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Analysis of the Selection and Implementation of Construction Contract Types in Indonesia from the Perspective of Goods and Services Procurement Law; (Completeness of Planning Products as Procurement Documents)

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ABSTRACT

The inconsistency between the selection of construction contract types and the completeness of planning products as tender documents has become a persistent problem in Indonesian government procurement, frequently leading to variation orders, cost overruns, risk misallocation, and audit findings. This research aims to analyse the legal relationship between the completeness of planning products and the selection of construction implementation contract types, as well as to identify the legal implications of such mismatches under Indonesia's goods and services procurement law. This study employs a normative legal research method using a conceptual approach and case studies of sports stadium renovation projects. The analysis is carried out through Lawrence M. Friedman's Legal Systems Theory, which encompasses three components: the substance of the law, legal structure, and legal culture. The results of the study show that the lack of synchronisation between contract types and the readiness of tender documents constitutes a systemic failure. The substance of the law has not provided operational parameters; the institutional structure does not perform a control function from the planning stage; and the prevailing legal culture remains oriented toward the transfer of risk and the shifting of responsibility rather than sound technical planning. The study recommends establishing minimum standards of planning completeness as a prerequisite for the qualification of tender documents for lump sum contract types, strengthening the role of Construction Management (Manajemen Konstruksi) from the initial planning stage, and shifting the paradigm toward technical data-based risk management.

INTRODUCTION

Construction contracts are the main legal instruments governing the relationship between service users and service providers in the implementation of construction work. In practice in Indonesia, construction implementation contracts are generally divided into three main types: lump sum contracts, unit price contracts, and combined contracts, as stipulated in Law No. 2 of 2017 concerning Construction Services and its implementing regulations. The selection of contract type is not purely administrative but carries significant legal, technical, and financial implications, particularly with respect to risk sharing, legal certainty, and the responsibilities of the parties in the implementation of construction projects (Abendroth, 2016; Khalef et al., 2021; Osifo et al., 2025).

In the theory and practice of construction procurement, the lump sum contract type is ideally applied when planning documents have been prepared in a complete, detailed, and final manner, so that the scope for changes in work can be minimised. Conversely, the unit price contract is more appropriate when the volume of work is not entirely certain and remains subject to adjustment during the implementation period (Sacks et al., 2018; Savelyev, 2017; Vanier & Tomescu, 2024). The inconsistency between the contract type selected and the level of completeness of the planning product has the potential to cause contractual disputes, cost inefficiencies, and audit findings, as demonstrated in various empirical studies on contract risk in Indonesia (Abdul-Malak & Ezzeddine, 2023; Chan et al., 2021; Gurgun & Koc, 2023).

This problem becomes even more pronounced in practice when the selection of contract type is made with the assumption of transferring risk entirely to the service provider, without being balanced by the readiness of adequate tender documents. In many projects, lump sum contracts are still chosen even when detailed drawings, technical investigation results, and structural calculations are not yet fully available (Gad et al., 2020; Khalafalla & Rueda, 2020; Othman, 2021). This creates legal and technical uncertainty, which ultimately not only harms contractors but also has the potential to cause state losses and violations of the principle of prudence in government goods and services procurement (Curry, 2016; David, n.d.; Paraskeva & Tsoulfas, 2025).

This phenomenon is illustrated by the case of a sports stadium construction project involving renovation and capacity improvement works. In that project, the contracting authority selected a lump sum contract type on the assumption that technical risks and unforeseen conditions could be transferred entirely to the contractor. However, the tender documents prepared included only a design concept, Rencana Kerja dan Syarat-syarat (RKS/technical specifications), an outline specification, and a Rencana Anggaran Biaya (RAB/cost estimate) with work volumes, without being supported by detailed structural drawings or forensic assessments of the condition of the foundations, columns, and balustrades — elements that substantially altered the scope of work.

The resulting changes were subsequently addressed through a variation order mechanism using a balance budget approach. However, this solution itself became the subject of audit findings, with auditors assessing the contracting team, planning consultants, and construction management consultants as negligent for having selected a lump sum contract type from the outset without adequate planning document completeness. This case demonstrates that errors in contract type determination are not merely technical problems but systemic ones, involving aspects of institutional structure, legal substance, and legal culture in the implementation of construction projects (Barman & Charoenngam, 2017; Husa, 2018; Seboka & Gidebo, 2026).

This paper aims to analyse, from a legal standpoint, the application of construction implementation contract types in Indonesia in relation to the completeness of design products as tender documents. The analysis is carried out using Lawrence M. Friedman's Legal System Theory, which situates the problem of construction contracts not only within legal norms (legal substance) but also within procurement institutions (legal structure) and the practices and mindset of the actors involved (legal culture). It is hoped that this paper will make both an academic and practical contribution to strengthening the construction procurement system based on legal certainty, professionalism, and the principle of prudence (Adrianto et al., 2023; Banwo, 2016; Bello, 2023).

Against this background, the central problem addressed in this paper stems from the inconsistency between the selection of construction implementation contract types and the level of completeness of planning products as tender documents. This condition gives rise not only to technical and financial problems but also to structural and systemic legal issues in the implementation of construction projects in Indonesia.

