

THE AUTHORITY OF REGIONAL GOVERNMENT TO REGULATE CONSTRUCTION SERVICES

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Abstract - The construction service sector is a community activity to realize the national development objectives that must ensure legal order and certainty. In general, the problem with infrastructure in the province of South Sulawesi is that the level of service performance is still not optimal, particularly the availability of construction experts that are not yet optimal both in terms of data collection and training, as well as the availability of information on construction services that has yet to be optimal. The authority of the Governor regarding the Construction Services Management is a concurrent governmental affair that has been delegated to the governor, which is also an implementation of the principle of deconcentration relating to 2 (two) matters, namely: (1) managing training for construction experts and (2) implementing a construction service information system with provincial area coverage. Construction Service Affairs in South Sulawesi are carried out by the Public Works and Spatial Planning Department of the province of South Sulawesi in the field of construction services. However, they have not been carried out in accordance with the concerns provided in the context of construction services. Therefore, it is necessary to establish a regional regulation regarding the implementation of construction services in the province of South Sulawesi pertaining to Government affairs in the Public Works and Spatial Planning sector that has not been conducted in accordance with governmental affairs in the Public Works and Spatial Planning sector.

Keywords: Authority; Regional Government; Construction Service;

INTRODUCTION

The objectives of the country of Indonesia are stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia,¹ following which many efforts must be performed towards achieving them. Thus, national development strives to establish a righteous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The construction services sector is a pursuit of the people to construct buildings that function as supports or infrastructure for social and economic activities of the people to support the realization of national development objectives, where the enactment of construction services must ensure legal order and certainty.

Act Number 23 of 2014 concerning Regional Government Provisions in Appendix C of the Distribution of Governmental Affairs in the Field of Public Works and Spatial Planning as for the Construction Services Sub-Affairs, in which the Provincial Government conducts Training of Construction Experts and Implementation of Construction Service Information Systems for Provincial Area Coverage

The issuance of Act Number 2/2017 concerning Construction Services four years ago has brought a spirit of change to the dynamics of construction services, with the aim of reforming construction service governance, construction service institutions, and the role of the construction service community. Regulations for implementing the Law on Construction Services (UUJK) include Government Regulation Number 22 of 2020 concerning Implementing Regulations for Act Number 2 of

¹ ... negara melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi, dan keadilan sosial.

2017 concerning Construction Services, which was enacted on the 24th of April 2020, and Regulation of the Minister of Public Works and Spatial Planning (PUPR) Number 9 of 2020 concerning the Establishment of a Construction Services Development Agency (LPJK) and Ministerial Regulation of PUPR Number 10 concerning Accreditation of the Association of Construction Service Business Entities.

More than a year has passed since the COVID-19 pandemic affected Indonesia and the rest of the world, and it has had an extraordinary impact not only on the health aspect but also on the social, cultural, and, of course, economic aspects. The impact of COVID-19 on the Indonesian economy is a decline in economic growth, from an average of 5% during the period 2016-2019 to 2.97 percent in the first quarter of 2020, even reaching the lowest point of -5.32% in the second quarter of 2020. In tandem with the implementation of the new normal period and Large-Scale Social Restrictions (PSBB), in which people's economic activities can be revived under conditions for implementing strict health protocols, economic growth has started to crawl up. In the fourth quarter of 2020, economic growth was reported to have increased to -2.19% year-over-year, or cumulatively, Indonesia's economic growth in 2020 experienced a contraction of 2.07%. The drop in economic growth resulted in a decrease in employment opportunities and an increase in poverty rates. This condition should not be allowed to persist, hence, a variety of government policy interventions are required to revive the national economy.² The impacts of the pandemic are also being experienced in the construction industry, and these impacts are related to: (1) Changes in behavior in the work environment, in which the implementation of health protocols will alter the behavior and culture of conducting construction services; (2) Supply chain capacity is reduced due to limited material supply and workforce mobilization, as well as construction equipment, which will encounter problems; (3) The output and productivity of the construction workforce have the potential to decrease due to adaptation to changes in work environment culture; (4) A further impact is the potential for delays in the completion time of work.

The identification of problems is based on internal and external aspects that affect the services of the Public Works and Spatial Planning Department. In general, the infrastructure problem in the province of South Sulawesi is that the degree of service performance is still not optimal. Among the problems encountered during the implementation Aspect of the Construction Services Sub-Affairs are the following:³

1. The availability of construction experts is not optimal in terms of both data collection and training The availability of information about construction services is not yet optimal
2. The availability of information about construction services is not yet optimal

According to the results of the analysis of service delivery problems, vision and mission of the regional head as stated in the Regional Medium-Term Development Plan (RPJMD) document, a review of the Strategic Plan of the Ministry of Public Works and Public Housing, as well as a Spatial Planning Study and Strategic Environmental Study, those pertaining to construction services are services construction that supports and active participation from all components of society in accordance to their respective roles and functions, especially from business stakeholders in the field of construction/consulting services in accordance with PUPR Ministerial Regulation No. 17 of 2019 concerning Minimum Remuneration Standards for Construction Workforce at the expert level for Construction Management Consulting Services. As for improving competence, professionalism, and productivity of the workforce, Aspects of the Problem of Services and Strategic Issues in Construction Services include the unavailability of qualified information and experts.

