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Legal Analysis of Legal Protection of Subcontractors in Building Construction Agreements in Indonesia

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Abstract

Abstract. A massive bargaining asymmetry between main contractors and subcontractors characterizes Indonesia's construction industry. Law No. 2 of 2017 on Construction Services (UUJK 2017) contains no explicit prohibition on unilateral risk-shifting clauses, creating a vacuum of norm systematically exploited through pay-when-paid clauses. This normative gap has not been addressed through dogmatic-prescriptive legal analysis in existing literature. This study aims to construct a juridical prescription: whether such clauses are void by operation of law and how synchronization between the Construction Services Law and the Civil Code should properly function. This study employs a prescriptive-analytical normative legal method through comparative doctrinal analysis, integrating the statute approach, conceptual approach, and case approach applied to the Construction Services Law, the Civil Code, and Supreme Court Decision No. 463 K/Pdt/2019. This study finds that the normative vacuum in the Construction Services Law dogmatically nullifies the lex specialis exclusivity, rendering the good-faith principle (Article 1338(3)) and the reasonableness principle (Article 1339 of the Civil Code) imperatively applicable as a synchronization catalyst — a dogmatic obligation, not merely an interpretive option. Furthermore, the pay-when-paid clause manifests misbruik van omstandigheden and contains an unlawful cause (onrechtmatige oorzaak) under Article 1320(4) jo. Article 1337 of the Civil Code, rendering it void by operation of law (nietig van rechtswege). Through the doctrine of partial nullity (partiële nietigheid), only the risk-shifting clause is void, while the main contractor remains absolutely obligated to pay the subcontractor in full. These findings shift the paradigm of subcontractor protection from legislative recommendation to a directly enforceable dogmatic verdict under existing civil law mechanisms.

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1. INTRODUCTION

Behind every Indonesian infrastructure project that is completed on time, there is a stark normative irony: the subcontractors who bear the heaviest technical burden are also the ones most legally vulnerable of *pay-when-paid*—a contractual provision that requires subcontractors to wait for payment until the main contractor receives funds from the project owner—represents a systemic failure of the 2017 UUJK in protecting service providers at the bottom of the construction chain. This anomaly is not simply an administrative problem;

it is a *vacuum of norm with* clear dogmatic consequences: when sectoral laws are absent in regulating the substance in question, general civil law is obliged to step in to fill the gap.

This phenomenon is rooted in the anatomy of the construction supply chain itself. In large-scale projects, main contractors commonly engage subcontractors—specialist service providers who bring technical expertise, efficiency, and flexibility that the main contractor lacks—to undertake specific parts of the construction work under separate agreements. Arifin et al. (2023) assert that the validity and legal protection of partnership agreements in construction services depend on the fulfillment of the requirements of Article 1320 of the Civil Code and the balance of the parties' positions—a requirement often lacking in standard contracts drafted unilaterally by the more powerful party.

Normatively, the Civil Code (KUHPerdata) through Article 1338 paragraph (3) emphasizes that every agreement must be carried out in good faith (*good faith*), while Article 1338 paragraph (1). Article 1339 limits the principle of freedom of contract so that it does not conflict with propriety and public order. Rini (2021) emphasized that the principles of propriety and justice (*reasonableness and fairness*) are not just complementary, but instruments that require proportionality between the parties from the formation stage to the implementation of an agreement, to protect the weaker party from unfulfilled expectations. This provision is w*hat should* (ideal legal conditions) require a balance of rights and obligations in every binding relationship. In the realm of *special law*, Law Number 2 of 2017 concerning Construction Services (UUJK 2017) should provide balanced regulations for all construction service providers, including subcontractors, within the framework of equitable construction industry governance.

In practice, the anatomy of a construction contract shows that the position of the subcontractor is very dependent on the main contractor, but does not have a direct legal relationship with the project owner (*owner*). This is due to the existence of the doctrine *of privity of contract, as* stipulated in Article 1340 of the Civil Code, which stipulates that an agreement is only binding on the parties who make it. This lack of a direct contractual relationship is then exploited by the main contractor to draft standard contracts containing unilateral risk transfer clauses. One of the most detrimental clauses is the pay-when-paid clause, namely a provision that requires subcontractors to wait for payment from the main contractor until the owner pays the main contractor first, without questioning the reason for the delay.

