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Legal Action Against Contract Termination Due To Breach of Contract

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Abstract

Construction work contracts are the legal basis governing the relationship between service providers and users in construction projects, requiring legal certainty, accountability, and a balance of rights and obligations. However, in practice, users often terminate contracts unilaterally on the grounds of default, which actually harms providers and triggers debates about the boundary between default and unlawful acts. Supreme Court Case No. 4/Yur/Pdt/2018 confirms that termination without a valid legal basis constitutes an unlawful act that gives rise to liability. This study uses a normative legal method with a legislative, conceptual, and case approach to the Civil Code, Law 2/2017 on Construction Services, Law 30/2014 on Government Administration, and the Pekanbaru Administrative Court decision No. 21/G/2023/PTUN. PBR and South Jakarta District Court No. 311/Pdt.G/2014/PN Jkt. Sel., and finds differences in the determination of absolute competence between civil and administrative courts, which creates legal uncertainty. Outside of litigation, alternative dispute resolution mechanisms are available, such as mediation, conciliation, arbitration, and the construction dispute council as regulated by Law 2/2017. Therefore, regulatory harmonisation and the application of fair liability principles are necessary so that the resolution of construction contract disputes provides protection and certainty for all parties.

1. Introduction

In national development activities, construction work contracts are an essential legal instrument because they form the basis of a legal relationship between service providers and service users.[1] Through these construction contracts, the rights, obligations, and responsibilities of both parties are regulated in detail to ensure the implementation of projects based on the basic principles of construction contract law, namely efficiency, accountability, and legal certainty. Construction contracts do not merely serve as administrative tools, but also have a strategic position as a manifestation of the principles of justice and legal certainty in infrastructure development.[2] However, in practice, the legal relationship between service users and service providers does not always run smoothly. Problems often arise when one party, particularly the service user, unilaterally terminates the contract on the grounds of delays, non-compliance with the work, or alleged default by the service provider. However, when the service user is the government, unilateral termination of a construction contract

[1] Gideon F. Samuel, Firdja Baftim, dan Anna S. Wahongan, "Pengaturan Hubungan Kerja antara Pengguna Jasa dan Penyedia Jasa dalam Kontrak Kerja Konstruksi," *Lex Administratum* 9, no. 2 (2021): 253–61, https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/33708/31891.
[2] Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian," *Jurnal Binamulia Hukum* 7, no. 2 (2018): 107–20, https://doi.org/10.37893/jbh.v7i2.318.

generates a normative conflict between private contract law (Book III Civil Code) and public administrative law (Government Administration Act). This dual character creates uncertainty regarding the applicable liability regime and the competent judicial forum.[3]

In contractual relationships, it is not uncommon for problems to arise when the service user unilaterally terminates the agreement on the grounds of delays in work, results that are deemed unsatisfactory, or alleged breach of contract by the service provider. Such unilateral termination is generally rooted in dissatisfaction with the provider's performance, the perception that the services provided no longer meet the needs, or the desire to maintain flexibility before the contract is automatically renewed. Various studies show that subjective factors on the part of the service user greatly influence these decisions: some genuinely intend to terminate the contract because they feel there is a mismatch between their expectations and the quality of service, while others propose termination only as a precautionary measure, rather than in response to actual contractual breaches by the service provider.[4]

This problem creates a legal dilemma because contract termination without a valid procedure can cause material and immaterial losses for service providers, even threatening the continuity of their business activities. In this context, a fundamental question arises: is unilateral contract termination merely a form of default, or can it also be categorised as an unlawful act (*onrechtmatige daad*)?[5] Based on Supreme Court Jurisprudence Number 4/Yur/Pdt/2018, unilateral contract termination by a service user without a clear legal basis has been classified as an unlawful act. Thus, the party that unilaterally terminates the contract can be held legally liable for the losses incurred, in accordance with the principle of liability as contained in Article 1365 of the Civil Code (BW), which states that any unlawful act that causes loss to another person obliges the perpetrator to compensate for the loss.[6]

The principle of liability applies not only to individuals or private entities, but also to the government when it acts as a service user in a construction contract. In this case, the term governmental liability is used, which refers to the state's obligation to provide compensation or damages if the actions of government officials cause losses to citizens.[7] This provision is in line with the spirit of Law Number 30 of 2014 Concerning Government Administration (Law

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[3] Suherman, & Mayangsari, A. (2020). Indonesia construction service law relating to MRT development contracts: A legal review with FIDIC international contract. *International Journal of Criminology and Sociology*, *9*, 1688–1700. https://doi.org/10.6000/1929-4409.2020.09.192.

[4] Torsten J. Gerpott, Nima Ahmadi, dan Daniel Weimar, "Who Is (Not) Convinced to Withdraw a Contract Termination Announcement? A Discriminant Analysis of Mobile Communications Customers in Germany," *Telecommunications Policy* 39, no. 1 (2015): 38–52, https://ideas.repec.org/r/eee/telpol/v28yi9-10p751-765.html.

[5] Yusrin Edyanti, "Perbuatan Melawan Hukum oleh Penguasa (Onrechtmatige Overheidsdaad): Suatu Tinjauan Analisis Administrasi Pemerintahan," *Dharmasisya: Jurnal Fakultas Hukum Universitas Indonesia* 2 (2022): 719–34, https://scholarhub.ui.ac.id/dharmasisya/vol2/iss2/14.

[6] Vincentius Gegap Widyantoro dan Faizal Kurniawan, "Perkembangan Prinsip dan Tanggung Gugat dalam Kontrak Kerja Pekerjaan Konstruksi," *Arena Hukum* 13, no. 1 (2020): 157–80, https://doi.org/10.21776/ub.arenahukum.2020.01301.9.

[7] Yong Zhang, *Comparative Studies on Governmental Liability in East and Southeast Asia* (The Hague and Boston: Kluwer Law International, 1999), 10, https://brill.com/edcollbook/title/10555?language=en&srsltid=AfmBOor28v8M_zCqQb-9uYSNOjQBfyiI1l-IOx2u1oo-W-VRFtj8u_JF.

No. 30/2014) and PERMA No. 2 of 2019, which provides space for the public or service providers to sue the government in the event of unlawful actions that cause harm, including unilateral termination of construction work contracts.

The issue has become increasingly complex due to differences in interpretation among judicial institutions regarding the forum with jurisdiction to adjudicate such disputes. Some rulings, such as Pekanbaru Administrative Court Decision Number 21/G/2023/PTUN.PBR, consider that the termination of a contract by a government official is a public administrative action and therefore falls within the jurisdiction of the Administrative Court (PTUN). However, a number of other decisions, such as Teluk Kuantan District Court Decision Number 12/Pdt.G/2021/PN Tlk and South Jakarta District Court Decision Number 311/Pdt.G/2014/PN Jkt. Sel., place contract termination within the jurisdiction of civil law, because the legal relationship between the government and service providers remains private in nature as stipulated in Book III of the Civil Code. This difference indicates an overlap of jurisdiction that has the potential to cause legal uncertainty, particularly for service providers who have suffered losses and are seeking justice and appropriate compensation.[8] His divergence reveals not merely a technical difference in forum selection, but a deeper structural problem, whether government contract termination should be governed by private law logic or by administrative law logic.

