

Legal Protection For Construction Service Providers in Cases of Building Failure

Anrizal^{1*}, Sami'an², Sarwono Hardjomuljadi³

University of Pekalongan, Indonesia

*Corresponding author: anrizal.rizal@gmail.com

Abstract

Building failure is a condition of collapse or non-functioning of a building when the final handover of construction services is carried out where this is caused by negligence on the part of the Service Provider, so that they are obliged to be responsible for the failure that exists. The problems in this study include 1) How to implement legal protection for construction service providers in cases of building failure. 2) What are the weaknesses in implementing legal protection for construction service providers in cases of building failure so that they are not yet fair. 3) How to reconstruct legal protection for construction service providers in cases of building failure based on the value of justice. The approach method used is empirical juridical. In this study, the theory used is the Pancasila Justice Theory. The results of the study found that the implementation of legal protection for construction service providers, especially related to building failure problems, has not been based on the principle of justice because building failure problems should be resolved through civil law and administrative sanctions, not criminal action. And related to various weaknesses in the implementation of legal protection are still found, where this is caused by the weakness of existing legal regulations, law enforcement structures and community culture.

Keywords: Building Failure, Legal Protection for Construction Service Providers, Pancasila Justice Theory.

Introduction

In order to implement all the contents contained in Pancasila and related to the equitable distribution of fair and quality infrastructure development, in line with that stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which states that everyone has the right to live in physical and spiritual prosperity, have a place to live, and have a good and healthy living environment. a quality construction development legal policy is needed (Timothy, Andrew et al., 2022).

Indonesia is classified as a developing nation, where efforts to build facilities and infrastructure in it must continue to be carried out. In the implementation of the current government program, the development that occurs is spread across all corners of the nation. The development that is being attempted is intended to be equitable in all regions in the country, so



that the welfare gap in each region can be minimized. In addition to the government's intensive role in pursuing development in this nation, the private sector also plays an active role in the existing development process. This is intended to support the efforts they are undertaking so that the implementation process becomes smoother. Therefore, both parties work together to strive for infrastructure development in this nation (Saputri, E., & Raffles, R.,2022).

Currently, Construction Services have a large and optimal role in national development, considering the results obtained by these Construction Services in the form of buildings that physically have a form, either in the form of facilities or infrastructure that support growth and development in many fields, especially the economic, social and cultural fields, so that a just and prosperous society can be realized, where this is based on growth and development in many fields, especially the economic, social and cultural fields, so that a just and prosperous society can be realized, where this is based on Pancasila and the 1945 Constitution. Furthermore, Construction Services have a large role in supporting the development of various industries, both goods and services needed to carry out construction work and support the nation's economic sector widely based on the principles of togetherness, optimization of justice, sustainability, environmental insight, independence, and by maintaining progress, unity and balance of the national economy.

Construction projects are classified as projects that have the potential for high risk. There are two types of risks that arise in carrying out construction projects, namely there are risks that may result in building damage such as material damage or disability, death, injury in work accidents from construction workers, the next is the emergence of commercial risks where this is related to late project handling and loss of profit. Therefore, when carrying out a construction project, all related parties should create a risk accountability matrix so that in the future the party responsible for the risk can be determined (Sanny, D. A.,2023). This study also examines that criminal efforts against construction services have shifted into the field of civil and administrative law. Legal direction towards criminal efforts must be carried out only when no other settlement options are found, and is only classified as an effort to enforce the law on construction services (Murdani, A. D., 2017).

Construction services are one of the sectors that have a crucial role in the development of the nation's facilities and infrastructure. From this sector, the progress of a development can be seen physically and directly. Service Users are parties who provide or have work through the use of Construction Services and for Service Providers are parties who provide Construction Services. Determinations related to the working relationship between Service Providers and Service Users must be stated in the Construction Work Contract.

