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A Critical Study Of Contractor Liability in The Perspective of Maqashid Sharia And Islamic Contract Law

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ABSTRACT

This study critically examines the concept of contractor liability in construction projects from the perspective of Maqashid Sharia and Islamic contract law. In Islamic jurisprudence, contracts are binding moral and legal agreements, and the fulfillment of obligations by all parties, including contractors, is essential to uphold the values of justice, trust, and responsibility. Using a normative legal research method, this paper analyses classical and contemporary fiqh literature, as well as statutory regulations relevant to construction contracts. The study finds that contractor liability is not only a matter of legal obligation but also a reflection of ethical responsibility in line with the objectives of Sharia, particularly the protection of propertyand public welfare(maslahah). When a contractor fails to meet agreed standards or causes damage due to negligence or breach of contract, Islamic law provides clear mechanisms for accountability and compensation. The study concludes that integrating maqashidbased principles into contract enforcement can enhance fairness and sustainability in the construction industry, especially in Muslim-majority contexts.

Keywords: **Contractor liability, Islamic contract law, Maqashid Sharia, and Construction Law**

INTRODUCTION

In the field of construction, contracts play a central role in regulating the relationships and responsibili-ties between stakeholders, particularly between project owners and contractors. In modern legal systems, contrac-tor liability is governed by civil laws and construction regulations that define standards, performance expectations, and penalties for breaches. However, within the framework of Islamic law, contractual obligations extend beyond legal formalitythey are rooted in ethical and religious responsibilities that uphold justice, trust, and accountability.Islamic contract law emphasizes the sanctity of agreements(ʿuqūd) and obligates all parties to fulfill their promises as a moral and legal duty. This perspective aligns with the objectives of Sharia(Maqashid Sharia), which seek to preserve essential human interests, including protection of wealth and promotion of public welfare (maṣlaḥah).

When a contractor fails to perform work in accordance with agreed specifications or causes harm through negligence, this not only constitutes a breach of contract but also a violation of Islamic ethical principles.Despite the growing interest in Shariacompliant economic practices, contractor liability in Islamic construction contracts remains underexplored in academic discourse. This study seeks to bridge that gap by critically analyzing contractor responsibility from both classical fiqh and contemporary Islamic legal perspectives. It aims to offer a comprehensive understanding of how Islamic principles can inform contract enforcement and promote integrity and fairness in the construction sector.

This research is particularly relevant in Muslim-majority countries where the integration

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Volume 6 Number 1 page 37-44

of Sharia based legal norms with national legal frameworks is both a legal and societal expectation by grounding contractor liability in Maqashid Sharia and Islamic contractual doctrine, this study contributes to the development of a more this study contributes to the development of a more just, ethical, and accountable construction industry.

LITERATURE REVIEW

Legal Provisions Regarding Civil Liability For Delay Work By Contractor

Delay in completion of work by the contractor is a breach of contract. The definition of breach of contract according to Harahap is a form of implementation of the obligations of a person or legal entity that is not carried out on time, either intentionally or unintentionally. The consequences of this breach of contract can result in the contractor's obligation to compensate for the losses incurred. A breach of contract can be requested to cancel the agreement if one of the parties experiences a breach of contract.[20]According to Prodjodikoro, "Breach of contract is a failure to achieve a form of achievement in contract law, which means that something must be able to be done as part of the contents of the agreement.

The term default is not included in the contents of the Civil Code, although the legal provisions for default are contained in this regulation. Article 1243 of the Civil Code only states, "Reimbursement of costs, losses and interest due to failure to fulfill an obligation begins to be required, if the contractor, even though he has been declared negligent, continues to be negligent in fulfilling the obligation, or if something that must be given or done can only be given or carried out within a time that exceeds the specified time limit".

Provisions on Default Law in the Civil Code.

Contractors can be declared in default if they meet the elements in Article 1238 of the Civil Code, namely, "Notified by a letter of order, or by a similar deed, or based on the power of the obligation itself, namely if this obligation results in the contractor being considered negligent by the passage of the specified time". The letter of order referred to in Article 1238 is an oral order delivered to the bailiff and also to the contractor. The conclusion is a type of copy of the warning letter. The definition of a letter of instruction according to Andi Malik Pratama is, "A letter of instruction is a letter made to give a written order to a certain party. This type of letter is classified as an official letter and is commonly used by government and private agencies and institutions. The letter is issued by a party who has a higher position to do something that is stated in the contents of the letter". From the definition above, it can be concluded that the letter of instruction referred to in Article 1238 of the Civil Code is a written letter of instruction from the service user to the contractor.

