a meaningful role in government construction agreements. Although certain contractual provisions are standardized or regulated by law, contracting parties still retain a degree of flexibility in determining aspects of their contractual relationship. For instance, parties may negotiate the allocation of certain project risks, determine the structure of payment schedules, and agree on dispute resolution mechanisms such as arbitration or mediation.

The ability to negotiate such contractual provisions is essential for accommodating the diverse and complex nature of construction projects. Each construction project possesses unique characteristics related to geographical conditions, engineering requirements, financial arrangements, and project timelines. As a result, a certain degree of contractual flexibility remains necessary to ensure that contractual arrangements can effectively address the specific challenges associated with individual projects. Business contracts, including construction contracts, possess distinctive legal characteristics such as reciprocity, consensual formation, and binding legal consequences for the parties involved (Yahman, 2016).

From a theoretical perspective, the coexistence of contractual freedom and regulatory oversight reflects an important transformation in modern contract law. Classical contract theory emphasized the primacy of private autonomy and voluntary agreements, whereas contemporary legal theory recognizes that contractual relationships often operate within complex institutional and regulatory environments. Collins, (2003) argues that modern contract law has gradually evolved toward a more socially oriented approach that emphasizes fairness, consumer protection, and regulatory oversight. The doctrine of contractual autonomy also forms the basis for modern business agreements in civil law systems. In Indonesian legal scholarship, contract law is understood as a legal relationship that gives rise to reciprocal rights and obligations between parties who voluntarily bind themselves through agreements (Salim, 2017; Widjaja, 2013).

In the context of construction law, this evolution is particularly evident because infrastructure development directly affects public welfare. Roads, bridges, hospitals, schools, and other infrastructure projects serve essential social functions that extend beyond the interests of the contracting parties. Consequently, legal frameworks governing construction activities must ensure that these projects meet public safety standards, environmental sustainability requirements, and financial accountability obligations.

The Indonesian Construction Services Law reflects this balanced approach by recognizing the importance of contractual arrangements while simultaneously establishing regulatory mechanisms designed to protect public interests. Within the Indonesian legal framework, construction contracts are recognized as essential instruments for organizing relationships between project owners and construction service providers in infrastructure development (Triwibowo, 2018). The law emphasizes several guiding principles for construction activities, including professionalism, independence, transparency, partnership, safety, and sustainability. These principles serve as normative guidelines for interpreting contractual relationships within the construction sector. Contemporary contract law has gradually moved beyond classical liberal concepts toward a more socially responsive framework that considers fairness and social justice in contractual relations (Rahardjo, 2006).

Professionalism, for example, requires construction service providers to possess adequate technical competence and professional certification. This requirement ensures that construction projects are implemented by qualified professionals capable of meeting established engineering standards. Similarly, the principle of transparency requires that procurement procedures and

contractual arrangements be conducted openly and fairly, thereby reducing the risk of corruption or mismanagement.

The principle of partnership also plays an important role in construction contracts by encouraging cooperation between service users and service providers. Rather than viewing contractual relationships solely as adversarial arrangements focused on allocating risks and liabilities, modern construction law increasingly emphasizes collaborative approaches that promote mutual problem-solving and project success. Comparative legal studies also demonstrate that contractual regulation in many jurisdictions has evolved to balance private autonomy with public regulation, particularly in sectors involving public infrastructure (Nicholas, 2016).

Safety and sustainability are additional principles that significantly influence the structure of construction contracts. Infrastructure projects must be designed and implemented in ways that protect the safety of workers, users, and surrounding communities. At the same time, construction activities must consider environmental sustainability by minimizing ecological damage and promoting efficient use of natural resources.

Taken together, these principles illustrate how modern construction law integrates contractual autonomy with broader social and regulatory objectives. Rather than undermining the principle of freedom of contract, regulatory frameworks seek to guide its application in ways that promote responsible and sustainable infrastructure development. Legal scholars have further emphasized that construction contracts in Indonesia must integrate both contractual principles and regulatory compliance in order to ensure project effectiveness and legal certainty (Zakaria, 2019).

In practical terms, the application of contractual freedom within government construction contracts can be understood as a form of regulated autonomy. Contracting parties retain the ability to negotiate certain aspects of their contractual relationship, but this autonomy operates within a structured legal environment defined by statutory regulations, procurement procedures, technical standards, and financial accountability requirements. Government procurement law also plays an important role in shaping the structure of construction contracts involving public institutions, particularly in ensuring transparency and accountability in infrastructure projects (Yasin, 2018).

This regulated approach provides several important advantages. First, it ensures that infrastructure projects financed through public funds are implemented in a transparent and accountable manner. Second, it protects public safety by requiring compliance with technical and engineering standards. Third, it promotes fairness and competition in the selection of contractors through standardized procurement procedures.

At the same time, regulated contractual autonomy allows parties to retain sufficient flexibility to address the practical challenges associated with complex construction projects. By allowing parties to negotiate certain contractual provisions, the legal system recognizes that construction projects often require adaptive solutions that cannot be fully predetermined by legislation.

Ultimately, this interaction reflects the evolution of modern legal systems. As economic activities become increasingly complex and interconnected with public interests, legal frameworks must adapt to ensure that private contractual arrangements remain consistent with societal objectives.

In this regard, the Indonesian legal framework governing construction services represents an important effort to balance the principles of contractual autonomy and public accountability. By integrating contractual freedom with regulatory safeguards, the law seeks to promote efficient infrastructure development while simultaneously protecting the interests of society as a whole.

CONCLUSION

In addition to these findings, this study acknowledges several limitations. The research primarily adopts a normative juridical approach that focuses on statutory interpretation and doctrinal analysis of construction law and contract principles. As a result, the study does not incorporate empirical data regarding the practical implementation of government construction contracts, nor does it examine judicial decisions or dispute cases that may illustrate how contractual limitations operate in real construction projects. Consequently, the analysis presented in this study reflects the normative legal framework rather than the full complexity of contractual practices within the construction industry. Future research could therefore expand this analysis by incorporating empirical and socio-legal approaches. Empirical studies examining actual government construction contracts, procurement practices, and dispute resolution mechanisms would provide valuable insights into how contractual autonomy and regulatory constraints interact in practice. In addition, examining court decisions or arbitration cases related to construction disputes could further clarify how legal principles governing construction contracts are interpreted and applied by judicial institutions. Such approaches would contribute to a more comprehensive understanding of the relationship between contractual autonomy, regulatory oversight, and practical governance in public infrastructure development.

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