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Reformulation of Criminal Act of Corruption in Building Failure Within Procurement of Construction Services from Perspective of Legal Certainty

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Abstract

Infrastructure development is a strategic sector in national development as mandated by the 1945 Constitution of the Republic of Indonesia and regulated under Law Number 2 of 2017 on Construction Services. However, the practice of law enforcement concerning building failures demonstrates inconsistency, particularly when applying the Anti-Corruption Law (UU Tipikor), despite such matters being more appropriately resolved through the legal mechanisms of construction law or civil contract law. The collapse of the Mandastana Bridge and the Sukamara Prison wall serve as concrete examples of legal uncertainty arising from improper application of the law, thereby raising issues of legality, the principle of ultimum remedium, and legal certainty. This study aims to analyze the application of Article 2 Paragraph (1) and Article 3 in conjunction with Article 18 of the Anti-Corruption Law and Article 55 Paragraph (1) of the Indonesian Criminal Code (KUHP) in relation to building failures in government goods and services procurement; to examine its legal implications; and to formulate an ideal, logical, consistent, and harmonious legal policy within the national legal system. Utilizing a normative approach, the research affirms that building failures are more effectively addressed through administrative and civil instruments, except where clear indications of corruption exist. The findings indicate that multiple interpretations of the elements of "unlawfulness," "self-enrichment," and "state loss" in the Anti-Corruption Law result in inconsistent law enforcement, protracted legal processes, and hesitation among officials in making decisions. Therefore, legal reform is required through the revision of the Anti-Corruption Law, the drafting of technical guidelines, capacity-building for law enforcement, and the protection of official discretion in accordance with the principles of good governance. Thus, a reconstruction of construction law focused on justice, legal certainty, and public benefit is expected to deliver infrastructure that is high-quality, sustainable, and capable of providing optimal economic benefits for society.

Keywords: Building Failure, Construction Services, Anti-Corruption Law, Legal Certainty, Legal Reform.

Introduction

Infrastructure development, including roads, bridges, buildings, and other public facilities, constitutes a vital element in supporting national economic growth and improving public welfare. The Constitution of the Republic of Indonesia of 1945 expressly mandates the State to realize national development that is equitable, sustainable, and accountable. This constitutional mandate is reinforced through Law Number 2 of 2017 concerning Construction Services (UUJK), which explicitly places the construction services sector as one of the strategic pillars of national development, aiming to ensure orderly implementation, legal certainty, and fairness for all parties involved, both service users and service providers.

The legal framework governing the procurement of construction services has been comprehensively regulated through various statutory instruments. In addition to the UUJK, there is Law Number 30 of 2014 concerning Government Administration, which generally regulates the authority of administrative officials, various government regulations, presidential regulations on the procurement of goods/services, as well as technical regulations issued by the Ministry of Public Works and Housing (PUPR) and the National Public Procurement Agency (LKPP). These legal instruments not only provide a normative basis for procurement procedures, legal responsibilities of the parties, and dispute settlement mechanisms, but also establish specific procedures for handling building failures to accurately distinguish between technical violations, contractual defaults, or criminal acts.

The UUJK explicitly defines building failure as the collapse or malfunction of a building after the handover process of the construction work has been completed. The determination of a building failure must be carried out objectively through an assessment by expert appraisers appointed by the Minister, ensuring that the process is technical and professional in nature. Liability is also regulated in a tiered manner, where the service provider is responsible during a specified warranty period under the construction contract, after which liability may shift to the service user. Normatively, the resolution of building failure is placed within administrative or civil law regimes, in accordance with the principle of ultimum remedium, which dictates that criminal law should serve as a last resort when other legal mechanisms are inadequate or where there is evidence of intent and malicious conduct.

However, law enforcement practice demonstrates a deviation from this normative framework. Several concrete cases show that building failures are directly pursued as acts of corruption under Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The collapse of the Plamboyan Auxiliary Health Center in Palangka Raya, the collapse of the Mandastana Bridge in Barito Kuala Regency, and the collapse of the Sukamara Prison wall serve as examples where officials and service providers were convicted of corruption, even though the issues were more appropriately placed within the contractual and administrative regime of construction services. This phenomenon creates ambiguity within the legal system,

as the boundary between professional negligence of a technical nature and conduct involving malicious intent to cause state financial loss becomes blurred.

This lack of clarity raises fundamental issues concerning legal certainty. The elements of “unlawful act” and “abuse of authority” in the Corruption Eradication Law are often interpreted broadly, thereby allowing the criminalization of administrative violations or contractual defaults (Saragih et al., 2023). Yet, the principle of legality requires that an act can only be punished if it is expressly formulated as a criminal offence by law. Such multiple interpretations also give rise to a conflict of legal principles, particularly between lex specialis derogat legi generali, whereby the UUJK as lex specialis should prevail over the general provisions of the Corruption Eradication Law in cases of building failure, and the principle of ultimum remedium, which mandates that criminal law must not be used as the primary instrument where other legal mechanisms are capable of resolving the matter proportionately.