The element does nothing

Sangkoeno stated that, "In a contract where the object is not do something, the contractor does not carry out the actions specified in commitments, such as not building a house, not making a fence, not making a the same company and so on". From the opinion above it can be concluded that the element of not doing something is the act of a contractor who does not carry out the actions agreed upon in the agreement. Legal provisions regarding default are contained in Article 1243 of the Civil Code.The Civil Code states: "Reimbursement of costs, losses and interest due to failure to fulfill an obligation begins to be required if the contractor, even though he has been

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declared negligent, continues to be negligent in fulfilling the obligation, or if something that must be given or done can only be given or done within a time that exceeds the specified time limit.

Delays due to Contractor's error

Construction project delays can be caused by errors in estimating the time needed to complete the project in the planning stage, or various possibilities such as improper management, problems with materials, labor, equipment, finance, and an unsupportive environment that hampers project implementation. And certainly results in project delays. Project delays for contractors will result in time and cost losses, because the benefits expected by the Contractor will be reduced, or even no profit at all. For the Owner, delays in completing the project will cause losses to the operating time of the project results, so that the use of the results of the project development becomes delayed or late.

Delays due to Owner's error

One of the factors that hampers the completion of work by the contractor is due to the owner's mistake in making late installment payments to the contractor. Installments are money used to make installment payments, be it debt, taxes, and so on. Factors that cause late installment payments include lack of money, forgetting the due date or the installer being sick. The result of late installment payments is the delay of work carried out by the contractor. Important parameters in the implementation of construction projects, which are often used as project targets, are budget, schedule, and quality. Success in running a project on time, at cost, and with planned quality is one of the most important goals for owners and contractors. Project implementation that is not in accordance with the plan can result in project delays. In the implementation of construction projects, project delays often occur, which can cause various forms of losses for service providers and service users. For contractors, delays can not only cause project costs to increase due to the increase in project implementation time, but can also result in a decrease in the contractor's credibility for the future. While for owners, delays in the use or operation of construction project results and often have the potential to cause disputes and claims between owners and contractors.

METHODS

This research adopts a normative legal research approach, focusing on the analysis of legal norms, principles, and doctrines within the framework of Islamic jurisprudence(fiqh) and statutory contract law. The study is qualitative in nature, relying on both primary and secondary sources to examine the foundations and applications of contractor liability in Islamic law.

Sources of Legal Materials

- Primary sources include classical Islamic legal texts(such as the works of Al-Shafi'i, A Mawardi, and Ibn Qudamah), the Qur'an, and Hadiths related to contracts, trust, and responsibility.
- Secondary sources involve scholarly articles, fatwas, contemporary books on Islamic commercial law, construc-tion law commentaries, and government regulations related to contract enforcement and professional liability.

The research also incorporates comparative analysis, comparing conventional legal mechanisms of contrac-tor liability with Shariabased interpretations, to highlight similarities,

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Volume 6 Number 1 page 37-44

gaps, and potential integration. This study focuses primarily on small-to-medium scale construction projects in Muslim-majori-ty regions. It does not cover criminal negligence or statesponsored infrastructure disputes unless directly relevant to contractual accountability under Sharia..

RESULTS AND DISCUSSION

Civil Liability Of The Contractor In Case Of Delay In Completion Of Work

Conventionally, civil liability only arises when contractual obligations or non-contractual obligations are not fulfilled. Contractual obligations are obligations that arise from contractual relationships. This means that there is a legal relationship that is intentionally created and desired by the parties who make the agreement/contract. While what is meant by non-contractual obligations are obligations that arise because of the determining Law. In such cases, the existing legal relationship is not based on an agreement but on an act that is determined by law as a legal relationship that gives rise to rights and obligations. One of the obligations that has been determined by law is the obligation to provide compensation as a result of an unlawful act (onrecht matige daad) whether committed due to one's own fault (Article 1365) or due to the fault of another person under one's supervision (Article 1367). In many literatures, such responsibility is referred to as liability. qualitative or vicarious liability and losses caused by the negligence of others.

Based on the explanation, in principle a civil claim for damages can be filed as a result of losses arising from unfulfilled contractual obligations (breach of contract) and losses due to unlawful human actions either due to his/her fault or due to negligence of the person causing the loss. The principle of establishing the legal principle of liability occurs because of an unlawful act which is conventionally known as liability based on fault (liability based on fault or schuld aaspraakelijkeheids) and in its development, especially in literature and practice in the Netherlands, liability without fault (riskico aanspraakelijkeids) was then introduced. The development of new principles and rules of accountability have been added to the Niew Burgerlijk Wetboek (NBW). Conventionally, civil liability only arises when contractual and non-contractual obligations are not fulfilled. Contractual obligations are obligations that arise from contractual relationships.