Condition *that be*This is not merely an abstract description, but rather a concrete reality in Indonesian judicial practice. Supreme Court Decision No. 463 K/Pdt/2019 dated March 11, 2019. The Pekanbaru High Court Decision No. 45/PDT/2018/PT PBR is a real-life case that clearly demonstrates the weaknesses in subcontractor legal protection. In this case, a subcontractor had completed the construction of several villa units perfectly based on the Contract Agreement (SPB); the work had been completed and handed over, and the project owner had even requested the keys to the villa and immediately occupied it. However, payment to the subcontractor was not made on the pretext that the payment from the *owner* to the main contractor had not been completed — a mechanism that is substantively identical to the *pay-when-paid clause*. The Supreme Court stated that the action of the project owner who occupied and operated the subcontractor's work without paying the full amount was an unlawful act (*unlawful act*) based on Article 1365 of the Civil Code.

Through a teleological interpretation, the absence of norms in the 2017 UUJK reveals the weakness of the assumptions of the legislators who appear to leave the payment mechanism in the main contractor-subcontractor relationship entirely to the freedom of contract, with the assumption that the relationship between the two is essentially equal of *business-to-business.* This assumption of equality has proven inconsistent with the reality of the Indonesian construction industry, where subcontractors, generally small and medium-sized enterprises, face massive bargaining asymmetry relative to capital-rich main contractors. The failure of lawmakers to anticipate this structural inequality has allowed the instrument to remain in place, entirely governed by the principle of asymmetrical freedom of contract, without adequate preventive protection.

This normative clash produces three legal gaps at once. **First**, conflict of norms between Article 1338 paragraph (3) of the Civil Code, which requires good faith, and the practice of *pay-when-paid clauses,* which releases the main contractor from the obligation to pay even though the work has been completed. **Second**, normative emptiness (*vacuum of norm*) in the 2017 UUJK, which does not explicitly prohibit unilateral risk transfer clauses in subcontract agreements. **Third**, normative ambiguity (*vagueness of norm*) regarding the hierarchical relationship between the 2017 UUJK and the Civil Code in regulating the legal status of subcontractors. These three gaps can only be resolved through normative legal research that uses dogmatic legal reasoning.

Commutative justice (*commutative justice*): Aristotle became the first scholar to examine this anomaly: the exchange of performance between the subcontractor and the main contractor must be equal — what is given must be equal to what is received. The application of the clause *pay-when-paid,* which transfers the risk of payment uncertainty from the *owner* to a subcontractor on one side, constitutes a violation of commutative justice because the exchange of performance becomes unequal and unfair. This philosophical principle is translated into the doctrine of contract law through Herlien Budiono's (2019) Theory of Contractual Balance: balance in contract law is not merely interpreted as mathematical equality between performance and counter-performance, but includes the balance of bargaining positions (*bargaining position*) of the parties in the process of forming and implementing an agreement. Sinaga and Zaluchu (2017) emphasized that the principle of balance demands consistency in the application of the principles of contract law — one party cannot enjoy the benefits of the doctrine of *privity* while also using it as a basis for assigning risks to other parties. At a technical level, the Principle of Proportionality in Commercial Contracts developed by Agus Yudha Hernoko (2021) serves as a concrete testing instrument: the distribution of rights, obligations, and risks of the parties in a commercial contract must be carried out proportionally according to the contributions, capabilities, and legal position of each party. Valda (2025) emphasizes that the principle of proportionality occupies a fundamental position in Indonesian contract law as a structural mechanism to prevent imbalances in rights and obligations that could harm the weaker party, in line with the demands of commutative justice. Ramon (2019) adds that the criterion of balance in asymmetric contractual relationships—as commonly found between creditors and debtors, or between main contractors and subcontractors—must be measured by the extent to which the exchange of rights and obligations reflects commutative justice, not merely formal compliance with a written agreement.

