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Implementation of Legal Principles in Construction Service Agreements: A Normative Study

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ABSTRACT

*Construction service contracts, as crucial legal instruments in infrastructure development, require a strong foundation of civil law principles. This research aims to normatively examine the application of civil law principles in construction service contracts, integrating the perspectives of the Civil Code and Law Number 2 of 2017. This normative legal research employs statute, conceptual, and philosophical approaches, as well as teleological and sociological analyses. The research findings indicate that formal principles, such as freedom of contract, consensualism, good faith, privity, and fair competition, form the foundation for the validity of contracts. Meanwhile, substantive principles, such as pacta sunt servanda, reasonableness, custom, balance, equality, partnership, and deliberation to reach a consensus (*musyawarah mufakat*), determine the substance of a fair and sustainable contract. However, teleological and sociological analyses reveal complex dynamics in their application. Unequal bargaining power, standard clauses, discrimination, and short-term orientations hinder the optimal realization of these principles. Therefore, synergy among stakeholders is needed to increase legal awareness, strengthen regulations, enforce business ethics, and revitalize local wisdom values so that legal objectives can contribute to achieving state goals.*

Keywords: Civil Law Principles; Construction; Contract; Sociological Analysis; Teleological Analysis.

INTRODUCTION

National development, as an embodiment of the mandate of the Preamble of the 1945 Constitution, is implemented through various strategic sectors, including infrastructure. As the backbone of infrastructure development, the construction sector plays a crucial role in realizing public welfare and national progress (Haryani & Anjani, 2023). Construction projects' complexity and strategic value give rise to legal relationships involving various parties, thus requiring a strong legal foundation that guarantees certainty and justice.

The legal relationship in construction projects is established through a construction service contract between the Service User and the Service Provider (Susanto et al., 2021). This contract not only regulates the technical aspects of project implementation but also the rights and obligations of the parties and dispute resolution mechanisms that may arise (Sumantri et al., 2025). Given the high potential for risks and vulnerabilities in construction projects, the state has a constitutional obligation to provide adequate legal protection for all parties involved. This legal basis is then embodied in the law governing construction services.

Law Number 2 of 2017 stipulates that construction service contracts must be subject to civil law provisions. Article 40 of Law Number 2 of 2017 mandates that the clauses in such contracts must be governed by the principles of civil law contained in the Civil Code. This provision emphasizes the importance of applying civil law principles to balance the parties' rights and obligations and provide a solid legal basis for implementing construction service contracts.

Construction service contracts often use standard clauses for efficiency and practicality (Yanuar et al., 2025). The use of standard clauses, both in physical and digital formats, has become a common phenomenon in modern business transactions. However, such clauses can cause problems if they are not formulated carefully and fairly. The clause must still comply with the principles of freedom, good faith, and *pacta sunt servanda*, regulated in the Civil Code.

Previous studies have indicated a potential imbalance in construction service contracts using standard clauses. Findings show that specific clauses tend to be more favorable to one party or even contrary to civil law principles, such as balance and fairness (Mangapeng et al., 2015; Pangaribuan, 2023). This condition raises the urgency to examine further the application of civil law principles in construction service contracts to ensure optimal legal protection for all parties.

This research aims to normatively examine the application of civil law principles in construction service contracts, as these principles are contained in the Civil Code. Through philosophical and juridical analysis, this study seeks to identify the potential application of civil law principles in construction service contracts. Thus, this research is expected to contribute to the development of contract and construction law and provide practical recommendations for stakeholders in drafting construction service contracts that are fair, balanced, and by the principles of civil law.

METHOD

This research employs a normative legal research methodology, examining civil law principles within construction service contracts. Normative legal research is chosen because the primary objective of this study is to analyze positive legal norms, legal principles, and legal doctrines found in the Civil Code and other relevant legislation (Qamar & Rezah, 2020). Consequently, this research prioritizes analyzing written legal materials to address the formulated legal issues.

To achieve this objective, the research utilizes three primary approaches: a statute, a conceptual, and a philosophical approach. The statute approach examines Law Number 2 of 2017, the Civil Code, and other related regulations to understand the legal provisions relevant to construction service contracts. The conceptual approach examines and analyzes civil law concepts and principles. Meanwhile, the philosophical approach explores the underlying rationale and values underpinning civil law principles and their relevance in the context of justice and legal certainty in construction services.

The sources of legal materials used in this research include primary legal materials, secondary legal materials, and documentation (Sampara & Husen, 2016).