Special policy regarding Consulting Service contracts, where the role of the consultant member (the party providing the service) is a policy that regulates the service provider which is a joint venture with more members than the service provider, so that the joint venture member gives his/her power of attorney to one of the joint venture members to carry out an action and represent all the rights and obligations of the other service provider party for the party using his/her services.. In an effort to obtain a construction contract, a contractor is required to run a tender or submit a price offer to the owner. The contractor must determine the optimum mark-



up amount where the results will not provide him with a profit but the final price set tends to be cheaper than other competitors. It is explained that contractors are all business entities that are individual in nature but have a legal entity and focus on the field of building contracts. Deviations that contractors often do in the field include:

1. The contractor has no desire to carry out certain work because the points of the work are not stated in the Bill of Quantities
2. The contractor submits a calculation proposal for changes to the work, which is based on the available Bill of Quantities volume.
3. The contractor carries out work in the field in accordance with the volume stated in the BQ.

Construction project contracts are often known as engineering contracts. A contract is a document that contains a mutual agreement made voluntarily, and has legal force, in which the first party promises to provide services and materials in the project development process for the second party, and for the second party promises to make payments as a form of compensation and material costs that the first party has provided. All contracts should be based on the principle of justice for both parties and do not have the aim of gaining one-sided benefits so that the other party feels disadvantaged (Herry Kamaroesid, 2009).

Handling various cases related to construction product failures often ends with an unclear party who should be held accountable. All parties involved in it will continue to try to avoid the existing form of accountability. This is classified as a logical consequence of a construction project in which there is involvement from various parties with work that is adjusted to the expertise they have and has their respective roles and responsibilities. So it can be ensured that each party who participates in providing their role in achieving product performance means having the possibility to contribute to the failure of the building that occurs (Muchtar, Alam Setya, et al. 2018).

Building failure is not only related to losses experienced by the owner, but also has other consequences, including differences of opinion that can result in increased costs and time that should not have occurred. As stated in Law No. 18/1999 concerning Construction Services Jo. Law Number 2 of 2017 concerning Construction Services which provides a prerequisite that building failure must be included in the contract, where this is one form of progress in the national construction implementation process, especially in efforts to fulfill the principles of justice and utility. However, it cannot be denied that this will result in bigger and more complicated problems if the supporting devices available for the implementation of the legislation, especially regarding the problem of building failure, are not met immediately. The need for a construction product guarantee system that is in line with the development of the nation's construction services and various socio-cultural conditions of society in the country is classified as a problem that must be considered and developed in order to support the implementation of the existing legislation (Napitupulu and Haryanto., 2024).

Building failure and construction failure can be caused by technical or non-technical factors. It is understood that technical factors are caused by the implementation of processes that are unbalanced and do not comply with the specifications agreed upon in the contract, while



non-technical factors tend to be caused by processes prior to the contract or are caused by the lack of competence of the workforce, business entities, managerial governance of all parties involved in the project (Yosafat, Yosua, 2013).

Quality control of the implementation of the construction process is often considered suboptimal. Construction failure can be detected when the construction process has been completed or during the maintenance process. If construction failure is detected too late, it will cause an increase in costs that must be spent on repair efforts with a percentage reaching 6-12% of construction costs and 5% for maintenance costs. Almost 20 to 40% of construction failures occur in the implementation process and 54% of them are caused by the unskilled workforce and the rest are caused by the quality of the materials used (Mulyo and Santoso., 2018)

The Letter of Agreement or Contract provides for an even distribution of risk, until all parties involved reach an agreement. The contract is classified as a process of spreading risk from the party using the service to the party providing the service. This contract must be understood and consciously known by all related parties so that various problems do not arise in the future. If one of the purposes of the project implementation is not achieved, then it can be interpreted that the project has failed. Construction failure or building failure is included in a long process, from a process of implementing work that the contractor does because it is not in line with the existing contract, especially the RKS and Plan Drawings that have been previously determined. Building failure is caused by project performance indicators that are not met. Because there is a building failure that causes it to not function properly, the community cannot use the results of the building optimally, which causes public services for construction services to be disrupted (Hansen, Seng, 2015).