Previous studies have only addressed descriptive and sectoral dimensions. Sujoko (2019) concluded that subcontractor protection in government construction projects remains very limited. Fajarini (2019) identified the doctrine *of contract as* a major barrier to direct legal protection for subcontractors from project owners. Taiban et al. (2024) found that normative protection for subcontractors in the 2017 UUJK is still general and does not specifically regulate payment mechanisms in subcontracting relationships. Christiawan (2020) concluded that normative uncertainty poses significant risks for weaker parties in the contract chain. Natsir Asnawi (2017) found that the principle of good faith is a critical instrument that must be consistently applied to protect weaker parties. Sodik et al. (2021) emphasized the need for more explicit norms to regulate the multilevel relationship between main contractors and subcontractors. Syafi'udin et al. (2025) analyzed the accountability gap (*accountability gap*) in the legal protection of subcontracted workers in Indonesia and recommend a restructuring of the main contractor's responsibilities. Sumantri et al. (2025) found that disproportionate risk distribution consistently disadvantages the weaker party in the contract chain.

Different from the aforementioned studies, which focus on descriptive or sectoral aspects, this study specifically identifies three forms of legal gaps (*vacuum of norm*, *vagueness of norm*, and conflict of norms) and executes the clause *pay-when-paid* using the instrument of Article 1320 paragraph (4). Article 1337 of the Civil Code and the doctrine of *abuse of circumstances as* a form of modern will defect. Novelty (*novelty*): This research is dogmatic-normative in nature: it does not merely describe field phenomena, but rather provides argumentative legal prescriptions regarding the validity of the clause of *pay-when-paid*and its legal consequences — including a null and void verdict based on a violation of the conditions of a lawful cause.

Based on this background, this research focuses on two research questions. First, how do the legal protection provisions for subcontractors in the 2017 UUJK align with the fundamental principles of the Civil Code? Second, what are the validity and legal consequences of implementing the clause? *Pay-when-paid* in subcontractor contracts reviewed from the principle of contractual balance and the principle of proportionality?

2. RESEARCH METHODS

This research is prescriptive normative juridical research (prescriptive normative legal research), which aims to provide a prescription on what should happen (*that should*) — not just describing the reality on the ground (*that be*). This research does not use field research and does not involve interviews or questionnaires, because the object of study is normative-dogmatic, not empirical-sociological. Three approaches are applied simultaneously: the legislative approach (*statute approach*) to the Civil Code — especially Articles 1320, 1337, 1338, 1339, and 1340 — as well as the 2017 UUJK and PP No. 22 of 2020; conceptual approach (*conceptual approach*) on doctrine *privity of contract*, the principle of good faith (*good faith*), the doctrine of contractual equilibrium, the doctrine of abuse of circumstances (*abuse of circumstances*), as well as the principle of proportionality in commercial contracts; and the case approach (*case approach*) to the review *reason for deciding* Supreme Court Decision Number 463 K/Pdt/2019 and PK Decision Number 983 PK/Pdt/2020 as normative argumentative material — not as a source of empirical data.

Analysis of legal materials is carried out using the deductive legal reasoning method (*deductive legal reasoning*) which starts from a major premise in the form of a general legal proposition, connected with a minor premise in the form of a specific legal fact, to produce a legal conclusion. In addition, three complementary interpretative techniques are used: grammatical interpretation to identify the normative content of relevant provisions; systematic interpretation to analyze how the 2017 UUJK as *special law* interacts with the Civil Code as *general law*; and teleological interpretation to reveal the legislator's intentions and test whether the assumption of equality *business-to-business.* The underlying principles of the 2017 UUJK are still relevant to the realities of the Indonesian construction industry. The primary legal materials—the 2017 UUJK and the Civil Code—are analyzed using deductive syllogism to test the validity of the clauses *pay-when-paid* dogmatically.

3. RESULTS AND DISCUSSION

The Vacuum of Norm and the Fall of the Exclusivity of Lex Specialist

As *special law, in* the construction services sector, the 2017 UUJK should be the primary instrument of legal protection for all construction service providers, including subcontractors. Article 47 paragraph (1) of the 2017 UUJK regulates the contents of construction work contracts, including the identities of the parties, the formulation of work, rights and obligations, payment methods, and other provisions. Article 51 of the 2017 UUJK regulates the rights of service providers to receive payment as agreed. Saputra and Surahmi (2022) confirmed that the regulation of the parties' responsibilities in construction work contracts is still general and does not specifically cover payment mechanisms in subcontracting relationships. Sarwono Hardjomuljadi (2020) noted that construction contracts in Indonesia generally do not explicitly regulate the mechanism. *Back-to-back payment* that protects the interests of subcontractors. Crucially, the 2017 UUJK does not contain a single provision that expressly prohibits or limits unilateral payment risk transfer clauses in subcontract agreements. This regulatory gap constitutes a regulatory loophole (*regulatory gap*) which allows the clause of *pay-when-paid* thrive without effective legal barriers.

