

The Constitutional Rights of the Community Regarding Fair Development Projects: Legal Position and Legal Certainty

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ABSTRACT

Construction projects inherently operate within the public sphere because their outcomes directly affect community safety, public welfare, environmental sustainability, and access to essential facilities. As a result, the fulfillment of constitutional rights becomes a fundamental requirement for ensuring that development processes are conducted fairly, transparently, and responsibly. In the Indonesian context, two core constitutional principles are particularly relevant: equality before the law as guaranteed under Article 27(1) of the 1945 Constitution, and the right to legal certainty as stipulated in Article 28D(1). This article examines how these constitutional rights are realized, limited, or potentially violated through two critical regulatory instruments in construction governance, namely construction contracts and building permit (*IMB/PBG*) procedures. Employing a normative juridical method supported by statutory analysis, doctrinal legal review, and comparative references to the FIDIC Red Book 2017, the study identifies several recurring sources of constitutional risk. These include ambiguous technical specifications, unclear brand corridor provisions, incomplete or inconsistent design documents, and procedurally flawed permitting processes. Such deficiencies not only increase the likelihood of disputes but also undermine fairness, accountability, and legal certainty for stakeholders. The article concludes that safeguarding constitutional rights in construction development requires strengthening the quality of contract documentation, improving transparency and consistency in permitting procedures, and reinforcing accountable public oversight mechanisms. These measures are essential to ensure equitable development that aligns with constitutional values and the public interest.

Keywords: Constitutional Rights; Legal Certainty; Technical Specifications; Permits

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INTRODUCTION

National development is the state's primary instrument for achieving its constitutional goals of realizing general welfare, improving the nation's intellectual life, and achieving social justice for all Indonesians (Chimhowu et al., 2019; Pratama, 2025; Zeng et al., 2015). Every development project, particularly those involving large-scale toll roads, dams, public buildings, residential areas, and social infrastructure, always has direct and indirect impacts on people's lives (Christiansen, 2013; Jain, 2015; O'Faircheallaigh, 2015).

From the perspective of constitutional law, the people have inherent constitutional rights to obtain legal protection, legal certainty, fair treatment, and equal access to the development process (Arief, 2017; Dwiyanto, 2018; Pratama, 2022; Sutopo, 2020). These rights are contained in Article 27 paragraph (1) of the 1945 Constitution concerning equality before the law, as well as Article 28D paragraph (1) of the 1945 Constitution concerning the right to recognition, guarantee, protection, and fair legal certainty, especially the right to equality before the law and the right to legal certainty (Asshiddiqie, 2015).

Construction development in Indonesia is carried out through a contractual mechanism between service users and service providers as regulated in Law No. 2 of 2017 concerning Construction Services. where a construction contract is a civil agreement between the parties based on freedom of contract, good faith, and legal certainty, as regulated in the Civil Code (ASHRAE, 2020). Although private in nature, a construction contract cannot ignore public interests, especially in the form of buildings or infrastructure that have a direct impact on the safety, comfort, and rights of the community (Salim HS, 2019). However, in practice, these two constitutional rights are not always implemented optimally (Onichakwe, 2016).

One critical point that is rarely discussed in depth is how the community's constitutional rights are directly connected to construction contract documents and permits , as well as building permits (IMB/PBG, AMDAL, SLF, UKL-UPL, environmental permits, and others) are administrative instruments to ensure that development activities do not violate citizens' rights and are in accordance with the principles of justice. This condition can give rise to unequal legal treatment, both in the supervision process, enforcement of sanctions, and legal protection for affected communities. Thus, it is important to academically examine the relationship between community constitutional rights **and** equitable development. This article aims to emphasize the need for a comprehensive legal study on how construction contracts and the fulfillment of building permits can be instruments for protecting community constitutional rights.

METHOD

This research used a normative juridical method with: statute approach, case approach, conceptual approach, And comparative approach. Primary sources include the 1945 Constitution, Law 2/2017, Law 30/2014, Law 11/2020, PP 22/2021, PUPR Ministerial Regulation, and other licensing regulations.

RESULTS AND DISCUSSION

Analysis: Meeting Point between Contracts, Licensing, and Constitutional Rights.

Construction projects are a domain that combines two different laws: Private (Civil) Law regulates the contractual relationship between project owners and contractors and consultants. Public Law (State Administration & Environment) regulates permits, public safety, and social and environmental impacts. life. Both influence the implementation of the project and ultimately determine whether the constitutional rights of the community are fulfilled or violated. The relationship can be summarized as follows:

A.