In addition to litigation, Indonesian law also provides opportunities for contract dispute resolution through non-litigation mechanisms, namely deliberation, mediation, conciliation, arbitration, or through the Construction Dispute Board as stipulated in Law Number 2 of 2017 concerning Construction Services (Law No. 2/2017), Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Law No. 30/1999), and Minister of Public Works and Public Housing Regulation Number 11 of 2021.[9] The peaceful resolution of disputes through non-litigation channels is essentially intended to speed up the process, save costs, and maintain good relations between the parties.[10] However, in practice, the effectiveness of non-litigation dispute resolution still faces a number of obstacles, particularly related to the enforceability of arbitration or dispute board decisions, which do not yet have strong legal certainty, as well as the tendency of some parties to be reluctant to implement final and binding decisions.[11]

Default (breach of contract) produces clear legal consequences for the party in breach and gives rise to the injured party's right to seek legal remedies, particularly compensation so that, in principle, no party is left bearing a loss without a legally recognized avenue for recovery.[12] Considering the various issues outlined above, a study of legal remedies for

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[8] Satria Winisuddha, "Analisis Yuridis Pemutusan Kontrak Kerja Sama Pengadaan Barang atau Jasa secara Sepihak," *Dharmasisya* 1 (2021): 1–40, https://scholarhub.ui.ac.id/dharmasisya/vol1/iss2/40/

[9] Nurindria Naharista Vidyapramatya et al., "Authority of the Dispute Council in the Resolution of Construction Disputes in Indonesia," *Law Reform* 19, no. 6 (2023): 88–109, 10.14710/lr.v19i1.49141

[10] Lintang Yudhantaka, Yohanes Sogar Simamora, dan Ghansham Anand, "Binding Power of Dispute Board Judgment in Construction Dispute Settlement," *Yuridika* 38, no. 1 (2023): 159–70, https://doi.org/10.20473/ydk.v38i1.42717.

[11] Gede Aditya Pratama, *Alternatif Penyelesaian Sengketa* (Sumedang: Mega Press Nusantara, 2023), 22.

[12] Febrian Rizki Pratama et.al., "Default of the Construction Service Provider as a Reason for Termination of the Construction Work Contract", *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, Vol. 23, No. 3, Desember 2024, h. 7 (1-22), https://doi.org/10.31941/pj.v23i1.

contract termination due to default is very important and relevant. This study serves to deepen our understanding of the concept of liability in civil and administrative law, as well as to identify the boundaries between actions that constitute contractual default and unlawful acts (PMH). In addition, analysis of various court decisions also provides an empirical picture of the direction of legal developments in Indonesia regarding construction contract disputes, particularly those involving the government as one of the parties to the contract.

This study addresses three central questions: (1) whether unilateral termination by the government should be classified as breach of contract or tort; (2) which judicial forum has jurisdiction over such disputes, and (3) whether compensation limitations in administrative courts provide adequate legal protection. The novelty of this research lies in clarifying legal certainty regarding judicial authority, specifically, which court has jurisdiction to hear cases involving unilateral termination of construction work contracts. This study argues that the District Court (*Pengadilan Negeri*) should have jurisdiction over disputes concerning the unilateral termination of construction contracts. The novelty of this research lies in reconstructing the boundary between contractual liability and governmental tort liability in construction contracts, and in arguing that disputes concerning unilateral termination must remain within the jurisdiction of the District Court to preserve full compensatory justice or in other words the uniqueness of this study lies in the reconstruction of the doctrinal boundaries between contractual liability and civil liability of the government, as well as in the argument that disputes related to unilateral termination of construction contracts should remain under the jurisdiction of the District Court to ensure full compensation justice. Theoretically, this study clarifies the interaction between civil and administrative liability regimes. Practically, this study guides forum selection and strengthens legal certainty for construction service providers.

The limitation of compensation in the State Administrative Court raises serious concerns regarding effective legal protection. Article 3(1) of Government Regulation No. 43 of 1991 restricts compensation to a maximum of IDR 5,000,000, a figure that is manifestly disproportionate to the financial scale of construction projects. Such limitation may undermine the principle of full compensation and the constitutional guarantee of legal protection. This condition generates a structural dilemma: while PERMA No. 2 of 2019 appears to expand the jurisdiction of the Administrative Court in cases of governmental misconduct, the remedial framework available within that forum may not adequately protect construction service providers. The question, therefore, arises whether disputes concerning unilateral termination should instead remain within the jurisdiction of the District Court to ensure effective and proportional compensation.

In comparison with prior studies, most existing research focuses on preventive measures, that is, prevention before a construction contract is terminated, rather than repressive remedies after a unilateral termination has occurred.[13] Other studies also discuss

[13] Ramadhani, Kaulah Sayu, Ermanto Fahamsyah, dan Mohammad Ali, "Perlindungan Hukum Bagi Penyedia Atas Pemutusan Sepihak Kontrak Konstruksi Dalam Pengadaan Barang dan Jasa Pemerintah," *Equivalent: Jurnal Ilmiah Sosial Teknik* 6, no. 1 (2023): 1–18, https://doi.org/10.59261/jequi.v6i1.168.

the legality or legal status of construction contract termination, rather than examining what legal remedies a service provider should pursue against unilateral termination.[14] In addition, some studies focus on legal certainty in ensuring that procurement processes are transparent, fair, and accountable, and provide legal protection for the parties involved. This differs from the present research, which specifically concentrates on legal remedies against arbitrariness by construction service users toward construction service providers.[15]

2. Methods

This study utilises a normative legal research method that focuses on the study of positive legal norms, legal principles, and doctrines governing contractual relationships between service providers and service users in the field of construction services. This approach was chosen because the issues studied are conceptual and normative in nature, rather than empirical.[16] The research data were obtained from secondary legal materials, which include primary legal materials such as the Civil Code, Law No. 2/2017, Law No. 30/2014, Law No. 30/1999, and PERMA Number 2 of 2019 concerning Guidelines for Resolving Government Action Disputes. In addition, the research also utilised secondary legal materials in the form of scientific literature, legal journals, expert opinions, and jurisprudence relevant to the issues of contract termination and legal liability.

The analysis was conducted through a statute approach, a conceptual approach, and a case approach. The statutory approach was used to examine the compatibility of positive legal norms with dispute resolution practices, while the conceptual approach was used to deepen understanding of the concepts of default, unlawful acts, and government liability. The case approach was carried out by reviewing a number of court decisions, such as the Pekanbaru Administrative Court Decision Number 21/G/2023/PTUN.PBR and the South Jakarta District Court Decision Number 311/Pdt.G/2014/PN Jkt. Sel. to see the differences in judges' views in determining absolute competence and the basis for liability. The results of the analysis were then systematically compiled to arrive at legal conclusions and provide normative recommendations regarding the most appropriate forum for dispute resolution in cases of contract termination due to breach of contract**.**

3. Results and Discussion

3.1. The Principle of Liability in Civil Law

Liability (*aansprakelijkheid*) constitutes a specific form of legal responsibility distinct from political accountability. As explained by Tatiek Sri Djatmiati, responsibility refers to the government's political accountability to parliament, whether collective or individual, whereas liability concerns the legal obligation of the state or government to provide compensation for direct or indirect material or immaterial harm suffered by citizens.[17] Liability thus operates

[14] Ni Putu Maista Mahadewi Jaya dan I Gede Perdana Yoga, "Analisis Legalitas Pemutusan Kontrak dalam Proyek Konstruksi Berdasarkan Standar Operasional Prosedur di Kementerian Pekerjaan Umum," *Media Akademik* 3, no. 9 (2025), https://doi.org/https://doi.org/10.62281/5ap2n348.
[15] Radella Elfani, Busyra Azheri, dan Yulfasni, "Pemutusan Kontrak Pekerjaan Jasa Konstruksi PT . Inanta Bhakti Utama dalam Proyek Drainase Oleh Dinas Pekerjaan Umum dan Penataan Ruang Kota Bukittinggi" 4, no. 2 (2023): 245–54, https://doi.org/https://doi.org/10.55637/jph.4.2.6589.245-254.
[16] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005), 35.
[17] Anner Mangatur Sianipar, *Perkembangan Hukum PT Perorangan* (Pasuruan: CV Penerbit Qiara Media, 2021), 18.

