

Juridical Analysis of Penalty Clauses in Construction Contracts Based on Bpk Audits for State-Owned Developer Companies: A Case Study of Housing Project C in Company P

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ABSTRACT

This study examines the juridical implications of penalty clauses in State-Owned Enterprise (SOE) construction contracts through a case study of Housing Project C between Company P and Company M. Using a normative legal research approach, the study analyzes the construction contract, Supreme Audit Institution (BPK) audit findings, and Supreme Court decisions to determine the enforceability and legal standing of penalty clauses in SOE construction projects. The findings reveal that although penalty clauses are normatively valid under civil law, their enforcement is constrained by the hybrid legal character of SOEs, which subjects them simultaneously to private contractual principles and public accountability mechanisms. BPK's determination of potential state losses compelled Company P to impose penalties as a form of governance responsibility; however, the Supreme Court limited the enforceable penalty to 2% instead of the contractual 5%, indicating that *pacta sunt servanda* is not absolute in SOE contracts. The Court emphasized fairness and proportionality, demonstrating that SOE contracts operate at the intersection of private law, public audit oversight, and judicial interpretation. The study recommends an integrative legal approach to contract drafting to ensure legal certainty, accountability, and proportional enforcement.

Keywords: penalty clauses; construction contracts; state-owned enterprises; BPK audit; Supreme Court decision

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INTRODUCTION

Company P is a subsidiary of PT BUMN B which is under the Sub-Holding Gas of PT BUMN A. Company P was established to carry out strategic functions in the development of assets, property, employee housing, and facility management that supports the operations of the parent company while creating added value commercially and socially.

Through the developer business model, Company P is not only engaged in property development, but also directed to strengthen the internal ecosystem of SOEs through the provision of decent housing and integrated asset management (Yusuf & Pratama, 2021; Hidayat & Santoso, 2020). This is in line with the direction of the corporate property market in Indonesia which shows an increasing trend, especially in the Employee Residential Estate (ERE) and property management for corporate efficiency segments (Lestari & Nugroho, 2022; Setiawan et al., 2021). With a vision as a sustainable residential provider and developer of strategic assets, Company P is directed to enter a wider market and strengthen the property business position within the Pertamina Group (Prasetyo et al., 2023; Wahyudi & Rahman, 2022; Kurniawan & Suryani, 2021).

As an implementation of this vision, Company P built a strategic project of Housing Project C in the Vida Bekasi area, which is intended as employee housing and a model for corporate property development (Rahman & Santoso, 2021; Nugroho & Wibowo, 2022). To carry out the project, Company P entered into a construction contract with Company M as the implementing contractor (Sari & Hidayat, 2020; Setiawan et al., 2021). The construction work

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agreement regulates the scope of work, deadlines, handover mechanism, and sanctions in the event of delay or default (Kurniawan & Setiawan, 2022). The clause regarding the imposition of fines is clearly stated in Article 7 paragraph (1) and Article 7 paragraph (2) of the contract, which is in the form of a maximum fine of 5% of the contract value and a fine for the remaining work that has not been completed (Lestari & Nugroho, 2023; Yusuf & Pratama, 2021).

However, in its implementation, Company M was unable to complete the work according to schedule (Ahn et al., 2022; Korchagin et al., 2022). The delay in the project then became the object of an audit by the Audit Board (BPK) which assessed the potential for state losses due to the incomplete work (Fassa & Wibowo, 2024; Yang et al., 2025). The BPK audit findings confirm that Company P needs to execute contract clauses, including the imposition of fines, as a form of obligation to apply the principles of accountability and *Good Corporate Governance* (GCG).

In response to the audit, Company P prepared a Minutes of the implementation of fines according to the contract. However, the execution of the fine was rejected by the contractor and continued to be a legal dispute until cassation and review (PK) at the Supreme Court. In its ruling, the Supreme Court annulled the imposition of fines on the remaining work and only recognized a maximum fine of 2%, instead of 5% as stated in the contract. The PK decision then corroborated the substance, so that Company P could not enforce the content of its own contract thoroughly.