Based on Article 60 in conjunction with Article 1 number 10 of Law No. 2 of 2017, it is explained that "In the event that the implementation of construction services does not meet the standards of security, safety, health, and sustainability resulting in building failure, namely a state of building collapse and/or non-functioning of the building after the final delivery of the construction service results caused by the Service Provider's error, then the Service Provider can be the party responsible for the building failure". Next, Article 67 explains that "Service Providers and/or Service users are required to provide compensation in the event of Building Failure as referred to in Article 65 paragraph (1), paragraph (2), and paragraph (3)". Then, Article 98 also explains that "Service Providers who do not fulfill their obligations to replace or repair building failures are subject to administrative sanctions (Government Regulation of the Republic of Indonesia, 2017).

From this case it will be seen that it is not yet clear how to determine the case of building failure as a form of civil and administrative law problem or criminal law where this results in legal uncertainty. The existing problem is certainly clearly contrary to the Fifth Principle of Pancasila and Article 28D of the 1945 Constitution of the Republic of Indonesia.

Based on this explanation, the researcher is interested in conducting a study that focuses on three problems, namely:

1. How is legal protection implemented for construction service providers in cases of building failure?



2. What are the weaknesses in implementing legal protection for construction service providers in cases of building failure so that it is not yet fair?
3. How to reconstruct legal protection for construction service providers in cases of building failure based on justice values?

Method

The paradigm in this study is constructivism, in which in this study the law is viewed as a reality that is plural and consists of various types. The law is placed in a mental construction of each individual who has different individual and social experiences, without exception the experience between informants and researchers, so that the existing law is considered varied and plural (Hans, Kelsen. 2009).

The type of legal research used is non-doctrinal. In non-doctrinal legal studies, law is viewed from a sociological perspective, namely as an empirical phenomenon that can be observed in ongoing life. Viewed from a substantive perspective, law is a form of social power that is empirical in form, but appears legitimate and works to provide patterns for various actual behaviors of society. The data used are primary and secondary data. It is understood that primary data is a clear form of information where the acquisition is from direct field studies. And for secondary data, namely the acquisition of data whose sources are from literature that is related to the object of study, divided into: Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials (Kadir, Muhammad. 2004.,).

The data analysis used by the researcher is qualitative descriptive, namely all collected data are edited, processed and systematically arranged, which are then displayed in descriptive form and finally conclusions are obtained. In the process of data analysis, the author uses a qualitative method, meaning that all data obtained are analyzed in full, where later a factual and systematic picture will appear (Kadir, Muhammad. 2004).

Implementation of legal protection for construction service providers in cases of building failure

Law Number 2 of 2017 concerning Construction Services no longer regulates the threat of criminal sanctions for building failures in line with that stated in Law Number 18 of 1999 concerning the old Construction Services. All forms of resolution of legal problems from building failure cases should be resolved through civil and administrative law only, in line with that stated in Articles 63 and 98 of Law Number 2 of 2017 concerning Construction Services.

Summation Building failure as a Special Crime

Construction service policy is classified as an independent legal field, where this provision regulates the mechanism of rights, authority and position of all parties, and sanctions related to construction services in the country. So that various forms of violations of construction services have a construction component and contain elements of action that are specifically closely related and classified as a group of building construction activities. This specialization



also concerns the problem of building failure as a criminal act, the determination of criminal elements in efforts to create construction services is specifically determined from the perspective of administrative law on procurement of goods as well as with the paradigm of criminal law. Based on this view, Law Number 18 of 1999 contains matters regarding special criminal acts for building failure, but this criminal sanction policy has been revoked based on the latest Construction Services Law, namely Law Number 2 of 2017, which ultimately in the implementation of its law enforcement causes the ambiguity of resolving building failure cases.