The basis for a civil liability claim requires the existence of a legal relationship, either a legal relationship arising from an agreement. (contractual) or legal relations that arise not because of an agreement (non-contractual). Legal relations that arise from an agreement assume that the parties consciously from the beginning want a certain legal consequence and the law provides a guarantee to realize it. Meanwhile, in a non-contractual legal relationship, the legal consequences are given by the Law not based on the will of the parties. Legal liability for breach of contract is based on a contractual relationship. Contractual relationships arise either because of an agreement or because of a law. According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons bind themselves to one or more other persons. Meanwhile, Article 1 number 6 of Law Number 18 of 1999 concerning Construction Services formulates a construction work agreement or contract as a whole document that regulates the legal relationship between service users and service providers in the implementation of construction work. According to civil law, if one of the parties in a construction work agreement does not carry out its performance, it is said to be a breach of contract.

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Volume 6 Number 1 page 37-44

Default itself in various literature is defined as not fulfilling obligations as stipulated in a contract or agreement. Failure to fulfill obligations in an agreement can be caused by two things, namely the contractor's error, either intentional or due to negligence, and due to circumstances. force or overmacht/force majure. Meanwhile, Article 1243 of the Civil Code formulates default as follows: "Reimbursement of costs, losses and interest for non-fulfillment of a statement, only begins to be required, if the debtor, after being declared negligent in fulfilling his obligation, continues to neglect it, or if what must be given or made, can only be given or made within a time limit that has passed."

Contractor's Legal Efforts in the Event of Force Majeure Construction Work Contract

In carrying out a contract in the provision of goods and services of construction contractors, it cannot always be implemented properly. The reason for this is because it is not implemented as well as possible, usually there is a second party as a provider of goods and construction contractors who:

a. Failure to carry out work on the contract as agreed;
b. Within a certain period of time, do not continue the construction work that has been started;
c. Directly or indirectly intentionally delaying the completion of agreed work; and
d. Providing false information that is detrimental or could be detrimental to the first party in connection with the work that has been agreed upon.

Therefore, in the contract that has been agreed upon in the provider of goods and also the contractor's construction services that have been agreed upon, it is necessary to include a clause regarding the settlement of disputes which aims to be one of the forms of legal action in carrying out a work contract against the provider of goods and services of the contractor, if one party does not fulfill the agreement or default or the provider of goods and services of the contractor construction has occurred force majeure in the addendum to the construction work contract. According to Richard L. Abel, a dispute is a public statement regarding demands that are not in line.

Legal efforts in the form of dispute resolution are a form or framework to end a dispute or dispute that occurs between the parties. In dispute resolution can be divided into two types, namely through the Court and through Alternative Dispute Resolution.

a. Settlement through the Courts
   Dispute resolution through the courts (litigation) is a pattern of dispute resolution that occurs between disputing parties through the courts. To obtain final and binding results, sometimes If a dispute arises in a contract for contractual purposes, the settlement will be carried out through a civil court mechanism.
b. Dispute Resolution Through Alternative Dispute Resolution
   In the event that the parties want the contract dispute to be resolved in a relatively short time so that it will save costs, then the out-of-court settlement pattern is the best solution. This Dispute Resolution Pattern is known as Alternative Dispute Resolution. The definition of Alternative Dispute Resolution according to the provisions of Article 1 Number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which reads Alternative Dispute Resolution is an Institution for Resolving Disputes or differences of opinion through procedures agreed upon by the parties, namely

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Volume 6 Number 1 page 37-44

out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment.

In this case, civil disputes or differences of opinion can be resolved by the parties through Alternative Dispute Resolution, based on good faith that sets aside a settlement through litigation in the District Court, according to its jurisdiction. In Dispute Resolution or differences of opinion through Alternative Dispute Resolution, in this case it can be resolved in a direct meeting by the parties concerned with a maximum period of 14 (fourteen) days and the results are stated in the existence of a written agreement. In addition, there are also two known patterns of dispute resolution, namely:

a. *The binding adjudicative procedure*, which is a procedure in dispute resolution where the judge's decision in a case is binding on the parties. This form of dispute resolution can be divided into four types, namely litigation, arbitration, mediation-arbitration, and private judges.
b. *The nonbidding adjudicative procedure*, which is a process in dispute resolution where the decision of the judge or the decision of the person appointed in deciding the case is not binding on the parties. This means that with the decision, the parties can agree or reject the contents of the decision. In resolving disputes in this way, it is divided into six types, namely conciliation, mediation, mini-trial, summary Jury Trial, Neutral Expert Fact Finding, and Early Neutral Evaluation. The appropriate out-of-court settlement patterns applied to contract disputes are mediation, arbitration and conciliation. Steven Rosenberg defines mediation as a method of resolving problems that is carried out voluntarily, confidentially, and usually cooperatively, without any element of coercion. Jay Folberg defines mediation as a negotiation process that is assisted neutrally in an effort to reach consensus and resolve disputes. In another statement, it states that Mediation is a method of resolution that is carried out voluntarily between fellow disputants, without coercion with the assistance of a mediator appointed by the parties but the mediator does not have any power to decide, the mediator only functions to find a middle ground, so the final decision and execution remains with the parties