This condition raises an interesting legal problem: the findings of the BPK audit that are public do not automatically have binding force on private contracts. On the other hand, construction contracts legally made by both parties are actually restricted after being tested in the judicial process. This situation shows that there is a tug-of-war between the private law regime (contracts), the public law regime (auditing and the use of state finances), and the interpretation of the law by the judiciary (Supreme Court decision). The meeting of these three legal regimes has not been studied in depth in the context of SOEs' business, even though it has significant implications for the preparation of construction contracts and the mitigation of legal risks in the future.

Thus, the cases of Company P and Company M present an important academic study space: SOE construction contracts are not fully within the private jurisdiction, because they can still be tested by public audit mechanisms and judicial processes. This raises the need to study comprehensively: what is the legal status of SOE construction contracts, the extent to which state audits can affect their implementation, and what are the implications of the Supreme Court's decision for the format of SOE contracts in the future.

Therefore, this study was conducted to examine more deeply the relationship between SOE private contracts, public audit findings, and court decisions. This study is expected to be a scientific contribution as well as a practical guideline for SOEs in designing construction contracts that are strong, audit-resistant, and have legal certainty when facing disputes.

This study examines the juridical position, binding force, and enforcement of penalty clauses in State-Owned Enterprise (SOE) construction contracts through the Housing Project C case between Company P and Company M, particularly in relation to civil law principles, public law accountability, BPK audit authority, and Supreme Court judicial review. It aims to analyze the legal status and implementation limits of fine clauses, evaluate the extent of state

audit intervention in private contractual agreements, and formulate a stronger, more applicable, and audit-resistant model of SOE construction contract clauses.

This research is academically authentic as it specifically integrates contractual law analysis, BPK audit findings, and Supreme Court decisions within a single analytical framework using real case documents and legal rulings. The study contributes theoretically to contract law, construction law, SOE business law, and administrative law, while practically providing legal mitigation guidelines, policy recommendations, and structured models for drafting SOE construction contracts that ensure fairness, proportionality, accountability, and legal certainty.

RESEARCH METHODS

This research is a normative legal study with a juridical-analytical character, aimed at examining the legal norms contained in Company P's construction contract, the findings of the BPK audit, and the legal considerations in the Supreme Court's decision. The data used in this study consist of: (a) primary data in the form of construction contracts between Company P and Company M, BPK audit findings, as well as Supreme Court and judicial review (PK) decisions; (b) secondary data in the form of law books, academic journals, laws and regulations, legal doctrines, and relevant scientific articles; and (c) tertiary data such as legal dictionaries, encyclopedias, and other supporting references.

Data collection is carried out through documentation studies on contracts, minutes, BPK audit reports, and court decisions, as well as literature studies using scientific literature, legal databases, journals, and regulations. If necessary, limited interviews may be conducted with SOE legal practitioners or construction contract experts to sharpen the analysis. The data are then processed using a qualitative-interpretive analysis method through several stages: identification of relevant legal norms, interpretation of statutory provisions and contract clauses, comparative analysis between doctrines, regulations, and court decisions, and the systematic formulation of legal arguments.

RESULTS AND DISCUSSION

Construction Contracts in Civil Law Perspectives

Construction contracts are basically agreements born from a private legal relationship between service users and construction service providers. The legal relationship is subject to the general provisions of treaty law in the Civil Code, in particular Article 1320 and Article 1338 of the Civil Code, which affirm that a legally made agreement is valid as a law for the parties¹. The principle of *pacta sunt servanda* is the main foundation that guarantees legal certainty and enforceability of the content of the contract, including the sanction clause in the event of default².

In the context of construction services, contract arrangements are not only sourced from general civil law, but also from sectoral law regimes, namely Law Number 2 of 2017 concerning Construction Services and Government Regulation Number 22 of 2020³. The regulation expressly requires that the construction work contract contain provisions regarding the scope of work, the implementation period, and sanctions for delay or failure to complete

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the work⁴. The delay penalty clause in a construction contract is normatively understood as a form of liquidated damages, i.e. compensation whose amount has been agreed upon since the beginning of the contract to provide legal certainty for the parties⁵.

Nevertheless, the doctrine of treaty law also recognizes that the application of the fine clause is not absolute. The clause must still be implemented by taking into account the principles of good faith and proportionality, so that in certain conditions restrictions can be imposed by the court if its application is considered unbalanced or exceeds the purpose of reasonable compensation⁶.