The Absurdity of Building Failure as a Corruption Offense

The elimination of criminal sanctions in the procurement policy of goods and services has shown that law enforcement in cases of building failure has been wrongly resolved through the criminal justice mechanism. However, in reality, legal enforcement of building failure problems will continue to be linked to criminal acts, especially corruption. Although the problem of building failure can be resolved with the stages stated in Law Number 2 of 2017, the implementation of criminal acts of corruption is still considered a threat to the perpetrators.

From the problem of building failures that are resolved through criminal law, it is clear that the law enforcement efforts that occur are inconsistent so that legal protection measures for parties providing services in building failure problems are not yet based on the principle of justice, because legal certainty in resolving them is not available.

Weaknesses in the Implementation of Legal Protection for Construction Service Providers in Cases of Building Failure, So It Is Not Yet Fair

Weaknesses of Legal Regulations

Criminal policies on construction services are only regulated in the previous construction services law, namely Article 43 of Law Number 18 of 1999 concerning Construction Services, where this law has been revoked and replaced with the latest law, namely Law Number 2 of 2017 concerning Construction Services, and therein no longer contains a special article concerning criminal sanctions for building failure. On the one hand, this is certainly welcomed by the party providing construction services because there is no longer a criminal threat when a building failure case occurs, but the existing form of resolution is to use civil and administrative law. While on the other hand, legal uncertainty arises in the implementation process, where various threats of general criminal acts such as embezzlement or fraud cannot be imposed on the construction service provider. This can happen because Law Number 2 of 2017 concerning Construction Services does not contain a policy that emphasizes that the problem of building failure can only be handled by using civil and administrative law.

Weaknesses of Legal Structure

Due to the lack of clear regulations regarding the elements of the act and the criminal sanctions given related to the procurement of goods, the implementation of the law in the case of corruption in the procurement of construction goods also does not have clear legal clarity so



that legal protection for construction service providers becomes uncertain. Law enforcement efforts on the problem of building failure are carried out based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Criminal Acts of Corruption which are specifically intended for criminal acts of corruption. Law enforcers tend to provide an assessment that the problem of construction failure will be better resolved by law enforcement efforts on criminal acts of corruption.

Weaknesses of legal culture

The disparity of public views on legislative policies will result in the emergence of consequences, namely differences in law enforcement between certain community groups and others. Or another term is: cultural pluralism will result in the emergence of pluralism in law enforcement efforts.

Reconstruction of Legal Protection for Construction Service Providers in Cases of Building Failure Based on Justice Values

Building Failure as a civil dispute

Based on Article 88 of Law No. 2 of 2017 concerning Construction Services which is stated in Chapter XI on dispute resolution, namely:

“Disputes arising in construction work contracts are resolved based on the basic principle of deliberation to reach consensus. In the event that the deliberation of the parties as referred to in paragraph (1) cannot reach an agreement, the parties shall take the dispute resolution measures stated in the construction work contract. In the event that the dispute resolution measures are not stated in paragraph (2), the disputing parties shall make a written agreement regarding the selected dispute. The stages of dispute resolution measures as referred to in paragraph (2) include”:

1. Mediation
2. Conciliation
3. Arbitration

The legal relationship between the party using the service and the party providing the service in the implementation of construction work should be based on existing laws and regulations, including Law Number 02 of 2017 concerning Construction Services (UUJK) and its implementing regulations. The legal relationship in question is stated in a construction work contract, in line with that explained in Article 1 number 8 of the Construction Services Law which states "The Construction Work Contract is the entire contract document that regulates the legal relationship between the Service user and the Service provider in the implementation of Construction Services".

In civil law terms regulated in Article 1604 to Article 1615 of the Civil Code Book III concerning Contracts in Part Six concerning Contracting of Work, the term contracting agreement is used. A Construction Work Contract is a form of document that contains an



agreement and is considered legally valid. All work or development efforts will be determined by various legal rights and obligations in a construction work contract, therefore a work contract must be made properly and properly in the eyes of the law.