within the sphere of legal claims, particularly civil claims, where one party must bear losses suffered by another, reflecting the classical maxim that "whoever causes harm must repair it."[18] Liability arises as a legal consequence of an act or omission causing damage. The legal system recognizes various models of liability, including fault-based liability, presumption of liability, strict liability, and limitation of liability. These models provide the doctrinal foundation for assessing responsibility in civil disputes.[19]

Law No. 30/2014 distinguishes between responsibility and liability, particularly in the context of delegation of authority. Although the UUAP does not define liability explicitly, Article 1, point 23 implies a juridical distinction between political responsibility and compensatory legal liability. In the context of construction contracts, disputes must first be examined under contractual liability pursuant to Article 1243 of the Civil Code. The contractual regime *constitutes lex specialis* governing the relationship between service users and service providers. Unilateral termination based on delay or non-performance is, therefore, in principle, to be assessed as breach of contract (*wanprestasi*). Not every unlawful termination constitutes tort. Where the termination is based on a contractual clause—even if its application is disputed—the matter remains within the realm of contractual liability. Tort liability arises only when the termination violates external legal norms, such as principles of legality, due process, or proportionality, thereby exceeding the contractual framework. Only when termination exceeds contractual boundaries, namely, when it is executed without a valid contractual basis, without procedural compliance, or in violation of good faith and proportionality, does the analysis shift toward tort liability under Article 1365 of the Civil Code.

Article 1365 of the Civil Code provides that any unlawful act causing loss obliges the perpetrator to compensate. The elements, unlawfulness, fault, causation, and relativity, are cumulative. However, these elements must be applied concretely in construction contract termination cases. Unlawfulness must be interpreted in light of the 1919 Arrest of the Hoge Raad, which broadened the meaning of unlawful acts to include conduct contrary to propriety and due care. A unilateral termination that disregards procedural safeguards or contractual due process may therefore satisfy this element. Fault in governmental termination must be constructed not merely as negligence, but potentially as maladministration, abuse of discretion, or disproportionate exercise of authority. This distinction is critical when the service user is a public authority. Causation requires proof that the termination directly caused economic loss, including actual loss and foreseeable lost profits. Not all financial consequences automatically qualify as compensable damage. Thus, unilateral termination does not automatically constitute tort; it must satisfy these cumulative elements.

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[18] Ismu Gunadi Widodo, Eddy Pranjoto W., dan Jonaedi Efendi, "Law Liability of Construction Failure in Indonesia," *International Journal of Civil Engineering and Technology* 9, no. 11 (2018): 2363–71, https://iaeme.com/MasterAdmin/Journal_uploads/IJCIET/VOLUME_9_ISSUE_11/IJCIET_09_11_236.pdf.

[19] Agustina et al, "Reconstruction of Corporate Liability Law in the Provision of Construction Services," *Journal of Law and Sustainable Developmen*, Vol. 11, No. 7 (2023), 01-018, https://doi.org/10.55908/sdgs.v11i7.

Supreme Court Jurisprudence No. 4/Yur/Pdt/2018 classifies unilateral contract termination without lawful basis as an unlawful act. The ratio decidendi indicates that the Court emphasized the absence of legal justification and procedural compliance rather than merely the existence of a contractual relationship. The jurisprudence demonstrates that the contractual regime may be set aside when termination violates principles of legality, propriety, or due care. Nevertheless, this does not imply that every termination constitutes tort; the classification depends on whether the termination represents contractual exercise of rights or arbitrary conduct.

Article 1367 of the Civil Code introduces the concept of vicarious liability, whereby a superior may be held responsible for the acts of subordinates acting under their authority. This provision becomes relevant in government contracts where termination decisions are executed by officials such as Budget Users (PA) or Commitment-Making Officials (PPK) acting on behalf of the state. Liability also extends to governmental liability when the service user is the government. Governmental liability refers to the obligation of the state or public authorities to provide compensation for losses caused to citizens, whether directly or indirectly. Such liability may arise from administrative decisions, regulatory acts, or contractual termination executed by government officials acting on behalf of the state.[20]

Legal norms in Indonesia state that civil lawsuits can be based on two grounds, namely breach of contract and unlawful acts,[21] or what is referred to in Dutch literature as *onrechtmatige.* Initially, unlawful acts were only referred to when the act directly violated a regulation. However, in 1919, through a Hoge Raad ruling, the term *onrechtmatige-daad* was expanded to mean that a violation also includes an act that is contrary to propriety in social life. Liability based on fault can be referred to as 'fault liability' or 'liability based on the fault principle,' which is found in Article 1365 of the Civil Code, which is based on fault and unlawful acts. When the service user is the government, the issue extends beyond ordinary civil liability into the realm of governmental liability (*onrechtmatige overheidsdaad*). Philipus M. Hadjon distinguishes between liability arising from unlawful administrative decisions and liability arising from unlawful governmental acts. Government contracts possess a hybrid nature: formally private, yet substantively influenced by administrative law principles. Government officials are bound by the principle of legality and the obligation to exercise discretion prudently. This hybrid character complicates the classification of disputes and requires careful doctrinal differentiation between contractual breach and unlawful governmental acts. Failure to maintain this distinction risks either over-expansion of tort liability or erosion of contractual certainty in public procurement law.

Under Law No. 30/2014 and PERMA No. 2 of 2019, unlawful governmental acts may be challenged before the Administrative Court. However, the choice of forum is not merely procedural; it determines the applicable legal regime and the scope of remedies. Government Regulation No. 43 of 1991 limits compensation in Administrative Court proceedings to a

[20] Mriya Afifah Furqania dan Ahmad Sholikhin Ruslie, "Tanggung Gugat Pemerintah dalam Perlindungan Data," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 482–94, https://doi.org/10.53363/bureau.v3i1.195.

[21] Karuna Dewi dan I Gede Agus Kurniawan, "Civil Law Liability of Debtors in Credit Agreements with Individual Guarantees", *Journal of Law, Politic and Humanities (JLPH)*, Vol. 4, No. 6, 2024, p. 2596-2610, https://doi.org/10.1080/09615768.2023.2283234.

maximum of IDR 5,000,000. This disparity between potential economic loss and statutory compensation limitation reinforces the urgency of doctrinal clarity regarding forum selection. Such limitation raises proportionality concerns in construction disputes where financial losses often far exceed this threshold. Judicial practice reveals divergent interpretations regarding jurisdiction. Some courts classify unilateral termination as an administrative act subject to review by the Administrative Court, while others treat it as a private contractual dispute falling under the jurisdiction of the District Court. This overlap creates structural legal uncertainty. The determination of the competent forum should not depend merely on the identity of the terminating party, but on the nature of the dispute itself. Where the core issue concerns compensation for economic loss arising from contractual relations, District Court jurisdiction is more consistent with the principle of full compensation and civil liability doctrine. Judicial control over unilateral government termination remains essential to prevent arbitrary exercise of administrative discretion. Nevertheless, the expansion of tort liability must be carefully confined to situations involving procedural violations, abuse of power, or disproportionate exercise of discretion. Without such doctrinal limits, tort claims risk undermining contractual certainty. Clear and consistent legal standards are therefore urgently required to distinguish breach of contract from unlawful governmental acts. Only through such doctrinal clarification can the legal system balance contractual certainty with effective legal protection for construction service providers.[22]

Therefore, unilateral termination of a construction contract by the government cannot automatically be classified either as breach of contract or as an unlawful act. Its legal qualification depends on whether the termination remains within contractual boundaries or constitutes abuse of authority, procedural violation, or disproportionate exercise of discretion. The choice of forum is not merely procedural but determines the applicable liability regime and the scope of compensation. To ensure legal certainty and effective protection, clear doctrinal standards must distinguish contractual default from unlawful governmental acts, while preserving judicial control over administrative discretion. The determination of absolute jurisdiction in disputes over unilateral termination of government construction contracts presents a fundamental doctrinal dilemma. On the one hand, contract termination is rooted in contractual relations governed by private law. On the other hand, when termination is executed by a government official through a formal decision, it may constitute an exercise of public authority subject to administrative law review. This tension between contractual justice and administrative legality has generated fragmented judicial practice, particularly following Supreme Court Jurisprudence No. 4/Yur/Pdt/2018.