² Kementerian Pekerjaan Umum dan Perumahan Rakyat (PUPR) Direktorat Jenderal Bina Konstruksi, 2021, Pengaturan Jasa Konstruksi, Buletin Konstruksi Edisi 2

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RESEARCH METHODS

Legal research utilizing the normative juridical method. The normative juridical method is carried out through a literature study that examines data in the form of legal materials. The approaches employed to conduct this study are the statutory approach and legal analytical and conceptual approach.

DISCUSSION

1. CONCEPT OF CONSTRUCTION SERVICES

Optimizing the growth of infrastructure development in the field of construction services necessitates synergistic cooperation between local governments and the private sector (contractors) in the implementation of development and, of course, cooperation with investors in terms of funding. Tracing the advancement of the dynamics of implementing regional autonomy in the era of advanced Indonesian development reveals that regional governments have a vast opportunity to collaborate with third parties, as stipulated in Article 195 of Act Number 23 of 2014 concerning Regional Government.

Construction services are one of the activities in the economic, social, and cultural fields that have an important role in accomplishing various means to support the realization of national development targets. Through this sector, the physical progress of Indonesia's development can be observed directly through the presence of tall buildings, bridges, and infrastructure such as toll roads and telecommunications facilities. These are the actual things indicating that Indonesia's economic pulse is going on.⁴

Construction is commonly understood as the process of creating or constructing infrastructure, as well as carrying out its maintenance and repairs. Construction is an economic activity that plays an essential role in improving the national economy and social welfare.⁵ Construction Services is a consulting service that works in the planning, execution, and supervision of construction projects. The parties involved in a construction project are the service customers and service providers. Service customers and service providers can be individuals or business entities, both in the form of legal entities and those that are not in the form of legal entities. Construction service providers formed as businesses must comply with business licensing requirements in the field of construction services and possess certificates, classifications, and qualifications for construction service businesses. The standard for classification and qualifications for work skills is the level of work competence for each national and global business entity in the construction services industry. This recognition is attained through tests held by the organization or agency assigned to carrying out these responsibilities. The process of obtaining recognition is carried out through registration activities, which include classification, qualification, and certification. Therefore, only businesses with these certifications are permitted to operate in the construction services industry. The implementation of development programs conducted by government agencies, on an ex officio basis, requires property or land as a location for realizing the physical form for the construction of facilities and infrastructure in the public interest. While the meaning of public interest does not have the capacity to make people's lives tougher, its overarching goal is to improve the prosperity and welfare of the people. Incidents of construction failures that result in fatalities are of particular concern to both the government and private companies.⁶


The construction services law is a series of regulations that regulate the connection between parties engaged in construction activities, such as project owners, contractors, consultants, and suppliers. The main purpose of construction services law is to protect the interests of all parties involved in a construction project and to ensure that the project is carried out in a safe, efficient, and compliant manner with the agreed-upon specifications.

Some of the things that are regulated by the law on construction services are as follows:

⁴ Nazarkhan Yasin, *Mengenal Klaim Konstruksi dan Penyelesaian Sengketa Konstruksi*, Jakarta: PT Gramedia Pustaka Utama, 2004, hal. 226

⁵ S Riki, S Akhmad, H Abdul, 2016, *Analisis Kegagalan Konstruksi Dari Perspektif Socio-Engineering System*, Jurnal Rekayasa Sipil, Vol 12. No 1

⁶ Firdaus, A. (2020). *Perspektif Normatif Hukum Pidana terhadap Kegagalan Konstruksi di Indonesia*. Law Jurnal, 1(1), 1-8.

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1. **Construction Contract:** A construction contract is a document that specifies the terms and conditions of a construction project, including the price, length of time, quality, and scope of work that must be performed by the contractor. Construction contracts must be made in writing and signed by all parties involved.
 2. **Certification and Licensing:** Contractors and consultants who are involved in construction projects must have certificates and licenses that are relevant to the kind of work that will be carried out. These certifications and licenses are issued by authorities and can be canceled if there are violations or errors in project implementation.
 3. **Liability:** The contractor is responsible and must have insurance to handle any damage or accidents that occur during the construction project.
 4. **Licensing:** The contractor must obtain the necessary licenses to carry out the construction project, including environmental license if the project will affect the surroundings.
 5. **Payment:** The contractor should receive the payment on the date agreed in the contract and entitled to request partial or full payment after the work specified in the contract has been completed.
 6. **Dispute Settlement:** An appropriate mechanism is required to solve disputes in the construction project such as through mediation, arbitration, or the courts.