One of the contents contained in a construction work contract is a clause regarding building failure, which contains the policy regarding the obligations of the party providing the service for building failures that occur and the time limit for accountability for Building Failure.

From this it is clearly understood that, building failure is classified as a civil incident that occurs because there is a legal relationship in an agreement that is made. Therefore, it is wrong if the problem of building failure is included in the criminal law problem.

Building Failure as an Administrative Violation

Law No. 2 of 2017 concerning Construction Services no longer contains matters regarding criminal sanction policies for building failure issues. The elimination of the criminal sanction policy in the legislation certainly has a reason. The parties who formed the law certainly understand very well that the regulation of construction services tends to have a civil and administrative legal nature, so that the determination of criminal sanctions is considered inappropriate if stated in the latest Construction Services legislation. Law No. 18 of 1999 does not explain that administrative fines are a form of administrative sanctions. However, Law No. 2 of 2017 contains administrative sanctions, one of which is in the form of administrative fines which are a substitute for the criminal sanctions of imprisonment contained in Law No. 18 of 1999.

Fines as a form of administrative sanctions are included in the realm of administrative criminal law. The use of criminal sanctions in administrative law is actually classified as part of criminal law policy (legal policy). Administrative criminal law is criminal law in the part of administrative law violations, which is actually classified as a real manifestation of a policy that uses criminal law as a means in an effort to enforce administrative law. From this, if administrative sanctions are to be implemented, they can be known as administrative criminal sanctions (Napitupulu, R., 2023).

Article 98 of Law No. 2 of 2017 concerning Construction Services contained in Chapter XII Administrative Sanctions explains that "Service Providers who do not fulfill their obligations to replace or repair building failures", in line with that stated in Article 63, will be subject to administrative sanctions in the form of:

1. Written warning;
2. Administrative fines;
3. Temporary suspension of construction service activities;
4. Inclusion on the blacklist;
5. Freezing of permits and/or
6. Revocation of permit".

The difference between Administrative Sanctions and Criminal Sanctions is that, if administrative sanctions are intended for acts, the nature is reparator-condemnator, the process is carried out by State Administrative officials directly without going through judicial efforts.



Criminal sanctions are intended for perpetrators, the nature is condemnatoir, and must go through judicial efforts Pranoto, H. (2023).

Conclusion

The implementation of legal protection for parties providing construction services, especially in the case of building failure, has not been based on the principle of justice because building failure actions are often subject to criminal sanctions for corruption and other crimes. Building failure should be addressed using civil law methods and the imposition of administrative sanctions.

Various weaknesses in the implementation of legal protection for parties providing construction services, especially in the case of building failures that are considered unfair, are caused by several factors, namely First, weak legal regulations, namely the absence of criminal sanctions in Law Number 2 of 2017, which causes the ambiguity of the implementation of criminal acts of building failure. Second, a weak law enforcement structure, where most building failures are given criminal sanctions for corruption and other general crimes by law enforcement. Third, legal culture, namely there is no harmony of perception regarding the criminal elements of building failure, which certainly results in the implementation of plural criminal acts.

Development of legal protection for parties providing construction services in the case of building failure based on the principle of justice through efforts to add normal Articles to Law Number 17 of 2017, namely Article 102A, which states that "Civil dispute resolution and the imposition of administrative sanctions in the event of building failure as referred to in Article 10 number 1 and Article 98 exempts from criminal charges."

The results of the research conclusions above have obtained a number of suggestions that the researcher recommends to be used as input, including:

1. In order for the problem of building failure that occurs, either due to the fault of the service provider and/or service user, to be resolved by using civil law and imposing administrative sanctions in line with those stated in Law Number 2 of 2017 concerning Construction Services. Which ultimately does not impose criminal sanctions on the party providing services in this building failure problem.
2. In order to implement synchronization of legal substance, legal structure, and legal culture. Cultural synchronization is uniformity and harmony in experiencing views, attitudes and philosophies as a whole that underlie the running of the Criminal Justice System (SPP). Structural synchronization is simultaneity and harmony in the framework of relations between law enforcement agencies. While substantial legal synchronization is simultaneity and harmony both vertically and horizontally related to positive legal regulations.
3. In order for the implementation of changes to Law Number 2 of 2017 concerning Construction Services by the Legislative Institution through the addition of the reconstructed Article policy, where in the end there will be legal certainty in efforts to resolve the problem of building failure.