In construction procurement practice, the selection of contract types is often made prematurely, driven by administrative considerations, budget year constraints, or assumptions regarding the transfer of risk to service providers. Such decisions are not always matched by the readiness of planning documents. As a result, contracts that are legally classified as lump sum are in practice implemented with characteristics more akin to unit price contracts — with adjustments carried out through variation order mechanisms — which are subsequently questioned in audits and give rise to findings of negligence or potential state losses.

From the author's perspective, this problem indicates that the root cause lies not solely in individual error but in the flawed design of the construction procurement system, particularly regarding the relationship between planning consultant outputs, contract type selection decisions, and risk control mechanisms. It should also be noted that even if a filtering mechanism is introduced at the stage of planning document review by the procurement team during pre-selection preparation, its effect will be limited if the project owner's planning products are not yet finalised at that point. It is therefore necessary to formulate a problem statement that is not only normative but capable of thoroughly explaining the root of the issue.

Based on this description, the problem formulation of this paper is as follows. First, what is the relationship between the level of completeness of planning products as tender documents and the selection of construction implementation contract types in Indonesia? This question specifically examines the extent to which planning documents — including technical drawings, specifications, RKS, and technical calculations — can serve as rational and legally valid determining factors in choosing a lump sum contract, unit price contract, or a combination thereof, emphasising that contract type selection is not merely an administrative choice but a legal decision grounded in the technical readiness of the project. Second, why does the discrepancy between the selected contract type and the completeness of planning documents give rise to legal problems such as audit findings and contractual disputes? This question focuses on the consequences of imprecise contract type selection — particularly when lump sum contracts are applied to projects with high technical uncertainty — including the potential for variation orders, blurred risk allocation, and auditor findings of negligence affecting the responsibilities of the parties. Third, how can the selection and application of construction implementation contract types be analysed systemically through the lens of Lawrence M. Friedman's Legal System Theory, by situating the issue within a broader framework that examines legal substance, legal structure, and legal culture?

This problem formulation places the issue of construction contracts within a broader framework by examining the interrelationship between: legal substance, in the form of laws, regulations, and contract provisions; legal structure, in the form of the roles and authorities of contracting authorities, planning consultants, construction management consultants, and auditors; and legal culture, in the form of risk transfer practices, administrative assumptions, and decision-making patterns in construction procurement. Through this problem formulation, the paper is expected to demonstrate that the problem of contract type selection is not merely

a matter of normative compliance but a systemic legal issue requiring careful attention and, potentially, comprehensive reform.

This research is prepared with the primary objective of analysing — both juridically and systemically — the relationship between the selection of construction implementation contract types and the level of completeness of planning products as tender documents in the implementation of construction projects in Indonesia. This objective is grounded in the observed inconsistency between the nature of the contract type selected, particularly the lump sum contract, and the actual condition of immature planning documents, thereby triggering disputes, variation orders, and audit findings with legal implications. Specifically, this research aims to: identify and explain the causal relationship between the completeness of planning products and the rationality of contract type selection — whether lump sum, unit price, or combined contracts — based on the applicable legal framework for procurement and construction services in Indonesia; analyse the legal implications of inaccurate contract type selection on the implementation of construction projects, particularly in the context of variation orders, blurred risk allocation, and findings of negligence by supervisory officials and state auditors; and examine the problem of contract type selection and application through Lawrence M. Friedman's Legal System Theory, by situating the completeness of planning products as part of legal substance, the roles of the actors as legal structure, and the practices of risk transfer and administrative culture as legal culture.

The benefits of this research are expected to provide both a theoretical and practical basis for the development of construction law and procurement management in Indonesia. Theoretically, this research is expected to enrich the body of construction law scholarship, particularly in the study of the relationship between planning documents, contract type selection, and legal certainty in the implementation of construction projects; provide conceptual reinforcement for the application of Lawrence M. Friedman's Legal System Theory in the context of procurement and construction contracts, a field in which this theory has been more widely applied in public and criminal law but remains relatively underexplored in construction contract studies; and serve as an academic reference for subsequent research addressing construction contracts, project legal risk, and procurement system reform based on planning quality. Practically, this research is expected to serve as a consideration for the government and procurement task force (Kelompok Kerja Pengadaan/Pokja) in determining the direction of contract type selection in a more rational manner grounded in the readiness of planning documents rather than solely administrative considerations or budget year constraints; provide guidance for planning consultants and construction management consultants in understanding that the quality and completeness of planning products carry direct legal implications for the contract type selected and the risks that may arise; assist contractors in understanding the limits of reasonable risk transfer in lump sum contracts, so as to avoid contractual arrangements that are substantively inequitable and have the potential to give rise to disputes or audit findings; and serve as an initial reference for auditors and supervisory officials in assessing construction contract issues in a more proportionate and systemic manner, taking into account the initial procurement design and the readiness of planning documents rather than focusing solely on the end of project implementation.

METHOD

This research uses normative legal research methods with a conceptual approach and case approach. The normative method is used to test laws and regulations. And the legal principles that govern construction and procurement contracts.