The repressive approach of applying corruption charges in cases of building failure is not always effective in achieving the objectives of law, particularly the recovery of state financial losses (Harahap & Tanjung, 2024). Criminal sanctions tend to focus on individual punishment, while contractual or administrative settlement mechanisms are more oriented toward asset recovery and technical remediation (Sembiring & Saragih, 2024). This imbalance indicates the urgent need for legal reformulation, both conceptually and normatively, to clarify the boundaries of corruption offences in the context of building failure, thereby avoiding legal uncertainty, preventing disproportionate criminalization of construction professionals, and ensuring accountability and protection of state finances. Such reformulation is also essential to create consistency in the application of legal principles, ensure substantive justice, and enhance the overall effectiveness of the legal enforcement system.

Literature Review

The literature on law enforcement in cases of building failure within the construction services sector highlights the complex relationship between administrative, civil, and criminal law regimes. Irfan and Rambey emphasize that the legal framework in Indonesia has yet to consistently distinguish between administrative violations and criminal acts, particularly in the context of state construction projects (Irfan & Rambey, 2024). They underline that administrative law should function as a mechanism for supervision and correction, whereas criminal law serves as an ultimum remedium, applied only where there is clear evidence of intent (mens rea) and unlawful conduct. However, judicial practice demonstrates that this distinction is often blurred, resulting in the criminalization of contractual breaches that should not fall within the scope of criminal law.

A number of academic studies also critique the application of the Anti-Corruption Law to cases of building failure. Pratiwi et al., asserts that the provisions of Articles 2 and 3 of the Anti-Corruption Law tend to be broadly interpreted, particularly regarding the terms "unlawful conduct" and "abuse of authority," thereby raising the potential for violations of the principle of legality (Pratiwi et al., 2024). Jurisprudential approaches indicate that judges possess broad

discretion in interpreting the elements of corruption offenses, including in determining the existence of state losses, even where such losses are merely potential or not yet quantifiable. This has implications for the erosion of the principle of lex specialis derogat legi generali, where the Construction Services Law as a special law is frequently disregarded.

Comparative legal research also provides valuable perspectives on how other jurisdictions address building failures without undermining legal certainty. A study by Klee Lukas shows that under the Dutch legal system, liability in construction services is largely governed by civil and professional regimes, with stringent technical oversight conducted through independent certification bodies (Klee, 2018). Meanwhile, Malaysia employs in-depth technical audits prior to establishing any element of criminal liability, ensuring a proportional approach to law enforcement and preventing premature criminal prosecution of parties involved in construction contracts.

From a theoretical perspective, literature on legal certainty (rechtszekerheid), as articulated by Gustav Radbruch and Hans Kelsen, underscores the importance of normative clarity, consistent application of legal provisions, and the protection of legal subjects from arbitrary state action. Applying the principle of legal certainty in the context of corruption offenses arising from building failures requires a clear demarcation between technical, administrative, contractual, and criminal acts. Some scholars, such as Hendri Edison, have even proposed the reconstruction of norms within the Anti-Corruption Law to prevent overlap with the Construction Services Law while simultaneously reinforcing parameters for determining state losses in construction-related cases (Edison, 2023).

The body of literature collectively indicates a significant gap between the ideal framework of legal norms and their implementation in practice. Regulatory inconsistencies, overly broad interpretations of corruption offenses, and inadequate technical mechanisms to ensure objective assessment of building failures are identified as primary causes of legal uncertainty. Consequently, these studies consistently recommend the conceptual and normative reformulation of corruption-related legal provisions in the construction services sector to establish a legal system that not only upholds justice and certainty but also supports sustainable infrastructure development effectively.

Research Method

This research is categorized as a study on legal obscurity, focusing on the ambiguity of norms concerning corruption offenses arising in cases of building failure within the procurement of construction services. The research employs a statutory approach by examining various relevant regulations within the domains of criminal law, civil law, and administrative law. Additionally, a case approach is applied through an in-depth review of court decisions relating to building failures, where the legal reasoning (ratio decidendi) in these rulings serves as a crucial reference for a comprehensive legal analysis (Behuku et al., 2025). A conceptual approach is also utilized by incorporating doctrines, theories, and scholarly opinions to formulate new ideas that strengthen the legal arguments presented in this study.

The sources of legal materials consist of primary legal materials, including statutory regulations and court decisions; secondary legal materials, such as books, journals, research findings, and relevant scholarly articles; and non-legal materials, namely expert opinions in the field of construction services that support the analysis. The collection of legal materials is conducted through a literature study, with a systematic selection process to ensure the relevance of materials to the research issues.

The analysis of legal materials is carried out by identifying legal facts, filtering out irrelevant aspects, and examining applicable legal norms. The legal facts (minor premise) are then correlated with the legal norms (major premise) through a syllogistic method to draw precise conclusions. Through this analytical process, a normative conflict is identified as a key factor contributing to legal uncertainty. Therefore, this research aims to provide legal prescriptions to harmonize such normative conflicts, thereby establishing legal certainty that is both fair and just in handling corruption offenses arising from building failures in the procurement of construction services.