Legal Position of SOEs in Contractual Relations

SOEs are legal entities that have special characteristics. Based on Law Number 19 of 2003 concerning SOEs, SOEs were established to carry out business activities with the aim of obtaining profits while providing benefits for the public interest⁷. In carrying out its business activities, SOEs are subject to corporate principles and operate under a private legal regime, including when binding construction contracts with third parties.

However, the position of SOEs is not entirely identical to that of private business entities. In the state business law literature, SOEs are often qualified as hybrid legal entities, i.e. entities that act as private legal subjects when contracting contracts, but are in a public legal regime when it comes to the management of state finances and assets⁸. This concept shows the dualism of the role of SOEs as business actors as well as an extension of the state in the management of state wealth.

The implication of the hybrid position is the emergence of an obligation of extra prudence in every contractual action of SOEs. Contract enforcement is not only assessed from the perspective of private legal certainty, but also from the aspect of public accountability and its potential impact on state finances⁹.

BPK Audit and Its Relationship with SOE Private Contracts

The Financial Audit Board has the constitutional authority to examine the management and responsibility of state finances as stipulated in Law No. 15 of 2006 concerning BPK and Law No. 17 of 2003 concerning State Finance¹⁰. In the context of SOEs, BPK audits include audits of the management of segregated state finances and assets.

Normatively, the findings of the BPK audit do not have a function as an adjudicative instrument that can change or cancel the content of private contracts. BPK audits are in principle evaluative and recommendative¹¹. However, in practice, audit findings are often the basis for SOEs' managerial considerations in taking corrective actions, including the enforcement of fine clauses, to avoid accusations of allowing state losses. This, BPK audits can indirectly affect the implementation of SOE private contracts. Contract enforcement is no longer solely driven by business interests, but also by the need for institutional protection of SOEs from public legal risks¹².

The Role of the Judiciary in Interpreting the Fine Clause

In the event of a dispute, the court has the authority to assess the performance of the contract, including the fine clause. The judge not only assesses the formal validity of the contract, but also considers the principles of fairness, propriety and balance of the parties¹³. In

construction contract disputes, this approach often results in restrictions on fine clauses that are considered disproportionate.

The Supreme Court's decision in the case between Company P and Company M shows that the fine clause agreed upon by the parties can be reduced by the court¹⁴. The reduction emphasizes that the principle of *pacta sunt servanda* is not applied absolutely, but must be balanced with the principle of substantive justice.

Research Framework of Thought

Based on the description above, this research is built on the framework of thinking that SOE construction contracts are in a wedge between private law, public law, and judicial authority. Fine clauses as a valid contractual instrument can experience limitations in meaning when faced with public audits and judges' judgments.

This frame of thought is used to analyze the legal position of fine clauses in SOE construction contracts, the limits of BPK's audit authority on private contracts, and the implications of the Supreme Court's decision on the design of SOE contracts in the future.

Position of Fine Clauses in Construction Contracts for Housing Project C

The construction contract between Company P and Company M is an agreement that is legally made and meets subjective and objective requirements as stipulated in Article 1320 of the Civil Code¹⁵. With the fulfillment of these conditions, the contract has full binding force for the parties and gives rise to legal rights and obligations that must be implemented consistently.

The fine clause in the contract for Housing Project C is expressly regulated in Article 7 paragraph (1) and paragraph (2), which stipulates a maximum fine of 5% of the contract value as well as a fine for the remaining work that is not completed. Juridically, the clause is a concrete form of application of the principle of *pacta sunt servanda*, where the parties have agreed from the beginning on the legal consequences in the event of delay or default¹⁶.

In contract law, the late payment clause is positioned as liquidated damages, which is a compensation mechanism that does not require proof of actual losses in detail. The existence of this clause aims to provide legal certainty, efficiency in dispute resolution, and protection of the interests of service users¹⁷. Thus, normatively, Company P has a strong legal basis to execute the fine clause when the contractor does not complete the work on schedule.

Delay of Employment and Qualification of Default

The legal facts show that Company M was unable to complete the construction work in accordance with the deadline set in the contract. This condition fulfills the element of default in the form of non-fulfillment of achievements on time as agreed¹⁸. In the doctrine of contract law, delay in the completion of work is a form of default that gives creditors the right to demand the fulfillment of achievements, compensation, or the application of contractual sanctions.