Primary legal materials include legislation, primarily Law Number 2 of 2017 and the Civil Code. Secondary legal materials encompass legal literature such as textbooks, scholarly journal articles, and research findings relevant to contract law, civil law, and construction law. The documentation referred to includes construction service contracts and prior research findings. The collection of legal materials is carried out through library research techniques and document studies. Library research is conducted by searching and reviewing legal literature available offline in libraries and online through legal journal databases and other digital sources. Document studies are focused on analyzing the content of construction service contracts to identify the application of civil law principles within them.

Legal materials analysis is performed qualitatively using the content analysis method. Legal materials are interpreted using several methods, namely grammatical interpretation, systematic interpretation, historical interpretation, and teleological/sociological interpretation. The meaning of words in legislation is interpreted through grammatical interpretation based on linguistic rules. Systematic interpretation is used to understand a legal provision by linking it to other legal provisions within a regulatory system. Historical interpretation is used to trace the history of the formation of legislation, while teleological/sociological interpretation is used to understand the meaning of law based on its purpose and social context. The results of these interpretations are then analyzed using legal reasoning, both deductively, inductively, and by analogy, to produce comprehensive conclusions that address the research problem (Irwansyah, 2021).

RESULTS AND DISCUSSION

Although the literature on contract law and construction law has examined various dimensions of construction service contracts, ranging from analyses of specific clauses to case studies of disputes (Maddeppungeng et al., 2019; Fredella & Widiyastuti, 2022), this research adopts a distinct and more foundational perspective. Rather than dissecting particular aspects, this study focuses on civil law principles as a value system that animates construction service contracts. By combining a philosophical-juridical approach and a teleological-sociological analysis and integrating the perspectives of civil law and construction law, this research seeks to uncover the dynamics of the application of these principles, as well as to identify the factors influencing the realization of justice, balance, and legal certainty in practice. Therefore, the discussion in this chapter will elaborate on the philosophical and juridical foundations of civil law principles, then reinforce the position of substantive principles and conclude with the dynamics of their application.

A. Formal Foundation of Construction Service Engagement: Principles of Contract Formation

As a complex legal undertaking, the engagement of construction services necessitates the fulfillment of a robust formal foundation (Sodik et al., 2021). This foundation is embodied in the legal principles of contract formation, which guarantee the contract's validity and reflect fundamental values in civil law. These principles will be discussed based on the Civil Code as the *lex generalis* and supplemented by Law Number 2 of 2017 as the *lex specialis*.

The principle of freedom of contract, enshrined in Article 1338 section (1) of the Civil Code, is a cornerstone of contract law. Grammatically, the phrase "all agreements" emphasizes the broad scope of this principle, which allows the parties to determine the substance of the contract autonomously. Furthermore, the phrase "shall have the force of law for those who have made them" underscores the binding force of a contract arising from consensus. However, this freedom is not absolute; it is limited by law, morality, and public order, which philosophically aim to protect the interests of weaker parties and maintain social harmony.

The principle of consensualism, embodied in Article 1320 of the Civil Code, determines the moment of a contract's birth, namely, from the moment of reaching an agreement. A grammatical analysis of "the agreement of those who bind themselves" highlights the importance of free will as the essence of the contract. Historically, the shift from formalism to consensualism in contract law reflects a growing recognition of individual autonomy and the power of will (*wils theorie*) in shaping legal relations (Steinbach, 2016).

The principle of good faith, regulated in Article 1338 section (3) of the Civil Code, demands a standard of honest, open, and proper conduct throughout the contract process. A grammatical interpretation of the phrase "must be performed in good faith" implies that good faith is relevant at the performance stage and at the pre-contractual (negotiation) and post-contractual stages. In the context of engaging construction services, this principle obliges the parties to provide accurate and complete information, not to conceal material facts, and not to exploit a stronger bargaining position to impose unfair clauses. As a derivative of good faith, the principle of trust reinforces the importance of building a contractual relationship based on mutual trust, which is essential in complex and long-term construction projects (Ismaryadi et al., 2023).

The principle of privity, as affirmed in Articles 1315 and 1340 of the Civil Code, limits the applicability of a contract only to the parties who make it. Conceptually, this principle is a logical consequence of individual autonomy and

freedom of contract: only those who voluntarily express their will to be bound can be burdened by contractual obligations. However, civil law recognizes exceptions to this principle, such as stipulations for the benefit of third parties (*derdenbeding*), which allow a third party to benefit from a contract made by others (Saveljev, 2017).

In the context of construction service procurement, Article 39 section (3) of Law Number 2 of 2017 emphasizes the principle of fair competition, which is also a crucial formal principle. This principle, which aims to prevent monopolistic practices, collusion, and discrimination, aligns with the spirit of good faith and freedom of contract (Ustmani et al., 2023). Implementing a transparent, accountable tender or provider selection process that provides equal opportunities for all business actors is a concrete manifestation of this principle. Philosophical and historical application aligns with Article 1338, section (3) of the Civil Code.