3.2. Analisis Analysis of Construction Contract Termination Decisions in Administrative Courts and District Courts

The determination of which court possesses absolute jurisdiction over unilateral termination of government construction contracts depends on the prior legal qualification of the termination itself. The central question is whether such termination constitutes contractual

[22] Rahman, W., Djatmika, P., & Madjid, A. (2024). Discretion of government officials detrimental to state finances: The intersection between administrative illegality and criminal illegality. *Law Reform, 20*(2), 230–249. https://doi.org/10.14710/lr.v20i2.64129.

default (wanprestasi) or an unlawful act (*onrechtmatige daad*). Supreme Court Jurisprudence No. 4/Yur/Pdt/2018 serves as an important normative reference, particularly in cases where termination reflects the exercise of public authority without lawful basis or procedural justification. However, it does not automatically transform every contractual termination into a tort, nor does it displace arbitration or private dispute mechanisms where such clauses exist. Its applicability depends on the juridical character of the termination and the source of authority exercised.[23]

Where unlawful termination constitutes an act of public authority (*onrechtmatige overheidsdaad*), PERMA No. 2 of 2019 directs jurisdiction to the Administrative Court. Yet doctrinal disagreement persists. Ghansham Anand maintains that termination originates from contractual relations and should therefore remain within the realm of private law adjudicated by the District Court. This tension confirms that Government contracts operate within a hybrid regime. While contractual principles govern performance and breach, the exercise of termination by public officials may simultaneously constitute an administrative act when it produces public law consequences. Accordingly, jurisdiction cannot be determined solely by reference to the identity of the government as a contracting party, but must depend on the juridical character of the termination itself. The following judicial decisions illustrate how courts have navigated this tension in practice.

1. Administrative Court Decision Number 21/G/2023/PTUN.PBR

In this decision, a dispute arose between PT. Merbau Indah Abadi and the Meranti Islands Regency Government, with the object of the dispute being Contract Termination Letter Number: 600/DPUPR-BM.SP.Tender.01.003.5/9 dated 17 March 2023, concerning the Contract Termination Letter from the Budget User Authority of the Public Works and Spatial Planning Agency (PUPR) of the Meranti Islands Regency for the Sei. Nyiur-Sesap Road Project carried out by PT. Merbau Indah Abadi. Based on the aforementioned, the Pekanbaru Administrative Court issued the following ratio decidendi:

A decision is classified as a State Administrative Decision or a Government Administrative Decision if it has the following elements:[24]

1. A decision in written form (also includes factual actions);
2. Issued by a State Administrative Agency or Official or government official (State Administrative Agencies and/or Officials in the executive, legislative, judicial, and other state administrative spheres);
3. Contains state administrative legal actions;
4. Based on applicable laws and regulations and the General Principles of Good Governance);
5. Concrete, individual and final in nature (final in a broader sense);
6. as legal consequences for a person or civil law entity (also decisions that have the potential to cause legal consequences);

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[23] Desmilia Eka Andriana et al, "Legal Standing and Organization's Right to Sue in Cases of Onrechtmatige Overheidsdaad (Unlawful Government Acts) After the Implementation of Law No. 30 of 2014", *Jurnal Kajian Syari'ah Dan Masyarakat*, Vol. 23, No. 2, 2023, 283-296, https://doi.org/10.19109/nurani.v23i2.19831.

[24] Bagus Oktafian Abrianto et al., "Problematika Keputusan Tata Usaha Negara yang Bersifat Fiktif Positif Setelah Undang-Undang Nomor 11 Tahun 2020," *Arena Hukum* 16, no. 3 (2023): 532–56, https://doi.org/10.21776/ub.arenahukum.2023.01603.5.

7. The decision applies to the public.

In the decision, the panel of judges explained the termination of the contract as an administrative decision, stating that the Object of the Dispute contained legal substance in the form of a unilateral termination of contract[25] (*eenzijdige publiek rechtshandelingen*) by the Meranti Islands Regency Government for the construction work package carried out by PT. Merbau Indah Abadi, namely by issuing the Object of the Dispute, which resulted in the termination of PT. Merbau Indah Abadi was unilaterally terminated and PT. Merbau Indah Abadi was not paid for the construction work it had carried out and was blacklisted. Therefore, it can be concluded that the issuance of the object of dispute had legal consequences for PT. Merbau Indah Abadi. Therefore, in the opinion of the Panel of Judges, the Object of Dispute has fulfilled the elements of an Administrative Decision. The Panel of Judges concluded that the object of dispute has fulfilled the elements of an Administrative Decision that can be examined and is under the absolute authority of the Administrative Court, so that the formal requirements for a lawsuit in terms of the absolute competence of the Court must be declared fulfilled.

Termination of construction contracts, as viewed from the provisions of Article 93, Paragraph 1 of Law Number 4 of 2015, which has been replaced by Presidential Regulation Number 16 of 2018, can be carried out based on the service provider's default, with the issuance of a decree by a government official. Although statutory provisions permit termination upon default, the juridical qualification of such termination remains dependent on the form and legal consequences of the act. While certain scholars argue that government contractual relations remain within the sphere of private law, the present case demonstrates that termination may acquire administrative character when embodied in a formal governmental decision producing public law consequences, such as blacklisting and exclusion from procurement processes.

2. Decision of the Teluk Kuantan District Court Number 12/Pdt.G/2021/PN Tlk

A dispute arose between PT. Ramawijaya as the service provider and plaintiff against the Commitment Making Officer (PPK) (Yusrizal Zuhri, S.T.) at the Kuantan Singin Regency Education, Sports and Youth Agency as the service user and defendant I and the Government of the Republic of Indonesia Cq. the Kuantan Singingi Regency Government Cq. the Kuantan Singingi Regency Education, Youth and Sports Office as the second defendant. The dispute arose due to the termination of the contract by the first defendant against the plaintiff for the construction of the athletic track at the Kuantan Singing Regency Main Stadium Sports Centre. Based on this dispute, the Teluk Kuantan District Court provided the following legal considerations. The court dismissed the claim on evidentiary grounds without undertaking a substantive qualification of the termination or examining the relevance of PERMA No. 2 of 2019. The decision, therefore, reflects procedural disposition rather than jurisdictional clarification.[26]

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[25] Norhernani Md Nor dan Mohd Saidin Misnan, "Issues in Termination of Construction Contract: Based on Law Cases", International Journal of Research and Innovation in Social Science (IJRISS), Vol. 8, No. 1, 2024, 671-683, https://dx.doi.org/10.47772/IJRISS.2024.801051.

[26] M. Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, ed. ke-2, cet. ke-2 (Jakarta: Sinar Grafika, 2019), 60.