In the context of construction contracts, work delays have significant implications because they are directly related to project planning, budget usage, and the social functions of employee housing projects. Therefore, the imposition of late fines is not only compensatory but also preventive to maintain the discipline of contract implementation¹⁹. Based on this, Company P's action to implement the fine clause is a logical consequence of the occurrence of default and is in line with the principle of prudence in the management of SOE projects.

BPK Audit Findings and Contract Enforcement Obligations

The delay in the completion of the C Housing Project then became the object of the Financial Audit Agency's investigation. In its audit findings, BPK assessed the potential for state losses due to the incompleteness of the construction work and emphasized the need for follow-up by Company P in accordance with the terms of the contract²⁰. The findings put Company P in a position to take corrective steps to maintain accountability in the management of state finances.

Juridically, the findings of the BPK audit do not change the substance of the contract, but function as an instrument of supervision over SOEs' compliance with the principles of good governance. In this context, the enforcement of the fine clause by Company P can be seen as a form of implementing institutional obligations to prevent potential state losses and avoid allegations of negligence²¹. However, the pressure of public audits also creates a situation where the enforcement of private contracts by SOEs is not entirely based on business considerations, but also on the need for legal protection from a public law perspective.

Legal Disputes and Supreme Court Judgments

Company M's refusal to apply the fine led to legal disputes that were examined to the level of cassation and review at the Supreme Court. In its ruling, the Supreme Court limited the imposition of the maximum fine to only 2% and annulled the fine for the rest of the work, even though the contract explicitly stipulated a higher amount. The Supreme Court's considerations show a judicial approach that emphasizes the principles of fairness and proportionality in the performance of contracts.

The judge not only adheres to the text of the contract, but also considers the factual conditions of the execution of the work and the balance of interests of the parties. This approach confirms that the principle of *pacta sunt servanda* is not applied absolutely, especially in construction contracts involving SOEs. The decision also shows that SOE construction contracts are in a wider judicial correction space than pure private contracts, considering their relationship with the public and financial interests of the state.

Juridical Implications for the Legal Certainty of SOE Contracts

The Supreme Court's decision in this case has significant juridical implications for the preparation and implementation of SOE construction contracts. On the one hand, the contract is still recognized as the basis of the legal relationship of the parties. But on the other hand, the applicability of sanctions clauses in contracts can be limited through judicial judgments that are casuistic.

This condition shows that SOEs cannot rely solely on the formulation of contract clauses textually, but need to consider aspects of fairness, proportionality, and the possibility of interpreting judges in the future. Therefore, the preparation of SOE construction contracts in the future needs to integrate a balanced approach to private law and public law.

CONCLUSION

Based on the juridical analysis of the construction contract of Housing Project C between Company P and Company M, it can be concluded that the penalty clause contained in the contract is normatively valid and binding. The clause fulfills the essential elements of an agreement as required by the Civil Code and is consistent with the provisions of the Construction Services Law, which mandates the inclusion of sanction mechanisms for delays in project implementation. Therefore, from a civil law perspective, Company P possesses a strong legal foundation to enforce the penalty clause in the event of contractual default.

However, Company P's status as a State-Owned Enterprise places the construction contract not solely within the domain of private law. The hybrid legal nature of SOEs subjects contractual implementation to public law oversight, particularly through the auditing authority of the Supreme Audit Institution (BPK). The BPK's findings regarding potential state financial losses encouraged Company P to enforce the contractual penalties as part of its accountability obligations and adherence to Good Corporate Governance principles. In this context, public audits serve as external determinants that substantively influence the execution of SOE contractual relationships.

Furthermore, the Supreme Court's judicial review provided an additional legal dimension, particularly when it limited the enforceable penalty and annulled sanctions on the remaining works. This demonstrates that the principle of *pacta sunt servanda* does not operate absolutely in SOE construction contracts. The Court emphasized fairness and proportionality as paramount legal considerations. Consequently, SOE construction contracts are situated at the intersection of private law, public law, and judicial interpretation, resulting in normatively valid clauses potentially experiencing enforcement limitations. This condition reflects ongoing challenges to legal certainty and underscores the need for an integrative legal design approach in future SOE contracts.

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