Thus, the six principles outlined—freedom of contract, consensual, good faith (along with the principle of trust), privity, and fair competition—form a unified formal foundation that determines the validity and enforceability of construction service engagements. Compliance with these principles guarantees legal certainty and lays the groundwork for the realization of a fair, balanced, and sustainable contract. With a valid formal basis, the agreement's substance can then be elaborated.

B. Substantive Principles in Contracts: Perspectives of Civil Law and Construction Services

The substance of a construction service contract, as an embodiment of the agreement of the parties, must comply not only with the formal principles of contract formation but also be based on substantive principles that guarantee justice, balance, and legal certainty (Wisnuaji et al., 2025). These principles, which originate from the Civil Code and Law Number 2 of 2017, serve as a normative and philosophical foundation in formulating the rights and obligations of the parties, as well as in the performance and interpretation of the contract. Thus, a thorough understanding of substantive principles is necessary to achieve an ideal construction service contract.

The principle of *pacta sunt servanda*, enshrined in Article 1338 section (1) of the Civil Code, is the heart of contract law. This principle affirms that a valid contract has the force of law for the parties. Philosophically, *pacta sunt servanda* rests on legal certainty, trust, and responsibility. Legal certainty requires that agreed-upon contracts be respected and performed; trust demands that the parties can rely on the promises made; and responsibility requires the parties to bear the

consequences of the agreements reached. In Law Number 2 of 2017, *pacta sunt servanda* is manifested in the provisions governing the rights and obligations of the parties, sanctions for breach of contract, and dispute resolution mechanisms.

The principle of good faith, regulated in Article 1338 section (3) of the Civil Code, occupies a central position in the performance of construction service contracts and in the pre-contractual and contract formation stages. Not only in the formation of the contract, the principle of good faith animates the entire process of contract performance. Conceptually, good faith demands honesty, openness, and a willingness to cooperate from the parties (Sebastian et al., 2025). This principle gives rise to several derivative principles, which manifest in Law Number 2 of 2017 in the form of the principles of balance, equality, partnership, and trust. The principle of balance requires proportionality between rights and obligations and between the risks and benefits each party receives. The principle of equality requires equal and non-discriminatory treatment, while the principle of partnership encourages creating collaborative and mutually beneficial relationships. The principle of trust underlies a mutual contractual relationship.

Furthermore, Article 1339 of the Civil Code recognizes the principle of reasonableness as a source of law that can fill gaps in a contract. Reasonableness originates from the moral values, justice, and propriety in society and becomes a guideline when the contract does not regulate a matter in detail. As a derivative of reasonableness, the principle of proportionality requires proportionality between performance and counter-performance, as well as between actions and the objectives to be achieved. In the context of Law Number 2 of 2017, the principle of benefit mandates that construction service contracts not only benefit the parties directly but also provide added value for society and national development. These three principles, together, function to prevent injustice and ensure that the contract is performed with due regard for human values and the public interest (Manery, 2017).

In addition to reasonableness, the principle of custom, as recognized in Articles 1339 and 1347 of the Civil Code, can also be a source of law in construction service contracts. Customs are generally and repeatedly practiced in the construction industry, and they are not contrary to law, and reasonableness can be a guide in interpreting and performing the contract. The recognition of custom as a source of law reflects contract law's dynamic and adaptive nature to developments in business practices (Purwanto et al., 2020).

In resolving disputes arising from construction service contracts, Law Number 2 of 2017 prioritizes the principle of deliberation to reach a consensus (*musyawarah mufakat*). This principle, which is rooted in the noble values of

the Indonesian nation, encourages the parties to resolve disputes peacefully, prioritizing dialogue and compromise (Indahwati et al., 2025). The application of the principle of musyawarah mufakat is not only more efficient in terms of time and cost. However, it is also better able to maintain good relations between the parties, which is important for the continuation of cooperation in the future (Wisatrioda et al., 2025).

In addition to the principles outlined, the substance of construction service contracts is also characterized by several other principles which, although not always explicitly stated in the Civil Code, have significant relevance. As a fundamental principle in any legal system, the principle of equality before the law demands equal treatment of all parties involved in construction service contracts without discrimination based on social status, economic status, or other factors. This principle, which is also in line with the principle of equality in Law Number 2 of 2017, ensures that each party has an equal position before the law and is entitled to equal legal protection.