From a doctrinal perspective, the court resolved the dispute on evidentiary grounds without undertaking a substantive qualification of the termination or examining the relevance of PERMA No. 2 of 2019. The decision, therefore, reflects procedural disposition rather than jurisdictional clarification.[27]

3. South Jakarta District Court Decision Number 01/Pdt.G/2019/PN.Jkt.Sel.

This decision arose due to a dispute between PT. Tirta Dhea Addonnics Pratama and the Commitment Making Officer (PPK-10), Bts Kota Kendari– Belalo/Lasolo & Pohara – Wawotobi, National Road Implementation Agency XIV Palu, Directorate General of Highways, Ministry of Public Works and Public Housing, Ir. Ilham, PT. Yodya Karya (Persero), Supervision Consultant, Minister of Public Works and Public Housing, Inspector General of the Ministry of Public Works and Public Housing, Director General of Highways of the Ministry of Public Works and Public Housing, Director of Road Preservation of the Ministry of Public Works and Public Housing, Head of the National Road Implementation Agency XIV Palu, Head of the National Road Implementation Task Force Region II Southeast Sulawesi Province or in this case the defendants as the Kendari City Government with the dispute arising from the decision issued by the Commitment Making Officer (PPK-10), Bts Kendari City – Belalo/Lasolo & Pohara – Wawotobi No. PW.0401.Bb14/PJNW.II.SULTRA/PPK-10/246.13, regarding the termination of the contract for the road widening package for the North Konawe Regency-Pohara (MYC) border. Based on this, the Panel of Judges of the South Jakarta District Court provided the following *ratio decidendi*:

The South Jakarta District Court does not have the authority to adjudicate this case and the authority to adjudicate lies with the Indonesian Arbitration and Alternative Dispute Resolution Forum for Construction (BADAPSKI)[28] and the State Administrative Court also does not have the authority to adjudicate this case, This is based on Article 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as Law Number 30 of 1999), therefore the Panel of Judges thinks that the District Court must declare itself absolutely incompetent to examine, adjudicate, and decide on the case, which was considered based on the agreement between PT. Tirta Dhea Addonnics Pratama and the Commitment Making Officer (Ppk-10), BTS Kota Kendari – Belalo/Lasolo & Pohara–Wawotobi, to resolve the dispute over the implementation of the Road Widening Contract. North Konawe Regency – Pohara, Southeast Sulawesi Province (MYC) No. KU.08.08/PPK-10/MYC/PJNW.II/IX/176, dated 15 September 2015, through the Indonesian Construction Dispute Resolution Forum (BADAPSKI). Although PT. Tirta Dhea Addonnics Pratama based its lawsuit on unlawful acts committed by the Commitment Making Officer (Ppk-10), BTS Kendari City – Belalo/Lasolo & Pohara–Wawotobi, in this case the unilateral termination of the contract, the main issue is the dispute over the implementation of the agreement signed by

[27] Yuherman et al, "Integration of Absolute Authority of District Courts and State Administrative Courts in Land Disputes through Koneksitas Courts, Administrative and Environmental Law Review, Vol. 6, No. 1, 2025, 45-60. https://doi.org/10.25041/aelr.v6i1.4223.

[28] Jeffry Yuliyanto Waisapi, "Analysis of Construction Dispute Resolution Reform Perspective of Law Number 2 of 2017", *Journal of Law, Politic and Humanities*, Vol. 4, No. 6, 2024, 2524-2537, https://doi.org/10.38035/jlph.v4i6.

PT. Tirta Dhea Addonnics Pratama and the Commitment Making Officer (PPK-10) of Kendari City - Belolo/Losolo & Pohara - Wawotobi, as evidenced by the appointment of the Commitment Making Officer (PPK-10) of Kendari City - Belolo/Losolo & Pohara - Wawotobi who awarded the work and signed the contract with PT. Tirta Dhea Addonnics Pratama.

Based on Law No. 30/1999, Article 3 states that the District Court does not have the authority to adjudicate disputes between parties who are bound by an arbitration agreement.[29] Furthermore, Article 11 paragraphs (1) and (2) state that (1) The existence of a written arbitration agreement negates the right of the parties to submit the dispute or disagreement contained in the agreement to the District Court (2) The District Court is obliged to reject and not interfere in a dispute resolution that has been determined through arbitration, except in certain cases specified in this Law. Therefore, referring to this article, the choice of dispute resolution through arbitration is made in writing, and the parties have made it in writing, so the district court has no authority to adjudicate the case.

Considering the *ratio decidendi* given by the Panel of Judges of the South Jakarta District Court, the forum for resolution is through arbitration, which is basically in accordance with Article 1 paragraph 1 of Law No. 30/1999, which states that arbitration is a means of resolving civil disputes outside the general court system based on an arbitration agreement made in writing by the disputing parties. In this sense, it is clear that the dispute that has arisen is a civil dispute and not an administrative dispute, even though the act constitutes a violation of government law, so the forum for its resolution is through Arbitration and the Indonesian Construction Dispute Resolution Forum (BADAPSKI) in accordance with the agreement of both parties.

4. South Jakarta District Court Decision Number 311/Pdt.G/2014/PN Jkt Sel

A dispute arose between PT. Indopenta Bumi Permai (Plaintiff) and PT. Multi Energi Dinamika (Defendant 1), PT. Indoenergi Rekapratama (Defendant 2), and PT. Tridaya Bata Energi (Defendant 3). The dispute concerned the unilateral termination of a work contract on 26 March 2013, because the Plaintiff had failed to achieve the agreed work progress. The Panel of Judges concluded that the Plaintiff had not met the contractual performance targets and that the termination was justified to prevent further losses. Accordingly, the unilateral termination was assessed as a matter of breach of contract (*wanprestasi*) and was not considered unlawful.

The South Jakarta District Court examined the dispute strictly within the framework of contractual liability. Judicial reasoning focused exclusively on the Plaintiff's failure to perform and the contractual consequences of default. The termination was therefore evaluated solely under private law doctrine, without reference to administrative law principles or the possibility that termination might acquire public law character.

The 2014 decision reflects a paradigm of contractual absolutism, in which termination was assessed exclusively within private law doctrine. At that stage, judicial reasoning did not yet fully accommodate the evolving doctrine of unlawful governmental acts (*onrechtmatige overheidsdaad*). Subsequent jurisprudence, particularly following Supreme Court

[29] Efa Laela Fakhriah dan Anita Afriana, "Cross borderof Jurisdiction between Arbitration and District Court in Business Dispute Settlement under the Indonesian Legal System", *Fiat Justisia:Jurnal Ilmu Hukum*, Vol. 17, No. 3, 2023, 287-298, https://doi.org/10.25041/fiatjustisia.v17no3.3175.

Jurisprudence No. 4/Yur/Pdt/2018, demonstrates a gradual recognition that termination executed by public officials may carry an administrative character when it produces public law consequences. This development indicates doctrinal evolution rather than mere inconsistency in judicial practice. A summary comparison of the above decisions is presented in tabular form below:

Table 1. Comparison of Summary Judgements, 2014-2023

ASPECT	ADMINISTRATIVE COURT DECISION NO. 21/G/2023/PTUN PBR	DISTRICT COURT DECISION NO. 12/PDT.G/2019/PN TLK	DISTRICT COURT DECISION NO. 01/PDT.G/2019/PN JKT. SEL	DISTRICT COURT DECISION NO. 311/PDT.G/2014/PN JKT. SEL
Forum	State Administrative Court (PTUN)	District Court (PN)	District Court (PN)	District Court (PN)
Reasons for Decision	The defendant has been negligent in carrying out the work agreed upon in the agreement, resulting in the work being neglected and delayed. This is evident in the fact that as of 21 November 2022, the physical progress of the work carried out by the plaintiff was only 8.10% of the planned 22.58%, resulting in a deviation of 14.47%.	The plaintiff was found to have committed a breach of contract in the form of construction delays, resulting in the termination of the contract.	The Plaintiff is liable because the Plaintiff has committed a breach of contract and/or the Plaintiff is liable because the Plaintiff has failed to complete the work in the *a quo* case on time and/or the Plaintiff has committed an unlawful act.	That Defendant I unilaterally terminated the Contract because the Plaintiff had committed a breach of contract in the form of a lack of significant progress in the work, which only included: mobilisation of equipment, purchase of materials for the construction of access roads, construction of a site office and excavation of soil for the planned bending foundation,