Those are several regulations in the law of construction services. It is important to understand that the law of construction services may vary in each country. Therefore, it is necessary to refer to the prevailing law in that region.

Construction services provide solutions for the construction needs of a project, whether it is constructing a new building, renovating or repairing existing buildings, or constructing infrastructure such as roads, bridges, and dams. The concept of construction services encompasses various types of services that can be provided by a construction company, including:

1. **Planning and Design:** A construction contractor or consultant provides planning and design services to ensure that the construction project meets the requirements and standards by providing the building blueprints, cost estimation, and project schedule.
2. **Construction:** A construction contractor is responsible for the success of a construction project. They will ensure that the work is carried out in accordance with the agreed plan and specifications.
3. **Procurement of Materials and Resources:** A construction company provides the procurement for the materials and resources needed for a construction project, such as building materials, equipment, and labor.
4. **Project Management:** A construction contractor or consultant provides project management services to ensure that the project operates according to plan by planning, supervising, and coordinating the entire project.
5. **Maintenance and Repair:** After a construction project is finished, a construction company provides maintenance and repair services to ensure that the building or infrastructure continues to function properly.

There are various types of companies which provide construction services, such as general contractors, consultants, and subcontractors. Each construction company might provide different services according to their expertise and specialization. Therefore, it is important to choose the right construction company to ensure that the construction project operates according to plan.

2. CONSTRUCTION SERVICES AFFAIRS

The participation of the local government is necessary because a country cannot be governed by a single centralized government. According to Duchacek as quoted by Widhi Novianti et al, there is no country that can prevail without centralization, and likewise, there is no country that can prevail solely by decentralization.⁷

The governmental affairs in Indonesia centralized on the president, but the president's authority is carried out by ministries and regional governments. The Law of the Republic of Indonesia Number 23 Year 2014 Article 1 Verse 5 on Government states that governmental affairs are within the authority of

⁷ Widhi Novianti, dkk, 2016, *Isu-Isu Startegis Bidang Desentralisasi dan Otonomi Daerah, Pembagian Urusan Pemerintahan Pasca Implementasi UU No. 23 Tahun 2014 tentang Pemerintahan Daerah: Studi Kasus Urusan Pemerintahan Bidang Kaluatan dan Perikanan di Provinsi Sulawesi Selatan dan Provinsi Jawa Barat*, Pusat Kajian Desentralisasi dan Otonomi daerah Lembaga Administrasi Negara Republik Indonesia, Jakarta, hlm. 10.

the president, which is carried out by state ministries and regional governments to provide protection, service, empowerment, and prosperity for the people. As mandated by the 1945 Constitution of the Republic of Indonesia, there are governmental affairs that are entirely within the authority of the Central Government such as absolute governmental affairs and concurrent governmental affairs.⁸ Absolute governmental affairs are governmental affairs that are entirely the authority of the central government which consists of foreign politics, defense, security, justice, national monetary and fiscal, and religion.^{9 10}

The provision of Annex C to the Law of the Republic of Indonesia Number 23 Year 2014 on Regional Government regarding the division of government affairs in the field of public works and spatial planning stipulates that for the Subdivision of Construction Services, the Provincial Regional Government carries out:

1. The implementation of Construction Experts Training;
2. The implementation of Provincial Construction Services Information System.

3. THE AUTHORITY OF REGIONAL GOVERNMENT ON THE REGULATION OF CONSTRUCTION SERVICES

Unitary State only consists of one state. It is not a composition of several states and there is no state within a state. Therefore, there is only one government in a unitary state, namely the central government which has the highest authority in governance. The central government determines governmental policies and carries out state and regional governance.¹¹ Principally, the highest authority lies in the hand of the central government to carry out all state affairs without any delegation of power, which is commonly known as centralistic ideology. The highest authority is held by the President.

This is emphasized in the 1945 Constitution of the Republic of Indonesia Article 4 Verse (1) on the authority of governance held by the President of the Republic of Indonesia. This article indicates that the highest authority in government is held by the President, where every policy in the central and regional government is determined and established by the President.