Although more often associated with the principle of *pacta sunt servanda*, the principle of legal certainty also has an important substantive dimension (Junaedi et al., 2025). Legal certainty in the substance of a construction service contract requires clear, firm, and unambiguous formulations of rights and obligations. This clarity is not only important to prevent disputes from arising in the future but also to provide a sense of security and predictability for the parties in performing the contract.

Furthermore, the principle of morality, which originates from the ethical values and propriety in society, also underlies the substance of construction service contracts. This principle, manifested in the principles of honesty and fairness as affirmed in Law Number 2 of 2017, demands that the contract is not only formally valid but also fair and does not unduly harm one party. A contract made in bad faith, containing deception, or exploiting the weakness of another party may be considered contrary to the principle of morality and, therefore, null and void.

In a more specific context, Law Number 2 of 2017 also mandates several principles relevant to the substance of construction service contracts. The principle of professionalism requires that the service provider has the competence, expertise, and experience to carry out construction work by applicable standards. The principle of self-reliance, which is also emphasized in the *quo law*, encourages the use of domestic resources and reduces dependence on foreign parties. Meanwhile, the principle of transparency requires transparency in the entire procurement process and implementation of construction services, thus enabling monitoring and accountability.

Furthermore, Law Number 2 of 2017 also pays great attention to safety, security, and sustainability in providing construction services. The principle of safety and security requires that construction work is carried out with due regard to strict work safety standards to protect workers, service users, and the general public from the risk of accidents. The principle of sustainable development and environmental awareness mandates that the provision of construction services considers the long-term impact on the environment and natural resources. The principle of harmony demands harmonization.

Thus, the substantive principles from the Civil Code and Law Number 2 of 2017 form a comprehensive value system for regulating the substance of construction service contracts. Proper understanding and application of these principles will not only result in a fair and balanced contract, but they will also create a healthy, professional, competitive construction service business climate.

C. Dynamics of the Application of Civil Law Principles in Construction Service Contracts: Teleological and Sociological Perspectives

The realization of civil law principles in construction service contracts does not always proceed smoothly. Although ideally serving as a normative foundation, the dynamics in practice often present challenges and gaps between expectations and reality. An in-depth analysis from teleological and sociological perspectives of five crucial principles – freedom of contract, equality before the law, reasonableness, morality, and balance – reveals the complexity of applying these principles and the factors influencing them, thus requiring optimization in achieving legal objectives.

The principle of freedom of contract, which guarantees the parties' autonomy in formulating the contract, faces significant distortion due to unequal bargaining power. The contractor's absolute freedom to negotiate the contract's content is often reduced in the contractual relationship between a large project owner and a small or medium-sized contractor. The reality in the field, where service providers tend to sign standard contracts presented by service users simply (Rahmiko et al., 2025), indicates that the free will that is the objective (*telos*) of the principle of freedom of contract is not fully realized. Sociologically, this phenomenon reflects an imbalanced market structure and asymmetrical power relations, where the stronger party has dominant bargaining power.

The principle of equality before the law, which mandates non-discriminatory treatment of all construction service business actors (Sinaga, 2019), also encounters obstacles in its implementation. Discrimination, both overt and covert, remains a problem. Practices that differentiate treatment between domestic and

foreign entrepreneurs or between large and small companies contradict the objective (*telos*) of the principle of equality before the law, namely to create a fair and competitive business climate. Sociologically, this discrimination may be rooted in prejudice, stereotypes, or the interests of specific groups that dominate access to resources and information.

The principle of reasonableness, intended to fill legal gaps and achieve substantive justice, is often marginalized in practice. The tendency of the parties to adhere to the letter of the contract, as well as the abstract and multi-interpretable nature of reasonableness, are inhibiting factors. Teleologically, this indicates that the objective of reasonableness to present contextual and flexible justice has not been fully internalized in the legal culture of contracts in Indonesia. Sociologically, the strengthening of legal formalism and positivism, which prioritize narrow legal certainty, contributes to obscuring the role of the principle of reasonableness.

The principle of morality, which should be the ethical foundation in every contractual relationship, also faces challenges in an era that increasingly prioritizes materialism and intense business competition (Sinaga & Zaluchu, 2017). Unethical behavior, such as manipulation of information, breach of promise, or abuse of trust, indicates that the objective (*telos*) of the principle of morality to create contractual relationships with integrity has not been fully realized. Sociologically, this phenomenon can be linked to society's weakening moral values and the lack of adequate social sanctions against business ethics violations. As a result, subjects tend to prioritize personal or group interests.