A conceptual approach is used to analyze the concept of selecting contract types, completeness of planning products, and risk allocation in construction contracts. Meanwhile, a case approach is used to examine examples of sports stadium construction projects as an empirical illustration that reflects systemic problems in practice.

The data used are:

1. Primary legal materials (laws and regulations and construction contracts),
2. Secondary legal materials (journals, books, and scientific papers of the last 5 years),
3. Supporting non-legal materials (audit reports and procurement practices).

The analysis is carried out qualitatively by drawing deductive conclusions from the general norm to concrete cases.

RESULT AND DISCUSSION

Analysis of Contract Type Selection Problems based on Completeness of Planning Products

1. Incompatibility of the lump sum contract with incomplete contract documents

Lump sum contracts in theory demand a complete and final design before the execution of construction. In the case of sports stadiums, although general design concepts and specifications are available, the absence of detailed drawings and the lack of investigation of the existing structure lead to significant technical uncertainty.

When forensic investigation of the structure is carried out at the implementation stage and results in the need to reinforce foundations, columns, and beams, it shows that the technicalities are unpredictable from the start. This condition is substantially contrary to the character of a lump sum contract.

2. Legal Impact of Incorrect Contract Type Selection

Inaccuracies in the selection of contract types have an impact on:

a. The appearance of unplanned/predicted variation orders,
b. Balancing risk allocation between assignors and service providers/contractors,
c. Potential financial losses to the state, and
d. The audit findings mentioned the carelessness of the technical team.

Legally, this condition reflects the failure of the principle of prudence and legal certainty in the implementation of construction procurement.

3. The Relevance of Friedman's Theory in Diagnosing Problems

Through Lawrence M. Friedman's Legal System Theory, it can be carefully concluded that the problem is not merely a technical error, but a failure of implementation in a comprehensive system, which is the impact/consequence of:

a. Inconsistent legal substance (contract vs document),
b. Ineffective legal structure (the role of the Constitutional Court is late),
c. Wrong legal culture (lump sum coercion).

Table 1. Lawrence M. Friedman vs. Case.

No.	Legal System Element	Ideal Condition	Empirical Findings	Legal Consequences
1	Legal Substance	Lump-sum contract selection should be supported by comprehensive planning and technical documentation as the basis for procurement and contractual arrangements.	The lump-sum contract was adopted despite incomplete technical documentation and the absence of forensic assessment of the existing structure.	Legal uncertainty arose, resulting in scope changes, variation orders, and weakened cost control mechanisms.
2	Legal Structure	Construction Management Consultants should be involved from the earliest planning stages to ensure quality assurance and informed contract selection.	The consultant was appointed concurrently with the contractor, limiting the effectiveness of oversight and quality control functions.	Risk mitigation measures were ineffective, leading to issues identified by auditors.
3	Legal Culture	Contract selection should be guided by prudence, accountability, and professional judgment.	Risk-transfer considerations to the contractor predominated in decision-making.	Formalistic practices emerged, creating potential legal and financial risks to the state.

Source: Analysis of case study data of sports stadium renovation project, processed based on the theoretical framework of Lawrence M. Friedman, 2025

Solutions and Problem Solving

The solution to this problem must be systemic, namely:

1. The direction of the contract type is determined from the beginning of the planning, but the final determination is made after evaluating the completeness of the documents,
2. Strengthening the role of Constitutional Court consultants from the planning stage to ensure document readiness,
3. Selection of adaptive contract types, e.g. unit price or joint contract for complex renovation projects,
4. A change in legal culture, from just risk transfer to technical data-based risk management.

CONCLUSION

Based on a juridical-empirical analysis of the selection of construction implementation contract types in Indonesia — particularly in relation to the completeness of planning products as tender documents — and employing Lawrence M. Friedman's Legal System Theory as its analytical framework, it can be concluded that the problems identified arise from systemic failures operating across all three elements of the legal system. These failures include: legal substance that has not established strict normative parameters governing the completeness of design documents as a prerequisite for lump sum contract selection; legal structure characterised by suboptimal institutional roles, such as construction management consultants who are engaged concurrently with the contractor and thereby fail to function as an

independent, layered controller; and a legal culture that prioritises administrative formality over prudence, resulting in the transfer of existing risks to the contractor without prior forensic investigation at the pre-tender stage. These failures are evidenced in the case of the sports stadium revitalisation project, which triggered massive variation orders, audit findings of technical negligence, and cost assurance failures.

This synthesis affirms that the errors identified are not partial or isolated but constitute a systemic cycle requiring simultaneous, integrated recommendations grounded in all three of Friedman's elements. With respect to legal substance, explicit regulation is needed to establish clear thresholds of design certainty as a basis for the selection of lump sum, unit price, or combined contract types. With respect to legal structure, the role of construction management consultants must be strengthened so that they serve as independent gatekeepers from the planning stage, complemented by a formal internal evaluation mechanism. With respect to legal culture, a paradigm shift is required through integrative legal and technical training aimed at internalising the values of good faith and professionalism among all procurement actors. These measures are essential to prevent the recurrence of contractual disputes, state losses, and construction project risks.

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