Through a teleological interpretation of the 2017 UUJK, a fundamental internal inconsistency is revealed: there is a gap between the values proclaimed in Article 2 of the 2017 UUJK—which regulates the principles of equality and harmony—and the normative instruments provided. The regulatory vacuum allows the *pay-when-paid clause to* operate without restrictions, has negated *the reason for the law from* the formation of the UUJK itself: instead of regulating a healthy and fair construction industry, this law actually allows economic cannibalism between main contractors and subcontractors to take place without effective normative barriers.

This gap should not be interpreted simply as the absence of an article; it must be understood as an antinomy of values with a systemic dimension. The 2017 UUJK in Article 2 claims to uphold the principle of equality, but the absence of a limiting limitation on the unilateral risk transfer clause in Article 47 paragraph (1) actually allows the principle of freedom of contract (*party autonomy*) to crush the principle of objective good faith (*reasonableness and fairness*) and the principle of propriety mandated by Article 1338 paragraph (3). Article 1339 of the Civil Code. Ali, Fitrian, and Hutomo (2022) emphasized that the principle of freedom of contract in Article 1338 of the Civil Code is never absolute, but is always limited by public order and morality—limitations that are often ignored in standard contract practices designed unilaterally by parties in a stronger position. This normative vacuum should be positioned as a synchronizing catalyst that dogmatically activates the role of *general law*. Vertical synchronization with the Civil Code as *general law* becomes a dogmatic obligation, not just a facultative hermeneutic choice.

From a comparative analysis between the norms of the 2017 UUJK and the fundamental principles of the Civil Code, three forms of legal gaps were identified which simultaneously give rise to inadequate protection for subcontractors. **First**, normative emptiness (*vacuum of norm*). This vacuum should not be interpreted simply as the absence of articles; it must be understood as a systemic antinomy of values. **Second**, normative ambiguity (*vagueness of norm*). There is a lack of clarity regarding the hierarchical relationship between the 2017 UUJK and the Civil Code in regulating the legal status of subcontractors. The normative question that has not been explicitly answered is: to what extent can the general principles of the Civil Code cover the gaps not regulated by the 2017 UUJK as *special law*? This ambiguity leads to legal uncertainty that is detrimental to subcontractors, because the main contractor can argue that the gap in the 2017 UUJK is a completely free space from restrictions. **Third**, conflict of norms. There is a conflict between the principles of good faith and propriety as mandated by Article 1338 paragraph (3). Article 1339 of the Civil Code, with the practice of applying the clause *pay-when-paid,* which frees the main contractor from the obligation to pay even though the work has been completed perfectly. When regulations leave the protection of subcontractors to free market mechanisms without the intervention of coercive norms (*mandatory law*), then the ideals of commutative justice and equality of the parties as stated in Article 2 of the UUJK are purely a utopian narrative.

At this point, dogmatic firmness is needed regarding the limits of the validity of the principle. *A special law derogates from the general law.* This principle is not absolute and does not work automatically simply because a law is stated as such a *special law. This* principle only applies if *special law.* This does regulate the substance in question. If *special law* it turns out that it does not regulate the substance - or contains a normative vacuum – then *special law* loses its exclusive power over areas it does not regulate. Because the 2017 UUJK has been proven to contain a normative void regarding the prohibition of unilateral risk transfer in subcontract agreements, the 2017 UUJK loses its exclusive power over this substance. As a legal consequence, the law must synchronize by bringing the subcontractor's contractual relationship back into the fold of *general law*— absolutely subject to the principle of objective good faith (Article 1338 paragraph 3) and the principle of propriety (Article 1339 of the Civil Code). Anindyajati, Wijayanti, and Putri (2021) emphasized that the principle of lex specialist derogat legi generalis cannot be applied mechanically without first examining whether the substance in question is truly regulated by the relevant lex specialist — a requirement that is not met in the case of pay-when-paid clauses because the 2017 UUJK does not touch on this substance at all.