Table 1. relationship

<i>Aspect</i>	<i>Private Law (Contracts)</i>	<i>Public Law (Licensing)</i>	<i>Impact on Constitutional Rights</i>
<i>Object</i>	relationship between the parties	public safety and interest	equality of treatment & legal certainty
<i>Legal basis</i>	Civil Code, Law 2/2017	Law 11/2020, PP PBG/SLF, Environmental Law	1945 Constitution Article 27(1), 28D(1)
<i>Risk</i>	contract disputes	socio-environmental impacts	social losses

From this perspective, it is seen that *the ambiguity of construction contracts and administrative defects in permits* result in violations of the community's constitutional rights.

Analysis of Construction Contract Documents

Construction contracts are essentially instruments to ensure clarity of the parties' obligations to ensure safe, high-quality, and equitable development. However, a number of potential contractual loopholes can threaten public rights.

1. Unclear Technical Specifications threaten public safety/quality

Technical specifications are the heart of a construction contract. Ambiguity leads to: a) building quality does not meet standards. b) increased risk of building failure (Article 27 of Law 2/2017). c) communities accept dangerous infrastructure.

2. Lack of clarity in the hierarchy of contract documents

When there are contradictions between drawings, specifications, and the BoQ, disputes arise. Without a clear order of precedence, each party can interpret the documents subjectively, violating the principle of legal certainty. As a result: a) potential for quality degradation. b) the tug-of-war of interpretations that is hampering the project. c) public risk of getting a defective building. d) Lack of Public Safety Regulations

Some contracts focus too much on worker safety and don't adequately address the safety of the community surrounding the project. Yet: crane collapse, high noise, air pollution, and drilling vibrations foundation. These conditions can threaten the health and comfort rights of residents. Contracts that ignore this violate Article 28H of the 1945 Constitution (the right to a healthy life), even though the main topic of the journal only focuses on Articles 27(1) and 28D(1).

Analysis of the Development Licensing Process

Licensing is a public instrument for protecting the public. When licensing is not implemented properly, citizens' constitutional rights are directly violated.

1. Issuance of Permits Without Adequate Impact Analysis

Common cases; AMDAL not yet completed, public consultation is just a formality, traffic studies are inaccurate, long-term environmental impacts are not calculated. If permits are issued without proper review, the public loses legal certainty. In extreme cases, this can lead to: 1. flooding due to faulty drainage design, 2. traffic jams, 3. air pollution, and 4. building collapse.

2. Permits that Conflict with Spatial Planning

Many projects have received permits despite violating the Spatial Planning (RTRW) regulations, such as building on river banks, exceeding the KLB/KDB, and building in green zones. The risks include increased flooding, reduced public space, and impacted property values.

Analysis of Two Representative Case Studies

Case 1: Steel Material Specification

In many projects, steel has specific parameters (yield strength, elongation, tensile strength). In certain projects, contractors propose alternative steel for reasons such as: out of

stock, lower price, discontinued product. If alternatives are given without an equivalency test, then: reduced structural strength, the risk of building failure increases. Constitutionality:

The quality of the structure is directly related to public safety → violation of Article 28D(1).

Case 2: HVAC System

HVAC affects: health of building users, air quality, energy consumption. If the contractor changes brands without performance analysis: Decreased efficiency, “sick building syndrome” disease may appear, expensive operational costs for the public who use public buildings. Potential violations: a) the right to comfort and health. b) the right to legal certainty regarding the quality of public buildings.

Critical Points that Trigger Violations of Constitutional Rights

From the entire analysis, there are at least 4 main vulnerable points: 1) Ambiguous contract documents (specifications, brand corridor, document hierarchy). 2) Incomplete design during tender becomes the burden of risk is shifted to the contractor & the community. 3) Licensing procedures are flawed (fake AMDAL, invalid PBG/SLF). Lack of community engagement mechanisms. Weak public oversight deviations are not corrected. then the potential construction project can be a systematic violation of people's constitutional rights.

CONCLUSION

Normative, theoretical, and empirical analysis reveals that the constitutional rights of the community in construction projects—anchored in the principle of equality before the law (Article 27(1)) and the right to fair legal certainty (Article 28D(1)) of the 1945 Constitution—form the foundational basis for all development stages, from planning and licensing to implementation and supervision. These rights are inherent throughout the construction cycle, given its public interest orientation, entitling communities to safety guarantees, information access, protection from negative impacts, equal legal treatment, and assurance that outcomes meet technical standards as outlined in contracts. Fulfillment represents not merely a moral but a binding legal obligation for the state and all actors involved, with licensing systems like PBG, SLF, AMDAL, UKL-UPL, and environmental permits serving as key public instruments to ensure safe, spatially compliant development that mitigates social and environmental risks while upholding justice and certainty. For future research, empirical studies could investigate the effectiveness of digital platforms in enhancing transparency and community participation during licensing and supervision phases.

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