In the era of reformation, the regional government is given the authority to regulate and manage their own affairs while still adhering to the principle of a unitary state. This is intended to ensure that the provision of the people's welfare can be carried out fairly and prosperously through transforming the previously centralized government into a decentralized government.¹²

The constitutional legitimacy of the regional government in regulating and managing their own regions refers to the 1945 Constitution of the Republic of Indonesia Article 18 Verse (5) which states that the regional governments operate the broadest possible autonomy, except for governmental affairs that are determined by law as the authority of the central government.

Given that Indonesia is a unitary state, regional autonomy can be seen as an instrument to maintain the unitary state based on the law to achieve equal welfare and justice in various fields throughout

⁸ Penjelasan Umum Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244, Tambahan Lembaran Negara Republik Indonesia Nomor 5587) sebagaimana telah diubah beberapa kali terakhir dengan Undang-Undang Nomor 9 Tahun 2015 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 5679).

⁹ Pasal 9 ayat (2) Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244, Tambahan Lembaran Negara Republik Indonesia Nomor 5587) sebagaimana telah diubah beberapa kali terakhir dengan Undang-Undang Nomor 9 Tahun 2015 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 5679).

¹⁰ Pasal 10 ayat (1) Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244, Tambahan Lembaran Negara Republik Indonesia Nomor 5587) sebagaimana telah diubah beberapa kali terakhir dengan Undang-Undang Nomor 9 Tahun 2015 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 5679).

¹¹ Rusdianto Resung, 2013, Hukum Otonomi Daerah, Negara Kesatuan, Daerah Istimewa dan Daerah Otonomi Khusus, PT. Refika Aditama, Bandung, hlm. 10

¹² Agung Eka Mulya Dharma dan Khairani, 2022, Analisis Yuridis Normatif Kedudukan Gubernur Sebagai Kepala Daerah Otonom dan Sebagai Wakil Pemerintah Pusat Dalam Ketatanegaraan Republik Indonesia. Jurnal Unespadang, Vol. 3 No. 1, hlm. 105

Indonesia.¹³ Through regional autonomy, democracy can be implemented extensively where the regional governments in Indonesia can manage their affairs independently. Despite being a unitary state, it is necessary for the regional governments to manage their affairs independently to show the importance and influence of the regional governments in Indonesia. Public welfare can be realized more effectively and efficiently in every region through the implementation of regional autonomy as the dynamics of the condition and the needs of the local communities are varied in each region.¹⁴

Additionally to the previous statement, the paradigm shift from a centralized government to a decentralized government can be explicitly found in the Law of the Republic of Indonesia Number 23 Year 2014 on Regional Governments, where there is a correlation between the Central Government, Provincial Governments, and District/City Governments. This correlation is an attempt to carry out the implementation of government. The central government manages the central government affairs, while the regional governments manage their respective regions.

Regarding the organization of government in the regions, the Law of the Republic of Indonesia Article 5 Verse (4) Number 23 Year 2014 states that the administration of government affairs is carried out based on three principles, including:

- 1) The principle of decentralization is the transfer of government affairs from the central government to autonomous regions based on the principle of autonomy¹⁵
- 2) The principle of deconcentration is the transfer of partial government affairs that fall under the authority of the central government to the governor as a representative of the central government, to vertical agencies in a certain area, and/or to the governor and regent/mayor as the responsible parties for general governmental affairs.¹⁶
- 3) The principle of deconcentration is the transfer of partial government affairs that fall under the authority of the central government to the governor as a representative of the central government, to vertical agencies in a certain area, and/or to the governor and regent/mayor as the responsible parties for general governmental affairs.¹⁷

As stated above, the administration of government in the regions is partially delegated to the regional government, such as the governor (the regional government at the provincial level). However, according to the principles of deconcentration and task delegation, the regional governments in the Republic of Indonesia still remain subordinate and responsible to the central government.

The statement above indicates that the Law of the Republic of Indonesia Number 23 Year 2014 on Regional Governments mandates the governor as the administrator of the regional government, as well as the representative of the central government in the region.¹⁸ As an intermediate government, the governor is serving as a bridge between the central government and the district/city government.¹⁹ This means that the governor has a dual role. The governor manages the province as an autonomous region and its administrative area while also responsible to the people who elected them. On the other hand, they carry out the principles of deconcentration and task delegation, which designate the governor as the representative of the central government in the region.