This dogmatic imperative for vertical synchronization does not merely resonate in a theoretical vacuum; it has found its manifestation through the ratio decidendi of Supreme Court jurisprudence. Through Decision Number 463 K/Pdt/2019, the judicial system has progressively assumed the role of "norm-bridge" by enforcing the principle of balance within the lex generalis instrument to undermine unilateral risk-transfer clauses that hide behind the vacuum of lex specialist.

Supreme Court Decision No. 463 K/Pdt/2019 provides crucial jurisprudential confirmation. A review of the Legal Considerations section of this decision reveals three interrelated key considerations. **First consideration**: The Supreme Court Judges dismissed the main contractor's argument that its obligation to pay subcontractors depended on receiving payment from the project owner, by emphasizing that the contractual relationship at the upper level (main contractor–project owner) is a legal relationship that stands alone and cannot be used as a condition for postponing obligations at the lower level (main contractor–subcontractors).**Second consideration**: the right to collect from a subcontractor who has completed his performance perfectly has been born in full and cannot be dependent on events beyond the subcontractor's control. **Third consideration**: the action of the project owner who occupies the subcontractor's work results without paying is an unlawful act (*unlawful act*) based on Article 1365 of the Civil Code.

The PK Decision Number 983 PK/Pdt/2020, which upheld the cassation decision, confirmed that these three considerations were not merely casuistic considerations, but rather stable legal principles that could be used as normative references. In the absence of explicit norms in *special law*, the Supreme Court was forced to use Article 1365 of the Civil Code (Unlawful Acts) solely because the 2017 UUJK failed to provide explicit protection for subcontractors — a direct jurisprudential demonstration that the synchronization of norms is *judicial* has been carried out even though the legislative basis is not yet available. Arief et al. (2025) emphasized that legal certainty in resolving construction contract disputes requires consistent application of basic contract law norms, including the rejection of disproportionate clauses.

Based on the analysis above, the ideal juridical prescription for synchronization is constructed through a tiered dogmatic syllogism. **Premis Mayor**: Indonesian contract law (Civil Code) stipulates that freedom of contract is limited by good faith, propriety, equality, and commutative justice; these fundamental principles are coercive (*mandatory law*) and apply to all contractual relationships without exception. **Premis Minor**: The 2017 UUJK experiences a legal vacuum because it does not contain any limitative restrictions on the unilateral transfer of risk in subcontract agreements, thus allowing asymmetric bargaining positions to create one-sided contracts; this omission directly negates *the reason for the law, the* formation of the UUJK itself. **Conclusion**: Externally and vertically, the subcontractor protection provisions in the 2017 UUJK experience a systemic inconsistency with the fundamental principles of the Civil Code, so that legal intervention is required in the form of applying the principles of proportionality and good faith to restore normative harmony. The gaps in the 2017 UUJK automatically activate the function o*f the* Civil Code as *general law,* which took over to fill the void.

The Dogmatic Construction of the Pay-When-Paid Clause as Null and Void

The *pay-when-paid* (PWP) is a contractual provision that requires payment to a subcontractor to be contingent upon the prime contractor receiving payment in advance from the project owner. In its most detrimental construction — the variant *pay-if-paid* (PIP) — this clause does more than just delay payment, but effectively transfers the entire risk of default by the project owner to a subcontractor who has no legal relationship with the project owner. The subcontractor is in a position *take-it-or-leave-it* generally do not have sufficient bargaining power to reject such clauses. Sodik et al. (2021) emphasize the need for more explicit norms to regulate the tiered relationship between main contractors and subcontractors, as this clause mechanism transfers all financial risk to a party who is completely unable to manage it.