Basis For Lawsuit	The Defendant's action in issuing a contract termination letter can be declared legally in violation of the applicable procedural provisions and contrary to the applicable laws and regulations as well as contrary to the General Principles of Good Governance (AAUPB), so that the Defendant's action has fulfilled the provisions of Article 53 paragraph 2 letter (a) and (b) of Law No. 9 of 2004 amending Law No. 5 of 1986 on Administrative Court Proceedings.	The Commitment Making Officer (PPK) issued a unilateral contract termination letter by (PPK) and the Plaintiff was given sanctions proposed to be included in the Blacklist without first inviting the Plaintiff to conduct PCM (Pre Construction Meeting) II & PCM (Pre Construction Meeting) III and issuing SP.3.	That Defendant I sent a letter to the Plaintiff, dated 21 December 2018, No. PW.0401.Bb14/PJ NW.II.SULTRA/P PK-10/246.13, regarding the termination of the contract, the North Konawe Regency-Pohara Road Widening Package (MYC).	intake and desanding, That the unilateral termination of the contract by Defendant I is invalid because it violates Article 16 paragraph (4) of the Contract, which stipulates that termination may only be carried out through the Court, which reads as follows: "As long as the dispute resolution process has not been concluded at either the BANI or the District Court level, the parties remain obliged to perform their respective obligations under this Agreement until a decision on the dispute resolution has been made.

Petition	The Plaintiff is liable because the Plaintiff has committed a breach of contract and/or the Plaintiff is liable because the Plaintiff has failed to complete the work in the *a quo* case on time and/or the Plaintiff has committed an unlawful act.	1. Granting the Plaintiff's claim in its entirety; 2. Declaring that the actions of Defendant I and Defendant II constitute unlawful acts (*onrechtmatige daad*); 3. Declaring that the actions of Defendant I and Defendant II in terminating the contract do not meet the requirements stipulated in Presidential Regulation No. 16 of 2018 and constitute unlawful acts (*onrechtmatige daad*); 4. Ordering Defendant I and Defendant II to pay a penalty *dwangsom* to the Plaintiff if they fail to comply with the decision in this case in the amount of IDR 5.000.000,00 (five million rupiah) per day calculated from the date this decision becomes final and binding; 5. Eclaring that this decision may be enforced immediately,	1. Accept the Plaintiff's claim in its entirety; 2. Declare that the Plaintiff is a bona fide plaintiff; 3. Declare that the seizure of collateral is valid and valuable; 4. Declare that the Defendants have committed unlawful acts; 5. Declaring that the letter issued by Defendant I addressed to the Plaintiff regarding the termination of the contract for the Konawe Utara Regency – Pohara Road Widening Package (MYC) and the disbursement of the advance payment for the Konawe Utara Regency – Pohara Road Widening Package (MCY) is legally flawed and null and void with all legal consequences.	1. Granting the Plaintiff's claim in its entirety; 2. Declaring the termination of the contract by PT. Multi Energi Dinamika to be invalid and legally flawed; 3. Declaring that the Defendants committed a breach of contract; 4. Ordering the Defendants to jointly and severally pay material damages to the Plaintiff in the amount of Rp 829.000.000,00 (eight hundred and twenty-nine million rupiah) in cash and in a lump sum; 5. Declaring that the Advance Payment Guarantee and Performance Guarantee in this case cannot be disbursed; 6. Declare that the decision

	even if there is an objection, appeal, cassation, or review by Defendant I and/or Defendant II; 6. Ordering Defendant I and/or Defendant II to pay all costs incurred in this case;		in this case is enforceable immediately, even if there is an Appeal, Cassation or *Verzet* (*uit voerbaar bijvooraad*) 7. Order the Defendants to pay the costs of the case.
Decision	1. Reject the Plaintiff's claim in its entirety; 2. Order the Plaintiff to pay court costs in the amount of Rp 746.000,00 (seven hundred and forty-six thousand rupiah).	1. Granting the absolute jurisdiction exception; 2. Declaring that the District Court has no absolute jurisdiction to examine, adjudicate and decide on case No. 01/Pdt.G/2019 /PN.Jkt.Sel.; 3. Ordering the Plaintiff to pay the costs of the case, which are currently estimated at Rp 3.056.000,00 (three million fifty-six thousand rupiah).	1. Granting the counterclaim of the Counterclaimant in part; 2. Declaring the termination of the employment contract for the Civil Works for the Construction of the Sita-Borong Mini Hydro Power Plant in East Nusa Tenggara between the Consortium of PT. Multi Energi Dinamika, PT. Indoenergi Rekapratama and PT. Tridaya Batara Energi with PT. Indopenta Bumi Permai,

	to be valid and effective; 3. Ordering the Counterclaim Defendant to return the remaining advance payment of Rp. 1.244.614.654,55 (one billion two hundred forty-four million six hundred fourteen thousand six hundred fifty-four rupiah and fifty-five sen), as well as return the Performance Bond in the amount of Rp. 691.452.575,00 (six hundred ninety-one million four hundred fifty-two thousand five hundred seventy-five rupiah); 4. Rejecting the counterclaim in all other respects.

Source: Administrative Court Decision No. 21/G/2023/PTUN PBR, District Court Decision No. 12/Pdt.G/2019/PN TLK, District Court Decision No. 01/Pdt.G/2019/PN Jkt. Sel., District Court Decision No. 311/Pdt.G/2014/PN Jkt. Sel.

5. Proposed Legal Qualification Test for Determining Absolute Jurisdiction

The comparative analysis of judicial decisions demonstrates a persistent fragmentation in determining absolute jurisdiction over unilateral termination of government construction contracts. Courts have alternately emphasized contractual origin, administrative character, or

arbitration clauses without employing a consistent doctrinal framework. In order to overcome this inconsistency, this study proposes a structured legal qualification test based on a three-layer analytical model.

1. Nature of the Act

   The court must examine whether the termination was executed through a formal administrative decision (*beschikking*) producing public law consequences, such as blacklisting, administrative sanctions, or exclusion from future procurement, or merely through contractual notification pursuant to agreed clauses. Where termination is embodied in a governmental decree that generates direct legal consequences beyond the contractual relationship, the act may acquire administrative character. Conversely, where termination operates strictly within contractual mechanisms without independent public law effects, it remains within the domain of private law.

2. Source of Authority

   It must be determined whether the authority to terminate derives primarily from statutory regulation (public authority) or from contractual clauses (private autonomy). If termination is grounded in discretionary authority conferred by legislation or procurement regulations, its legality must be tested against principles of administrative law, including legality, proportionality, and due process. However, if termination is exercised pursuant to contractual rights mutually agreed upon by the parties, the dispute is more appropriately assessed under contractual liability pursuant to Article 1243 of the Civil Code.

3. Dispute Resolution Clause

   The existence of a valid arbitration agreement must be respected under Law No. 30/1999. Where parties have explicitly agreed to resolve disputes through arbitration, the District Court is obliged to decline jurisdiction. The mere characterization of termination as an unlawful act cannot circumvent a binding arbitration clause. This three-layer model provides a coherent explanation for the judicial outcomes examined above. The Pekanbaru Administrative Court Decision No. 21/G/2023/PTUN.PBR logically falls within administrative jurisdiction, as the termination was executed through a formal governmental decision producing public law consequences. The South Jakarta District Court Decision No. 01/Pdt.G/2019/PN.Jkt.Sel correctly declined jurisdiction due to the existence of a valid arbitration clause. The Teluk Kuantan District Court Decision No. 12/Pdt.G/2021/PN.Tlk illustrates procedural deficiencies rather than substantive jurisdictional clarity. Meanwhile, Decision No. 311/Pdt.G/2014/PN.Jkt.Sel reflects an earlier paradigm of contractual absolutism that did not yet accommodate the doctrinal development of unlawful governmental acts (*onrechtmatige overheidsdaad*).