The principle of balance, which requires proportionality between the rights and obligations of the parties, is often distorted due to the unequal bargaining power inherent in construction service contracts (Bukit et al., 2018). The stronger party, in this case, the service user, tends to impose clauses that benefit itself, while the weaker party, the service provider, is forced to accept these conditions due to limited choices. Teleologically, this condition shows that the objective of the principle of balance to create a fair and sustainable contract has not been achieved. Sociologically, an oligopolistic market structure and weak enforcement of unfair standard clauses perpetuate this imbalance.

Thus, the dynamics of applying civil law principles in construction service contracts in Indonesia are still characterized by various problems. Teleological and sociological analyses reveal that the gap between ideals and reality is not only caused by juridical factors but also by complex non-juridical factors. Improvement efforts require not only refining regulations or improving law enforcement but also a more substantive transformation of legal culture, prioritizing the values of justice, equality, and sustainability.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that construction service contracts, as complex and strategic legal instruments, require a solid formal and substantive foundation. The formal principles of contract formation, such as freedom of contract, consensualism, good faith, privity, and fair competition, have strong philosophical and juridical roots in both the civil law tradition and Indonesian positive law. These principles guarantee the contract's validity and reflect fundamental values such as individual autonomy, honesty, trust, and fairness in the procurement process.

Furthermore, the substance of construction service contracts must also be based on substantive principles that form a comprehensive value system. As a cornerstone, the principle of *pacta sunt servanda* affirms the contract's binding force and the obligation of the parties to abide by the agreed-upon commitments. The principle of good faith, with its derivatives in the form of the principles of balance, equality, partnership, and trust, demands honesty, openness, and cooperation in all stages of contract performance. On the other hand, the principle of reasonableness (with its derivative, the principle of proportionality), the principle of custom, and the principle of deliberation to reach a consensus (*musyawarah mufakat*), serve as important sources of law to fill gaps in the contract, interpret ambiguous clauses, and resolve disputes peacefully. All substantive principles, originating from the Civil Code and Law Number 2 of 2017, are oriented toward realizing a fair, balanced, and sustainable contract.

However, a teleological and sociological analysis of the dynamics of applying civil law principles in construction service contracts in Indonesia reveals a substantial gap between ideals and reality. The absolute freedom of contract for contractors is distorted by unequal bargaining power and the practice of using standard clauses that are often one-sided. Equality before the law is undermined by overt and covert discriminatory practices against certain business actors. Reasonableness and morality are often sidelined by narrow legal formalism and a focus on short-term profit maximization. The balance of rights and obligations is often challenging to achieve due to the dominance of the stronger party in contract drafting. Thus, structural, cultural, and behavioral factors pose a significant challenge in realizing the ideals of fair and civilized contract law in construction services.

Based on the above conclusions, it is recommended that stakeholders in the provision of construction services in Indonesia take strategic steps to optimize the application of civil law principles, both in the formation and performance of contracts. *First*, contract drafters, especially service users who often have more substantial bargaining power, are advised to consistently prioritize the principles of fairness,

balance, and transparency in formulating contract clauses. Avoiding one-sided standard clauses, providing adequate room for negotiation for service providers, and including rights and obligations proportionally are concrete steps to realize substantive freedom of contract and good faith.

Second, construction service business actors, both service users and service providers, are advised to increase their understanding and awareness of the importance of civil law principles in all contract stages. Capacity building through legal education and training, as well as the internalization of business ethics values, can be instruments to prevent violations of these principles. In addition, business actors are also encouraged to be more active in utilizing alternative dispute resolution mechanisms, such as mediation and negotiation, which align with the principle of *musyawarah mufakat*.

Third, the government, as regulator and supervisor, is recommended to strengthen regulations in the field of construction services that explicitly regulate the application of civil law principles and provide effective sanctions for violations. Increased supervision of the construction service procurement process, especially in preventing discriminatory practices and bid rigging, is also a crucial step. Furthermore, the government needs to encourage a platform that allows the exchange of information and best practices related to the drafting and implementation of fair construction service contracts.

Fourth, legal enforcement institutions, both courts and arbitration bodies, are advised to be more progressive in interpreting and applying civil law principles, adhering to legal formalism, and considering the values of reasonableness, morality, and the socio-economic context surrounding construction service contracts. Judges and arbitrators need to be bolder in exploring the philosophical and teleological meaning of legal principles and using sociological interpretations to understand the real dynamics in business practices.

Finally, legal academics and researchers are recommended to continue conducting in-depth studies on the dynamics of applying civil law principles in construction service contracts, using various approaches and perspectives. Empirical research that reveals practices in the field and comparative studies with other legal systems can provide valuable contributions to the development of contract law and construction law in Indonesia. With synergy among all stakeholders, it is hoped that the ideal of realizing fair, balanced, and sustainable construction service contracts can be achieved.

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