The first test of the validity of the *pay-when-paid clause is* carried out through the principle of proportionality in commercial contracts as developed by Agus Yudha Hernoko (2021). Viewed from the dimensions of **proportionality of distribution of rights**, this clause creates a clear asymmetry: the main contractor's right to receive work from the subcontractor is unconditional, while the subcontractor's right to payment is conditional on payment by a third party outside the legal relationship. Viewed from the dimension of **proportionality of risk distribution, this** clause transfers the project owner's risk of default—which should logically be borne by the main contractor with a direct legal relationship—to a subcontractor with no such relationship at all. Agus Yudha Hernoko firmly stated that such a risk transfer cannot be justified by the principle of proportionality because the subcontractor is not in a position to evaluate, influence, or manage the risk transferred to it.

This violation of the principle of proportionality is not merely a violation of a theoretical principle in isolation. It constitutes substantive evidence of a violation of "common morality and legal propriety" (*good morals*), which is the lifeblood of Article 1337 of the Civil Code. Thus, the principle of proportionality functions as an objective measuring tool that determines that the clause of *pay-when-paid* contains non-halal causes (*unlawful cause*), because the proven disproportionate risk distribution directly reflects a violation of the standard of legal decency prohibited by Article 1337 of the Civil Code. Susanto et al. (2021) emphasized that the application of the principle of proportionality in commercial contracts requires the distribution of risk in accordance with the capacity and control of each party.

The second test was conducted using the Contractual Equilibrium Theory developed by Herlien Budiono (2019). In the relationship between the main contractor and the subcontractor, the equilibrium of bargaining power is clearly not met. Subcontractors, which are generally small and medium-sized businesses with limited capital, are highly economically dependent on contracts from the main contractor. This dependence creates a massive asymmetry of economic power: the main contractor can unilaterally design the contract content, and the subcontractor, who does not want to lose business opportunities, has no real choice but to accept the terms. This asymmetry fulfills the requirements for the application of the doctrine of abuse of circumstances (*abuse of circumstances*) as a form of modern will defect. This doctrine requires two cumulative elements: *First*, the existence of special circumstances in the form of economic weakness of one party; and *second*, exploitation by a stronger party to gain disproportionate benefits. These two elements are clearly fulfilled in the context of the clause *pay-when-paid*.

Clarins (2022) found that inconsistent application of the abuse of circumstances doctrine by judges often hinders the protection of the weaker party. Azzahra and Gozali (2025) classified indicators of abuse of circumstances into three objectively testable aspects: the bargaining position of the parties, the formulation of clauses in the agreement, and good faith in the execution of the contract—all of these aspects are clearly fulfilled in subcontractor contracts containing clauses *pay-when-paid* Herlien Budiono asserts that if these two elements are met, the consensus formed is not free and pure, but rather a consensus tainted by defects of will, so that the principle of freedom of contract must be subject to the principle of balance and the obligation of good faith.

The third and most determinative test is carried out through the deadliest positive legal instrument in contract law: Article 1320 paragraph (4). Article 1337 of the Civil Code concerns lawful causes. This is a test that directly touches on the objective requirements for the validity of an agreement and produces the most stringent legal consequences. Article 1320, paragraph (4) of the Civil Code requires that every agreement must have a lawful cause. Article 1337 of the Civil Code explains that a cause is prohibited if it is contrary to good morals or public order. Ahmadi Miru and Sakka Pati (2019) emphasize that the concept of "good morals" in Article 1337 of the Civil Code also includes legal propriety (*good morals*), which prohibits the exploitation of the weaker party in an agreement. In a related context, Hafilda et al. (2024) examine judges' interpretations of standard clauses in Supreme Court jurisprudence and conclude that courts tend to interpret clauses that disadvantage the weaker party restrictively to protect legal propriety, a relevant pattern of judicial interpretation also applied to pay-when-paid clauses which structurally contain a similar imbalance.

Clause *pay-when-paid* which requires the subcontractor to bear the risk of default by the project owner — where the subcontractor does not have a direct legal relationship and does not have the capacity to control the risk — is constructed as a clause containing an unlawful cause (*unlawful cause*) because it violates the boundaries of public morality and legal propriety. This argument is strengthened by Article 1338 paragraph (3) of the Civil Code, which specifically prohibits the enforcement of clauses that allow one party to obtain the full benefit of the agreement (receiving the completed work) without an equivalent obligation (paying on time).