According to M. Manullang, the success rate of regional duties depends heavily on the regional leader, in this case the governor as the manager of the respective region.²⁰ Additionally, David O. Porter and Eugene A. Olsen state that a regional leader, in this case the governor, must be qualified as a "generalist" as a consequence of decentralization and as an instrument of the central government, they are expected to become a "specialist".²¹

¹³ Bagir Manan, 2001, *Menyongsong Fajar Otonomi Daerah*, PSH FH UII, Yogyakarta, hlm. 3

¹⁴ *Ibid.*

¹⁵ Lihat Pasal 1 angka 8 Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah

¹⁶ Lihat Pasal 1 angka 9 Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah

¹⁷ Lihat Pasal 1 angka 11 Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah

¹⁸ M. Arafat Hermana dan Arie Elcaputera, 2020, *Kedudukan Gubernur Sebagai Wakil Pemerintah Pusat di Daerah Dalam Sistem Ketatanegaraan Indonesia*, Jurnal Pemerintahan dan Politik Islam Vol. 5, No. 2, hlm. 113-129

¹⁹ A.Sakti RS Rakia, Muharuddin, dan Sahertin Marthin, 2022, *Pelaksanaan Kewenangan Gubernur dalam Konsep Otonomi Khusus Papua*, Jurnal Justisi Universitas Muhammadiyah Sorong, Vol. 8, No. 1, hlm. 2

²⁰ Hery Yulianto, 2021, *Pola Koordinasi Gubernur sebagai Wakil Pemerintahan Pusat dengan Bupati/Walikota dalam Pelaksanaan Tugas dan Wewenang Pemerintah Menurut Undang-Undang Dasar 1945*, Jurnal Hukum dan Keadilan, Vol. 8 Nomor 2, hlm. 278

²¹ *Ibid.*

Furthermore, the Law of the Republic of Indonesia Article 9 Verse (1) Number 23 Year 2014 also mentions that the governmental affairs consist of:

- 1) Absolute affairs refer to the governmental affairs that are entirely the responsibility of the central government.²² Therefore, absolute affairs are not related to the principles of decentralization or autonomy.²³
- 2) Concurrent affairs refer to the governmental affairs which are divided between the central government, provincial government, and regency/municipal government.²⁴ Concurrent affairs consist of mandatory and optional governmental affairs. Mandatory governmental affairs include governmental affairs related to basic services and non-basic services as regulated in the Law of the Republic of Indonesia Number 23 Year 2014 Article 11 with a breakdown of 24 mandatory governmental affairs and 8 optional governmental affairs, making a total of 32 concurrent governmental affairs. Out of the 24 mandatory governmental affairs, six are related to basic services, and 18 are non-basic services.²⁵
- 3) General governmental affairs.

Based on the three perspectives of governmental affairs above, the governor acts as the representative of the central government in the region when carrying out absolute governmental affairs,²⁶ This is a delegation of authority from the central government based on the principle of deconcentration. It is emphasized in the Law of the Republic of Indonesia Number 23 Year 2014 Article 10 Verse (2) on Regional Government which states that in the matters of (1) foreign policy; (2) defense; (3) security; (4) justice; (5) national monetary and fiscal; and (6) religion, the central government delegates authority to vertical instances in the region or the governor as the representative of the central government based on the principle of deconcentration.

Similarly, concurrent matters are delegated from the central government to the governor or vertical instances in the region based on the principle of deconcentration. It is emphasized in the Law of the Republic of Indonesia Number 23 Year 2014 Article 19 Verse (1b) on Regional Government which states that the affairs delegated from the central government are based on the principle of deconcentration. This also applies to the administration of the general governmental affairs according to the Law of the Republic of Indonesia Article 25 Verse (1) on Regional Government.

The existence of governor as a central government representative, as confirmed in Government Regulation No. 38/2018 about The Execution of Responsibility and Authority of Governor as Central Government Delegation, where the regulation is substantially demonstrates that the governor's position is merely strategic since it is the most important part of the better synergy development between central government and local government. President as the head of central government as well as the final responsible person in government, roundly deliver or hand out his authority to the governor to act above the central government's name on the observation and development in the district area to make sure the autonomy is done in accordance with the norms, standards, and procedures, also the criteria that has been appointed by the President as central government.

Logical consequence of the authority administration to the governor as the local government from the central government, leads to the existence of observing relationships.²⁷ Observing relationships intends to ensure and confirm that every implementation of authority, financial, and institutional relationship is in accordance with the legislation's provision.

It can be concluded that based on the statement of government principle and matter above, the governor's authority as local government related to either absolute, congruent, or regular government matters is accustomed by deconcentrate or assistance function principles.