The definition of arbitration according to the provisions in Article 1 Number 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is a method of resolving a civil dispute outside of the general courts which is based on an arbitration agreement made in writing by the disputing parties. Definition of Arbitration Institution according to Article 1 Number 8 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, namely: Arbitration Institution is a body chosen by the disputing parties to provide a decision on a particular dispute; the institution can also provide a binding opinion on a particular legal relationship in the event that a dispute has not yet arisen.

Conciliation is an effort to bring together the desires of the disputing parties to reach an agreement and resolve the dispute. According to Oppenheim, conciliation is a process of resolving a dispute by hand it over to a commission of people tasked with explaining the facts and (usually after hearing the parties). and try to reach an agreement), make proposals for a settlement, but the decision is not binding. And there is a need for contract law experts related to the formulation of new construction work contracts. The essence of the statement is the resolution of disputes to a commission and the decision made by the commission is not binding on the parties. This means that the parties can agree or reject the contents of the decision. In the contract

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url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 6 Number 1 page 37-44

for construction as required procedures, there is a special clause that regulates dispute resolution, which is regulated in the contents of the contract in the provision of construction goods and services.

Contractor's Civil Liability reviewed from Decision Number 257/Pdt.G/2019/PN Jkt.Brt

In analyzing this, it is necessary to take a decision as a comparison in viewing the decision on civil liability. The author's analysis of the decision is as follows. Decision Number 257 / Pdt.G / 2019 / PN Jkt.Brt has not provided a decision regarding the contractor's responsibility due to the delay in completing the work because the plaintiff's lawsuit lacks parties. A lawsuit lacking parties (plurium litis consortium) is one of the classifications of an error in persona lawsuit.Disqualification in person occurs when acting as a plaintiff is a person who is not qualified (disqualified) because the plaintiff is in the following conditions:

a. Not having the right to sue for the disputed case, A lawsuit filed by a person who is not entitled or does not have the right to do so, is a lawsuit that contains a formal defect of error in persona in the form of disqualification in persona, namely the party acting as the plaintiff is a person who does not have the requirements for that. Or the father acts as plaintiff for the divorce of his child's marriage.
b. Incompetent to take legal action, a person who is a minor or guardian is not capable of taking legal action. Therefore, they cannot act as plaintiffs without the help of parents or guardians. Lawsuit which they submitted without the assistance of parents or guardians contained a formal defect, error in persona, in the form of disqualification because the person acting as plaintiff was a person who did not meet the requirements.

Another form of error in persona that may occur is the person who is named as the wrong defendant (gemis aanhoeda nigheid). For example, the person who borrowed the money is A, but the person named as the defendant to pay off the payment is B. Such a lawsuit is wrong and mistaken, because the wrong person is placed as the defendant. In addition, it can also be a wrong target, if the person being sued is a minor or under guardianship, without including their parents or guardian.

Another form of error in persona is called plurium litis consortium (a lawsuit lacking a party), namely the party acting as the plaintiff or being drawn as the defendant, among others, is incomplete, there are still people who must act as the plaintiff or be drawn as the defendant. Therefore, the lawsuit in the form of plurium litis consortium means the lawsuit is lacking a party. Based on the explanation above, it shows that the decision of the panel of judges has It is correct to state that a lawsuit lacking parties or called plurium litis consortium is a form of lawsuit that is an error in persona. The Legal Consequences of an Error in Persona Lawsuit are that the lawsuit is deemed not to meet the formal requirements, therefore the lawsuit is qualified as containing formal defects

CONCLUSION

Conclusion of this paper are:

1. Legal Regulations Concerning Civil Liability for Delays in Completion of Work by Contractors are Regulated in the Civil Code, Law Number 2 of 2017 Concerning Construction Services, and Government Regulation Number 54 of 2016 Concerning the Provision of Construction Services.

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Volume 6 Number 1 page 37-44

2. Factors that hinder the completion of work by contractors that cause civil liability consist of delays due to contractor errors, delays due to owner errors, and delays caused by parties other than the two parties.
3. Discussion of Contractor's Civil Liability in Cases Delay in Completion of Work Consists of the Principles of Civil Liability, Contractor's Legal Remedies for Field Force Majeure in the Addendum to the Construction Work Contract, and Civil Liability for Delay in Completion of Work by the Contractor.

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