Considering the violation of the objective conditions of the agreement — especially the condition of a lawful cause in Article 1320, paragraph (4). Article 1337 of the Civil Code — then the dogmatically correct legal consequence is that it is null and void (***void by operation of law***). Different from "can be canceled" (*destructible*), which is the result of a violation of subjective conditions, is void by law, meaning that the agreement is deemed to have never existed since the time it was made. However, it needs to be emphasized: is the void clause *pay-when-paid?* Does this mean that all subcontractor contracts are cancelled? This is where the doctrine of partial cancellation (*partial nullity*) provides the right solution. J. Satrio (2018) emphasized that if a certain part of an agreement contains a defect, then only the defective part is legally void, while the rest of the agreement remains valid as long as the agreement can still stand without the invalid part. By applying the doctrine of partial cancellation, only the clause is void: *pay-when-paid.* This doctrine automatically operates by law to amputate the risk transfer clause like a cancer cell excised from the body of the agreement, while the main anatomy of the contract—namely the obligation to complete the work by the subcontractor and the obligation to pay by the main contractor—remains alive and legally binding.

The legal implications are very clear: the main contractor remains legally obligated to pay for all work completed by the subcontractor, regardless of whether the project owner has paid the main contractor or not. Furthermore, the subcontractor has the right to claim compensation (*compensation*) based on Article 1243 of the Civil Code for losses due to late payment, which includes actual losses suffered (*emerging damage*) and profits that should have been gained but were lost (*profit ceases*). Badri, Handayani, and Rizki (2024) confirmed that both elements of compensation are consistently regulated in the Civil Code for both cases of default and unlawful acts, so that subcontractors can demand full recovery for the losses they suffer through both legal channels. T.M.P. Pangaribuan (2019) emphasized that the court has the authority to ignore liability limitation clauses that conflict with the principle of good faith and apply the principle of full compensation. Sulthanah (2021) added that judges in construction cases have broad authority to rebalance the distribution of rights and obligations of the parties if the contract clause is proven to violate the principle of balance.

Supreme Court Decision Number 463 K/Pdt/2019 provides jurisprudential confirmation of this legal consequence. The Panel of Supreme Court Justices dismissed the main contractor's argument that payment to subcontractors depended on receipt of payment from the project owner, and emphasized that a subcontractor's right to collect on a performance that has fulfilled its obligations perfectly cannot be dependent on events outside the scope of the subcontractor's contract itself. It should be noted that the Supreme Court did not explicitly declare the clause null and void due to an impermissible cause; the legal basis used by the Panel was Article 1365 of the Civil Code. However, both considerations are in principle consistent: both reject constructions that impose risks beyond the subcontractor's control. Thus, this decision serves as jurisprudential confirmation of the principle of risk segregation between layers of a construction contract.

Comparative analysis shows that the prohibition clause *pay-when-paid* is a widely adopted legal policy. Singapore implemented the Building and Construction Industry Security of Payment Act (SOPA) 2004, which expressly prohibits clauses of *pay-when-paid* which serves as an absolute condition for subcontractor payment and provides a speedy adjudication mechanism. Malaysia followed suit through the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012), which provides a speedy adjudication mechanism for construction payment disputes. In the United States, the states of California, New York, Ohio, and several other states have banned such clauses of *pay-if-paid*-through legislation, declaring the clause contrary to public policy. The fact that countries with different legal systems independently reached the same conclusion dogmatically reinforces that the clause contains an illegitimate cause that is contrary to universal principles of contractual justice.

As a final dogmatic conclusion, the application of the clause *pay-when-paid*—especially in the absolute variant *pay-if-paid*— clearly manifests abuse of circumstances (*abuse of circumstances*) which distorts the principles of balance and proportionality. The legal consequence is that the clause is proven to contain an impermissible cause (*unlawful cause*) because it violates the limits of legal propriety and public order. Therefore, civil law absolutely renders the verdict null and void (***void by operation of law***) regarding the risk transfer clause from the moment the agreement is signed. Through the operation of the partial cancellation doctrine (***partial nullity***), the extinction of this binding force only specifically amputates the payment deferral clause. Meanwhile, the subcontract agreement as a whole remains in place as a legitimate basis, creating an absolute and unconditional obligation for the main contractor to pay for all subcontractor performance.