²² Mesy Azmiza Azhar, 2022, *Dinamika Urusan Konkuren Antar Pemerintahan Pusat dan Pemerintahan Daerah dalam Sistem Desentralisasi*, Jurnal Lex Renaissance Vol 7, Nomor 3, hlm. 648-660

²³ Djambar, M Yasin Nahar dan Muhammad Tavip, 2019, *Penyelenggaraan Urusan Pemerintahan Bidang Pertambangan Dalam Perspektif Otonomi Daerah*, Vol. 5 Nomor 2, hlm. 26-35

²⁴ Rizki Ramadhan dan Aidul Fitri ciada Azhari, 2021, *Penyelenggaraan Pemerintahan Daeah dalam Urusan Konkuren Bidang Pelayanan Dasar di Kota Serang*, Jurnal Volksgeist Vol. 4, No. 1, hlm. 125-137

²⁵ Rahyunir Rauf, 2018, *Asas Penyelenggaraan Pemerintah Daerah (Dekonsentrasi, Desentralisasi dan Tugas Pembantuannya)*, Zanafa Publishing, Pekanbaru, hlm. 366

²⁶ Wilda Prihatiningtyas, 2020, *FUngsi Gubernur Dalam Penyelenggaraan Pemerintahan di Daerah*, Airlangga Development Journal. Hlm. 34

²⁷ Danetta Leoni Andrea, 2020, *Penyelenggaraan Otonomi Daerah Bidang Pendidikan Berdasarkan Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah*, Jurnal Ilmu Hukum Kyadiren, hlm. 19



Next, if it is associated with the construction service, the setting of construction service includes in the part of congruent matter which is General Performance and Spatial Planning (PUPR) in obligatory basic services category. For that, construction service settings become the governor's authority as the head of local government as central government conveyors, manifestation of decentral principle, and a shape of district's responsibility of its autonomy area as the head of a province.

It can be identified from the distribution of congruent matters implemented by the provincial government (governor), which are: (1) education; (2) health; (3) general performance and spatial planning; (4) public housing and residential area; (5) reconciliation, public order, and community protection; (6) social; (7) labor; (8) women empowerment and children protection; (9) nourishment; (10) land; (11) environment; (12) population administration and civil registration; (13) community and Village empowerment; (14) population control and family planning; (15) relation; (16) communication and information; (17) cooperative, small, and secondary business; (18) modal investment; (19) youth and sport; (20) statistic; (21) coding; (22) culture; (23) library; (24) archive; (25) marine and fisheries; (26) tourism; (27) agriculture; (28) silviculture; (29) energy and mineral resources; (30) trading; (31) industrialization; (32) transmigration.²⁸ It is also firmly mentioned in Paragraph 12 Act No. 23/2013 concerning Local Government.

It needs to be understood that in construction settings start by referring to the Act No. 2/2017 about Construction Services.²⁹ Gideon, etc. explained generally the payload material in the constitution including responsibilities and authorities.³⁰ A paradigm shift occurred in Act 2/2017, where the area setting is expanded, which included construction industry; a clear power distribution between central government and governor as the delegation of central government in district area, provincial government authorities, city/regency government authorities; construction service; building provision attempt; supply chain; decentralized development; classification of CPC attempt (KLBI); and community participation.

However, after the issuance of Act No. 6/2023 in connection to Stipulation of Government Regulation in Lieu of Law No. 2/2022 about Job Creation³¹, change some points of Act No. 2/2017 concerning Construction Service related to the authorities between central, provincial, and regency/city governments.

The Ministry of Public Works and Public Housing (PUPR) Directorate General of Construction published a bulletin explaining that in Construction Service sector, the impact to Act No. 2/2017 concerning Construction Service consists of 33 Paragraphs changed in Job Creation Act, including Central, Provincial, and City/Regency Government authority settings, business permissions, business qualifications, Building Provision Attempt (deletion) and execution of construction service attempt.³²

Partially, there are some impactful things to Act No. 2/2017 concerning Construction Services related to the authority between central, provincial, and regency/city governments upon the publication of Job Creation Acts, as stated below:

No.	Central Government	Provincial Government	City/Regency Government
1.	Establishment of the national construction service policy	Establishment of technical guidelines of national	The execution of construction service

²⁸ Mahmuzar, 2020, Model Negara Kesatuan Republik Indonesia di Era Reformasi, Jurnal Hukum & Pembangunan Vol. 50 No. 2, hlm. 302-316.

²⁹ Andi Bayu Putra dan Hendrik Sulistio, 2019, Analisis Undang-Undang yang Mengatur Jasa Konstruksi Indonesia Terhadap Pengguna dan Penyedia Jasa Konstruksi, Jurnal Media Komunikasi Teknik Sipil, Vol. 25, No. 2, hlm. 200

³⁰ Gideon F. Sumual, Firdja Baftim, Anna S. Wahingan, 2021, Pengaturan Hubungan Kerja Antara Pengguna Jasa dan Penyedia Jasa Dalam Kontrak Kerja Konstruksi, Jurnal Lex Administratum Vol. IX, No. 2, hlm. 256

³¹ Sebelumnya berupa Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja. Lalu dibatalkan dan dianggap cacat formil oleh Putusan MK Nomor 91/PUU-XVII/2020. Lalu diterbitkan lagi Peraturan Pemerintah Pengganti Undang-Undang (PERPPU) Nomor 2 Tahun 2022 tentang Cipta Kerja. Lalu terakhir, Undang-Undang Nomor 6 Tahun 2023 tentang Cipta Kerja.