Through this structured approach, absolute jurisdiction cannot be determined solely by reference to the identity of the government as a contracting party. Instead, jurisdiction must be established through careful qualification of the juridical nature of termination, the source of authority exercised, and the binding force of dispute resolution agreements. This structured model reconciles contractual certainty with constitutional principles of administrative

accountability, ensuring that neither private autonomy nor public authority operates beyond judicial scrutiny.

3.3. Legal Remedies and Jurisdictional Tension in Termination Disputes

Unilateral termination of construction contracts constitutes the most contentious form of contractual breakdown under Law No. 2/2017.[30] Unlike ordinary performance disputes, termination often produces immediate legal consequences that alter the contractual equilibrium and may simultaneously trigger administrative sanctions within the public procurement regime. The Law No. 2/2017 formally provides a structured dispute resolution framework, prioritising deliberation and sequential alternative dispute resolution mechanisms before recourse to litigation. However, in cases where termination is accompanied by administrative measures—such as blacklisting or exclusion from procurement, the existing framework reveals doctrinal and jurisdictional tension. The sequential ADR model, while comprehensive in design, does not adequately address situations in which termination transcends contractual relations and enters the sphere of public authority. Consequently, the determination of appropriate legal remedies becomes inseparable from the juridical qualification of the termination itself.[31]

1. Non-Litigation Mechanisms

A. Mediation and Conciliation

In termination disputes, mediation and conciliation suffer structural limitations. Unilateral termination is typically executed as a *fait accompli*, leaving limited room for negotiated restoration.[32] Once the contract has been formally terminated, especially where accompanied by administrative sanctions such as blacklisting, the dispute shifts beyond mere contractual disagreement and enters a domain where consensual mechanisms cannot reverse legal consequences.[33]

Although Law No. 2/2017 places mediation and conciliation as preliminary mechanisms in a sequential dispute resolution framework, their effectiveness in termination cases is limited.[34] These mechanisms depend entirely on voluntary compliance and mutual consent. They lack authority to annul administrative decisions, suspend procurement sanctions, or compel reinstatement of contractual relations. As a result, mediation and conciliation are structurally ill-equipped to address disputes in which termination operates not merely as contractual remedy but as an exercise of public authority.[35]

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[30] D. Safnul et al., "Civil Liability of Construction Service Providers against Building Failures in the Taxiway Construction Agreement of Kuala Namu International Airport," *IOP Conference Series: Earth and Environmental Science* 452, no. 1 (2020): 1–5, https://doi.org/10.1088/1755-1315/452/1/012080.

[31] A. Panov et al, "Alternative ways of resolving disputes in the field of contract law", *Amazonia Investiga*, Vol. 3, No. 76, 2024 258-273, https://doi.org/10.34069/AI/2024.76.04.21.

[32] Salim H.S., *Perkembangan Hukum Kontrak Innominaat di Indonesia*, Buku Kesatu (Jakarta: Sinar Grafika, 2014), 45.

[33] Azizan Akmal et al., "Optimizing Civil Construction Litigation in Indonesia: A Comprehensive Framework for Efficiency, Expertise, and Equity in Dispute Resolution," *Jurnal Hukum dan Peradilan* 13, no. 1 (2024): 189–226, https://doi.org/10.25216/jhp.13.1.2024.189-226.

[34] Yessenbekova, P. (2024). Results of implementation of conciliation procedures in civil proceedings. *Social and Legal Studios, 7*(3), 95–102. https://doi.org/10.32518/sals3.2024.95.

[35] Kraeme, R. (2023). Mediation in the activities of a lawyer. *Teisė, 126*, 166–181. https://doi.org/10.15388/Teise.2023.126.12

Conciliation and dispute board decisions may become binding by consent of the parties, but they do not possess executorial force unless supported by judicial recognition. Their binding character derives from a contractual agreement rather than statutory authority.[36] This fundamentally distinguishes them from arbitral awards, which carry executorial title under Law No. 30/1999 and may be directly enforced through court registration. The absence of executorial force creates a structural weakness in termination disputes, particularly where one party refuses voluntary compliance.[37]

B. Arbitration

The settlement of construction contract disputes through arbitration refers to Law No. 30/1999. Arbitration is the settlement of civil disputes outside the general court system based on an arbitration agreement made in writing by the disputing parties (Article 1, paragraph (1) of Law No. 30/1999). The arbitration agreement must be made in writing. An arbitration agreement is an agreement in the form of an arbitration clause contained in a written agreement. The written agreement is made by the parties before a dispute arises, or a separate arbitration agreement is made by the parties after a dispute arises.

Arbitration in dispute resolution provides the parties involved with an option to resolve their disputes. Arbitration takes two forms, namely ad hoc arbitration and institutional arbitration.[38] Arbitration may take the form of ad hoc or institutional proceedings, including construction-specific institutions such as BADAPSKI in Indonesia.[39] Unlike mediation or conciliation, arbitral awards possess executorial force upon court registration under Law No. 30/1999. This executorial character provides stronger legal certainty. However, the effectiveness of arbitration in termination disputes remains contingent upon the nature of the act challenged.[40]

In government construction contracts, arbitration clauses are frequently embedded within standard-form procurement agreements drafted predominantly by public authorities. This raises legitimate concerns regarding the authenticity of consent and the equality of bargaining power between the parties. While formally based on agreement, the inclusion of arbitration may not always reflect fully negotiated autonomy but rather administrative standardisation. Moreover, arbitration is structurally designed to adjudicate civil disputes arising from contractual performance. Where termination is embodied in a formal

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[36] I Made Wisnu dan Suyoga Yohanes, "Penyelesaian Sengketa Kontrak Kerja Konstruksi melalui Ajudikasi dan Perbandingan dengan Arbitrase," *Acta Comitas: Jurnal Magister Kenotariatan* 5, no. 2 (2020): 244–60, https://doi.org/10.24843/AC.2020.v05.i02.p03.

[37] Martin Putri, Nur Jannah, dan Dewi Nurul Musjtari, "Penyelesaian Sengketa Wanprestasi Akibat Keterlambatan Pelaksanaan Perjanjian Konstruksi Bangunan," *UIR Law Review* 3, no. 2 (2019): 46–60, https://journal.uir.ac.id/index.php/uirlawreview/article/view/3489/2303.

[38] Muskibah dan Lili Naili, "Penyelesaian Sengketa Konstruksi melalui Arbitrase," *Pandecta* 16, no. 1 (2021): 1–16, https://garuda.kemdiktisaintek.go.id/documents/detail/2646797.

[39] Basuki Rekso Wibowo, "Perjanjian Arbitrase dan Kewenangan Arbitrase dalam Penyelesaian Sengketa Bisnis," *Juris and Society: Jurnal Ilmiah Sosial dan Humaniora* 1, no. 1 (2021): 1–15, https://journal.pppci.or.id/index.php/jurisandsociety/issue/view/2.

[40] Udechukwu Ojiako, "A Constitutional Perspective of the Finality Principle in Arbitration", *Journal of Legal Affairs and Dispute Resolution in Engineering and* Construction, Vol. 15, No. 1, 2023, 1-9, https://doi.org/10.1061/(ASCE)LA.1943-4170.0000579.

administrative decision producing independent public law consequences, such as blacklisting or exclusion from future procurement, arbitral tribunals may lack competence to review the legality of administrative discretion. In such circumstances, arbitration cannot substitute judicial control over the exercise of public authority, and jurisdictional qualification must remain sensitive to the public-law dimension of the act. In practice, parties entering into construction contracts have specified the means of resolving disputes that arise between them. One such means is through arbitration institutions.