References

- Hans, Kelsen. 2009. *Dasar-Dasar Hukum Normatif*. Nusamedia. Jakarta
- Hansen, Seng. 2015. *Manajemen Kontrak Konstruksi*. Jakarta: PT Gramedia Pustaka Utama
- J. Moleong, Lexi. 2007. *metode Penelitian Kualitatif*. Remaja Rosdakarya. Bandung
- Kadir, Muhammad. 2004. Abdul. *Hukum dan Penelitian Hukum*. Citra Aditya Bakti. Bandung
- Linggomi Adinda Tamaradhina Napitupulu, Imam Haryanto. “Legal Responsibility of Construction Consultants for Building Failure”. dalam *Jurnal USM Law Review*, Vol 7 No 1 Tahun 2024
- Muchtar, Alam Setya, dkk. 2018. *Hukum Properti*. Bandung: PT Citra Aditya Bakti
- Mulyo, Sulistijo Sidarto dan Budi Santoso. 2018. *Proyek Infrastruktur dan Sengketa Konstruksi*. Jakarta: Prenadamedia Grup
- Murdani, A. D. (2017). Perlindungan Hukum Bagi Penyedia Atas Penghentian Kontrak Pengadaan Barang dan Jasa. *Jurnal Hukum Volgeist*, 2(1), 45–55. Retrieved from <https://portal-ilmu.com/konsep-pembangunan-infrastruktur>
- Napitupulu, R. (2023). Pertanggung Jawaban Hukum Konsultan Konstruksi terhadap Kegagalan Konstruksi Bangunan. *Jurnal USM Law Review*, 7(1), 45–60. <https://doi.org/10.26623/julr.v7i1.7756>
- Peraturan Pemerintah Republik Indonesia Nomor 59 Tahun 2010 tentang Penyelenggaraan Jasa Konstruksi atas perubahan Peraturan Pemerintah Republik Indonesia Nomor 29 Tahun 2000 tentang Penyelenggaraan Jasa Konstruksi. Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi
- Pranoto, H. (2023). Protection for Contractors in Construction Work Contract Due to Force Majeure (Study in Banyuwangi Regency). *Santhet: Jurnal Sejarah, Pendidikan dan Humaniora*, 7(2), 584–592. <https://doi.org/10.36526/santhet.v7i2.3004>
- Rakha, Muhammad dan Manna Naufal Maulana, 2020, tanggung jawab penyedia jasa konstruksi terhadap kegagalan bangunan, dalam jurnal education and development, *Jurnal Hukum Sanny*, D. A. (2023). The Role of a Notary for Construction Service Providers on Failed to Build Disputes. *Jurnal Konstatering*, 2(1), 15–25. Retrieved from <https://jurnal.unissula.ac.id/index.php/jk/article/view/29643>
- Saputri, E., & Raffles, R. (2022). Tanggung Jawab Para Pihak dalam Kontrak Pelaksanaan Konstruksi terhadap Kegagalan Bangunan. *Zaaken: Journal of Civil and Business Law*, 3(2), 206–227. <https://doi.org/10.22437/zaaken.v3i2.14708>
- Timothy, Andrew dkk, 2022, “pertanggungjawaban hukum bagi penyedia jasa konstruksi dan pengguna jasa konstruksi dalam kegagalan bangunan, “ *jurnal udayana*
- Yosafat, Yosua, 2013, *Pertanggungjawaban Perencana Konstruksi Terhadap Pengguna Jasa Dalam Kontrak Konstruksi Terkait Kegagalan Bangunan*, Universitas Indonesia, Jakarta