³² Kementerian Pekerjaan Umum dan Perumahan Rakyat (PUPR) Direktorat Jenderal Bina Konstruksi, 2021, Pengaturan Jasa Konstruksi, Buletin Konstruksi Edisi 2, hlm. 9

	development	Construction Service policy execution in provincial area	policy which impacts in regency/city area
2.	The execution of the strategic, provincial crossing, and/or impacted to national importance construction service policy development	The execution of regency/city crossing construction service in provincial area	
3.	Investigation and evaluation towards the execution of national construction service policy development	Investigation and evaluation of the execution of national construction service policy development in provincial area	Investigation and evaluation of the national construction service policy execution in the regency/city area.
4.	The development of the cooperation with the provincial government in the implementation meant in paragraph 7	The execution of regency/city government empowerment in the authority meant in paragraph 8	
5.	Support to the governor as the delegation of central government		

Source: Law Number 6/2023.³³

The main impacts of the presence of the Job Creation Law on Law No. 2 of 2017 concerning Construction Services are:

- 1) Regarding the business licensing sector for construction services.

Dadan Ramdani explained in his research that the governors' dilemma in issuing policies is due to the Job Creation Law, which transfers almost all licensing policies to the central government.³⁴

Previously, the requirements for a construction services business included the Construction Services Business License (IUJK) issued by the Regional/City Government, which included SBU, SKA, and SKTK issued by the Construction Services Development Agency (LPJK). Currently, the requirements for undertaking construction services consist of SBU, SKK Construction, and NIB issued by the Central Government.³⁵ This means that the authority of regional governments, whether governors, regents/mayors, in relation to this matter, is lost and becomes the absolute responsibility of the central government.

The LPJK was established through the issuance of the Job Creation Law, which then led to the issuance of Government Regulation Number 14 of 2021, amending Government Regulation Number 22 of 2020 regarding the Implementation of Law Number 2 of 2017 concerning Construction Services. In Government Regulation Number 14 of 2021, some of the central government's authority is not given to the governor as the regional government but is assigned to the LPJK.

- 2) Strengthening the construction service community, through the establishment of a certification body to be able to carry out certification.³⁶ This certification body was formed by the Association of Accredited Business Entities, which is managed by the Construction Services Development Institution (LPJK).³⁷ The LPJK was established through the issuance of the Job Creation Law,

³³ Baiquni Aka Sanjaya, 2021, Design Pembinaan Jasa Konstruksi di Daerah Dengan Pendekatan Performance Prism (Studi Kasus Lampung Selatan), Jurnal Profesi Insinyur-JPI Vol. 2 Edisi 2, hlm. 2-3

³⁴ Dadan Ramdani, 2022, Deklinasi Kedudukan Gubernur Sebagai Kepala Daerah dan Penyelenggara Urusan Pemerintahan Konkuren Daerah Provinsi, Jurnal Restorasi Hukum, Vol. 5, No. 1, hlm. 34

³⁵ Kementerian Pekerjaan Umum dan Perumahan Rakyat (PUPR) Direktorat Jenderal Bina Konstruksi, 2021, *Pengaturan Jasa Konstruksi*, Buletin Konstruksi Edisi 2, hlm. 3

³⁶ *Ibid.*

³⁷ LPJK tersusun atas sekretariat dan pengurus, dimana pengurus dapat terdiri dari beberapa unsur yaitu: a. Asosiasi Badan Usaha Jasa Konstruksi yang terakreditasi; b. Asosiasi Profesi yang terakreditasi; c. institusi Pengguna Jasa Konstruksi yang memenuhi kriteria; d. perguruan tinggi atau pakar yang memenuhi kriteria; dan e. Asosiasi Terkait Rantai Pasok yang terakreditasi. (*Ibid*)

which then led to the issuance of Government Regulation Number 14 of 2021, amending Government Regulation Number 22 of 2020 regarding the Implementation of Law Number 2 of 2017 concerning Construction Services. In Government Regulation Number 14 of 2021, some of the central government's authority is not given to the governor as the regional government but is assigned to the LPJK.

However, even though some changes have occurred, policies that are at the provincial level are still given to the provincial government based on the principle of deconcentration, for example, the establishment of technical guidelines for implementing national Construction Services policies in the provincial area or the implementation of Construction Services policies that are cross-regency in the provincial area.