Ariyanto and Wicaksono (2023) emphasized the urgency of implementing the doctrine of abuse of circumstances (*undue influence*) in Indonesian contract law and concluded that the principle of equity (*equity principle*) requires that agreements formed due to the pressure of asymmetric bargaining positions be annulled or their binding force reduced for the sake of justice. Deva and Rosmidah (2023) confirm that the principle of proportionality and the principle of good faith function synergistically as constraints on freedom of contract—both are binding simultaneously and cannot be overridden by each other. The implications of these findings for clauses *pay-when-paid* very firmly: a clause that is proven to arise from a systemically exploited asymmetry in bargaining position, and which distributes risk disproportionately to parties who do not have the capacity to manage it, cannot receive legal protection from the principle of freedom of contract. The principle of freedom of contract only protects free will (*free will*), not a will distorted by economic domination.

Susanto et al. (2021) specifically demonstrated that in commercial construction service contracts, the application of the proportionality principle resulted in a fairer risk distribution and significantly reduced dispute rates. This comparative finding further strengthens the dogmatic conclusion that clauses *pay-when-paid* which transfers the risk completely to the subcontractor — without considering its capacity and legal position — not only violates the principle of proportionality theoretically, but concretely harms the construction industry ecosystem and is contrary to the public interest, which must be protected by law.

4. CONCLUSION AND SUGGESTIONS

Based on the entire series of normative legal analyses, two main conclusions are drawn which are prescriptive-dogmatic in nature. First, the synchronization of legal protection for subcontractors must be realized through the re-establishment (*reinforcement*) of fundamental principles of the Civil Code. The absence of norms (*vacuum of norm*) in the 2017 UUJK regarding the prohibition on unilateral risk transfer automatically invalidates the power of exclusivity/*special law.* The legal consequence is that the subcontracting relationship is withdrawn at *general law* and is imperatively subject to the principle of objective good faith (Article 1338 paragraph 3 of the Civil Code) and the principle of propriety (Article 1339 of the Civil Code). This systemic lack of synchronicity is manifested in three legal gaps: the absence of norms, the ambiguity of norms, and the conflict of norms between the principle of good faith in Article 1338 paragraph (3) of the Civil Code and the practice of clauses *pay-when-paid,* which releases the main contractor from payment obligations even though the subcontractor's performance has been perfectly fulfilled.

Second, the *pay—when—paid clause*— especially absolute variants of *pay-if-paid*— is a manifestation of abuse of the situation (*abuse of circumstances*) which is not legally valid. This clause contains an unlawful cause (*unlawful cause*) because it was proven to have violated the limits of propriety and public morality based on Article 1320 paragraph (4). Article 1337 of the Civil Code. As a legal consequence, this clause ***batal demi hukum (void by operation of law)***. Through doctrine ***parsial (partial nullity)***, this cancellation only amputates the specific payment delay clause, while the main subcontract agreement remains valid and binds the main contractor to pay all the subcontractor's performance absolutely.

Based on these conclusions, three suggestions are put forward. **To the legislators (DPR RI and the government)**, it is dogmatically obliged to amend Law Number 2 of 2017 concerning Construction Services by formulating an absolute prohibition norm of a coercive character (*mandatory law*) regarding the inclusion of the *pay-when-paid clause*, especially the variants *pay-if-paid*. This amendment must be integrated with the institutionalization of a direct payment scheme (*direct payment*) and a fast dispute resolution adjudication mechanism (*statutory adjudication*), by adopting the efficacy of the Security of Payment Act (SOPA) and CIPAA instruments. **To the Supreme Court and the judicial environment**, judges are obliged to take a progressive jurisprudential stance by using Article 1320, paragraph (4),. Article 1337 of the Civil Code to issue a null and void verdict against a unilateral risk transfer clause, and to apply the partial cancellation doctrine uniformly. **To construction industry players**, the main contractor is obliged to adjust all drafts of its subcontractor contracts to the principle of proportional risk distribution as required by the principle of good faith in Article 1338, paragraph (3). Article 1339 of the Civil Code, considering the inclusion of the clause *pay-when-paid* variants *pay-if-paid,* contains the risk of legal nullity based on violation of the conditions of a lawful cause.

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