C. Construction Dispute

Law No. 2/2017 introduces the Construction Dispute Council as a specialised mechanism inspired by FIDIC dispute boards. The Council is designed as a preventive and adjudicative body within construction contracts, and its decisions are formally described as final and binding under the implementing regulations. In practice, the mechanism aims to provide faster and more technical dispute resolution compared to ordinary litigation.[41] However, the regulatory framework reveals structural ambiguity concerning enforcement. Although the Council's decision becomes final and binding when no objection is submitted within the prescribed period, the legislation does not clearly establish whether such decisions possess executorial force or require judicial recognition for enforcement. The binding character appears to derive primarily from contractual agreement rather than independent statutory authority.

This limitation becomes particularly significant in termination disputes. Where one party refuses voluntary compliance, the absence of explicit executorial status creates legal uncertainty. Unlike arbitral awards under Law No. 30/1999, which carry executorial title upon court registration, dispute council decisions lack a clearly articulated enforcement pathway. Consequently, while the mechanism may function effectively in technical performance disputes, its capacity to resolve termination accompanied by administrative consequences remains institutionally constrained.

2. Legal Action Through Litigation

The central issue in litigation concerning unilateral termination of construction contracts lies in the proper doctrinal qualification of the act. The crucial question is whether termination must first be examined under contractual breach pursuant to Article 1243 of the Civil Code, or whether it may directly be framed as a tort under Article 1365. This distinction is not merely technical, as it determines the burden of proof, the scope of recoverable damages, and the competent judicial forum. Termination arising from non-performance constitutes a matter of contractual liability. Article 1243 of the Civil Code provides that compensation becomes due when a debtor, after being declared in default, fails to fulfill its contractual obligations. Within this framework, unilateral termination is evaluated as a contractual remedy triggered by breach (*wanprestasi*). The injured party must establish the existence of a valid contract, non-performance, fault, and measurable contractual loss. Remedies are primarily directed toward expectation loss and restoration of contractual equilibrium,[42] however, the doctrinal landscape

[41] Michael T. Kamprath, "The Use of Dispute Resolution Boards for Construction Contracts," *Urban Lawyer* 46, no. 4 (2014): 807–14, https://www.jstor.org/stable/44735667?seq=1.
[42] Muhammad Adiguna Bimasakti, *Unlawful Acts by the Government (Onrechtmatige Overheidsdaad) from the Perspective of the Government Administration Law* (Yogyakarta: Deepublish, 2018), 48.

evolved with Supreme Court Jurisprudence No. 4/Yur/Pdt/2018, which recognized that unilateral termination may, under certain circumstances, constitute an unlawful act (*onrechtmatige daad*). The ratio decidendi of this jurisprudence does not eliminate contractual analysis, nor does it automatically transform every termination into a tort. Rather, it affirms that where termination is carried out without legal basis, in bad faith, or in violation of statutory obligations, the act may transcend contractual breach and enter the realm of unlawful conduct under Article 1365.[43]

The principle *lex specialis derogat legi generali* remains doctrinally significant in this context. Where a valid contractual relationship governs the parties' rights and obligations, contractual remedies under Article 1243 should prevail as the primary legal basis. Tort liability under Article 1365 should operate subsidiarily, invoked only where termination exceeds contractual authority or reflects abuse of power. Otherwise, the expansion of tort liability risks undermining contractual certainty and blurring the boundary between breach of contract and wrongful act.

In government construction contracts, the complexity deepens due to the hybrid character of the relationship. While the contract is grounded in private autonomy and measured against Article 1320 of the Civil Code, the service user may simultaneously exercise public authority derived from procurement regulations. Termination executed purely pursuant to contractual clauses remains within the sphere of civil liability. Conversely, termination accompanied by administrative sanctions, such as blacklisting or exclusion from procurement, may reflect the exercise of discretionary public power. In such cases, the wrongful element may derive not merely from non-performance, but from abuse of authority (*détournement de pouvoir*) or violation of principles of proportionality and good governance. This is a consequence of government actions carried out by administrative bodies or officials as civil actors performing civil law acts.[44]

In cases of governmental termination, the construction of liability requires rigorous doctrinal analysis of both fault and causation. Fault may arise not only from negligent assessment of contractual performance, but also from abuse of discretion (*détournement de pouvoir*), misuse of authority, disproportionate sanctions, or procedural irregularities in the procurement process. The wrongful element cannot be inferred merely from the existence of termination; it must be normatively established by demonstrating that the authority exercised exceeded contractual or statutory limits. Causation must likewise be strictly proven. The claimant bears the burden of showing that the termination directly produced legally cognizable and quantifiable losses. These losses may encompass actual financial damage and lost profits recoverable under contractual liability, as well as reputational harm arising from administrative sanctions such as blacklisting. Accordingly, the assessment of damages must clearly distinguish between expectation loss under Article 1243 of the Civil Code and extra-contractual harm under Article 1365. Liability does not arise automatically from termination;

[43] Siti Faridah dan Shinta Hadiyantina, "The Role of Active Judges: A Comparative Study of Civil Cases and Administrative Disputes," *Jurnal Hukum dan Peradilan* 14, no. 1 (2025): 351–76, https://doi.org/10.25216/jhp.14.1.2025.351-376.

[44] Yohanes Sogar Simamora et al., *Pengantar Hukum Pengadaan Barang dan Jasa* (Surabaya: Airlangga University Press, 2021), 112.

it emerges only where unlawfulness, fault, and causal linkage are coherently constructed within the appropriate legal framework.

Accordingly, unilateral termination of government construction contracts cannot be categorically classified as either breach of contract or tort. Its qualification depends on whether the act remains within contractual limits or exceeds them through the exercise of public power. Litigation must therefore begin with contractual analysis under Article 1243 and only proceed to Article 1365 where the termination demonstrates elements of abuse, arbitrariness, or illegality beyond the contractual framework. This structured approach preserves contractual certainty while preventing public authorities from shielding abusive conduct behind private law formalism. It also reconciles civil liability doctrine with administrative accountability, thereby addressing the jurisdictional tension between District Courts and Administrative Courts without collapsing the two regimes into one.

Jurisdiction cannot be determined by the quantum of damages available. Rather, it must depend on the juridical qualification of the act. Where termination constitutes a civil act embedded within contractual relations, the District Court remains competent. Conversely, where termination manifests as an administrative decision producing independent public law consequences, jurisdiction lies with the Administrative Court. The determination of forum must therefore follow doctrinal qualification, not pragmatic considerations of remedy size. Any other approach risks distorting the structural boundaries between private law adjudication and administrative accountability.

4. Conclusions

Unilateral termination of construction contracts cannot be categorically classified as either contractual breach under Article 1243 or tort under Article 1365 of the Civil Code. Supreme Court Jurisprudence No. 4/Yur/Pdt/2018 confirms that termination may, under certain circumstances, constitute an unlawful act; however, such qualification depends on whether the termination exceeds contractual authority and reflects abuse of public power. In government construction contracts, the relationship operates within a hybrid regime. While performance and non-performance remain governed by contractual principles, termination accompanied by independent administrative consequences, such as blacklisting, may acquire public-law character. Accordingly, jurisdiction cannot be determined solely by the identity of the government as a contracting party. Rather, it must depend on the juridical qualification of the act challenged. Where termination remains embedded within contractual relations, the District Court retains competence. Conversely, where termination manifests as an administrative decision producing autonomous public-law consequences, jurisdiction lies with the Administrative Court. This structured approach preserves contractual certainty while ensuring accountability in the exercise of public authority, thereby resolving the jurisdictional tension without collapsing private and public law regimes into one another.

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