The provisions relating the governor's authority in regulating construction services mentioned above apply to all provinces in the unitary territory of the Republic of Indonesia, including South Sulawesi. In South Sulawesi itself, there are two regulations that are still in effect issued by the Provincial Government of South Sulawesi, called the Regional Regulation (Perda) of South Sulawesi Province Number 2 of 2004 concerning the Implementation of Construction Services in the Province of South Sulawesi and the Regional Regulation (Perda) of the Province of South Sulawesi. South Sulawesi Number 2 of 2012 concerning Management of Construction Services.³⁸

As stated in the Appendix of Law Number 23 of 2014 concerning Regional Governments, there is a provision regarding the concurrent division of governmental affairs between the central government and regional governments. These affairs include (1) organizing training for skilled construction workers and (2) organizing construction services information systems in the province.


Upon examining the 2 (two) regulations in the Regional Government of South Sulawesi above through the JDih column for the Regional Government of South Sulawesi, then the reference for regulations stipulated in Law Number 23/2014 concerning Regional Government has been issued by the Regional Government of South Sulawesi. For example, with regard to the implementation of construction service training, it can be seen in Article 31 paragraph 2 of the Regional Regulation of South Sulawesi Province Number 2 of 2012 concerning Management of Construction Services which states that the Regional Government of South Sulawesi can provide guidance in the form of training on the management of construction services. Another example, with regard to information systems, the Regional Government of South Sulawesi can form an Electronic Procurement Service (LPSE) for the implementation of an electronic goods/services procurement service system as stated in Article 1 number 44 of the Regional Regulation of South Sulawesi Province Number 2 of 2012 concerning Service Management Construction.

Similarly, the Regional Regulation of the Province of South Sulawesi Number 2 of 2004 concerning the Organization of Construction Services in the South Sulawesi Province, also regulates guidance in the form of training in construction services, but has not regulated electronic-based construction services.

Moreover, the Governor of South Sulawesi Province is also the representative of the central government in the region, who has the authority regulated in Law 2/2017, including:

- 1) Empowering jakon BU, supervising the process of IUJK-orderly business-supply chain processes and facilitate BUJK partnerships;
- 2) conducting supervision over the selection of service providers, construction work contracts, 4 orderly implementation and utilization of Jakon in the Province;
- 3) conducting supervision of the implementation of safety, health, and sustainability standards (K4);
- 4) organizing supervision of the SKA system, construction workforce training and wages;
- 5) conducting supervision of the use of construction materials and technology, facilitating cooperation with research and development institutions, facilitating the development of priority technologies, and ensuring the use of material and equipment quality standards in accordance with SNI;

³⁸ Jaringan Dokumentasi dan Informasi Hukum (JDih) Provinsi Sulawesi Selatan <https://jdih.sulselprov.go.id/dokumen/cari?q=jasa+konstruksi> diakses 11 Mei 2023

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- 6) strengthening the capacity of institutions, increasing community participation in monitoring the implementation and provision of buildings;
 - 7) collecting data and information on Construction Businesses in the Province.
Meanwhile, the duties and authorities of the Governor of South Sulawesi Province as an autonomous region, as regulated in Law 2/2017, are as follows:
 - 1) Data collection on projects in regions that have the potential to be carried out through a government and business partnership scheme;
 - 2) Competence of construction experts;
 - 3) Construction service information system for provincial coverage;
 - 4) Implementation of development policies, dissemination of regulations, conducting training, technical guidance, and education on construction services;
 - 5) Capacity of construction service businesses;
 - 6) Supervision of business order, operational order, and utilization order of construction services;
 - 7) Development of Construction Services Development Institutions and construction service associations;
 - 8) Technology capability, use and added value of domestic construction services and products;
 - 9) Market development and construction cooperation.

The duties and authorities described above refer to Law Number 2 of 2017 concerning Construction Services, which means that they do not only apply to the South Sulawesi Provincial Government, but to all governors in all regions of Indonesia, with two patterns of duties from the governor, which are as representatives of the central government in the regions and as regional heads in their autonomous regions.

CONCLUSION

The authority of Governors throughout Indonesia, including in this case the Governor of South Sulawesi, has been clearly regulated in Law Number 23 of 2014 concerning Regional Government. The Governor has a dual role as a Representative of the Central Government in the regions and as heads of their autonomous regions. The regulation for special autonomy regions (OTSUS) such as Papua and Aceh differs from this. Likewise in terms of regulation of construction services, this authority can be seen in detail in Law Number 2 of 2017 concerning Construction Services. The regulation of construction services is a concurrent government affair that is delegated to governors, which is also an implementation of the decentralization principle that relates to two things: (1) the implementation of training for construction experts and (2) the implementation of a construction service information system covering the provincial region. Meanwhile with regard to licensing, following issuance of the Job Creation Law, the arrangements and implementation were taken over by the Central Government.


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