Results and Discussion

Building Failure in the Procurement of Goods and Services as Construction Law

The legal nature of goods and/or services procurement is a combination of two branches of law; therefore, it is referred to as mixed law or gemeenschappelijk recht, encompassing both public law and private law. Public law in this context refers to administrative law, while private law pertains to contract law (Simamora et al., 2021). The application of principles linking public and private law arises because contracts involving the government are subject to two distinct legal regimes: public law (administrative and criminal law) and private law (civil law). This is because, in entering into contracts—ordinarily governed by private law—the government cannot relinquish its status as a public legal entity subject to public law. This duality gives government contracts a hybrid legal character.

However, some scholars argue that mixed law in procurement does not merely involve two branches of law. In the context of government procurement of goods and services, three branches of law are directly or indirectly involved in regulating its implementation, namely:

a) Administrative Law (State Administrative Law), which governs the legal relationship between providers and users of goods and services, from the preparatory stage through to the issuance of the Letter of Appointment of Goods and Services Providers.
b) Civil Law, which governs the legal relationship between providers and users of goods and services from the signing of the contract until its completion.
c) Criminal Law, which governs the legal relationship between providers and users of goods and services from the preparatory stage of procurement until the completion of the procurement contract.

One method of conducting goods and/or services procurement is through a tender process, which is unique in nature. Tenders are conducted to produce an agreement, as the winner is determined based on the best offer. Subsequently, a Letter of Appointment of Goods

and Services Provider (SPPBJ) is issued. In the context of contract law, the SPPBJ represents a statement of acceptance, while in the context of administrative law, such acceptance is embodied in a State Administrative Decree (KTUN). This further underscores the mixed law nature of procurement law. Consequently, legal enforcement in the context of goods and services procurement must consider these multifaceted legal aspects.

One of the government's efforts to stimulate economic growth is through government expenditure, which inherently involves technical processes of government procurement of goods and services (PBJ). Proper execution of PBJ is essential to support economic development. In carrying out PBJ, both government institutions and providers enter into a legal relationship established through a procurement contract. Such contracts are crucial in ensuring the proper implementation of procurement activities.

Contracts are generally governed by Article 1313 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), which states, "An agreement is an act whereby one or more persons bind themselves to one or more other persons." More specifically, PBJ contracts are regulated under Article 1(44) of Presidential Regulation No. 12 of 2021, which defines a Procurement Contract as "a written agreement between the Budget User/Budget User Proxy/Commitment-Making Official (PA/KPA/PPK) and the Provider or self-management implementer."

Based on these legal provisions, it is evident that procurement contracts possess unique characteristics compared to ordinary contracts. Generally, contracts involve relationships between natural persons (natuurlijke persoon), between legal entities (rechts persoon), or between individuals and legal entities. However, in government procurement, the parties to the contract are providers/self-management implementers and PA/KPA/PPK. Furthermore, the provisions in a PBJ contract must not conflict with Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods and Services (as amended), other relevant regulations, public order, or morality. As a result, the legal consequences arising from such contracts are distinct from those of ordinary contracts.

These distinct legal consequences lead to different legal risks. In PBJ, legal risks may arise during the drafting stage if the procurement contract is not carefully prepared. Such risks include potential state losses, breach of contract, unlawful acts, maladministration, contracts being declared null and void or voidable, providers lacking adequate business permits, legal disputes between providers and subcontractors, contract prices exceeding statutory limits, and other potential legal risks. These risks can be mitigated if the parties—particularly the PPK, who under Article 11(1)(d) is tasked with preparing the draft contract—carefully consider crucial aspects of PBJ contract formulation. Several key aspects must therefore be thoroughly addressed to ensure legal compliance and prevent disputes (Samosir, 2024).

Settlement of Building Failure Under Construction Law and Procurement Law

Hans Kelsen's theory of legal responsibility states that a person bears legal responsibility for a specific act and, by assuming such legal responsibility, is subject to sanctions if they engage in unlawful conduct. He further explains that the exercise of due care as required by law relates to negligence (culpa), which is often regarded as a distinct form of

violation, though not as severe as intentional wrongdoing committed with or without malicious intent that results in harmful consequences (Kelsen, 2007). According to the Kamus Besar Bahasa Indonesia (KBBI), responsibility is an obligation to be accountable for any matter that may give rise to liability, prosecution, or blame if an undesirable event occurs (Kemendikbud, 2016). Pursuant to Article 1(3) of the Construction Services Law, "Construction Work" encompasses all or part of activities involving the construction, operation, maintenance, demolition, and reconstruction of a building. Meanwhile, "Building Failure" as defined under Article 1(10) of the Construction Services Law refers to a condition where a building collapses and/or becomes non-functional after the final handover of construction services has been completed.

In legal theory, two principal concepts govern liability: the obligation (schuld) as the state or fact of being bound to a duty, and responsibility (haftung), which refers to the state or fact of being accountable in the broader legal sense, as provided under the Civil Code (Dita & Winanti, 2023). This includes substitute liability or vicarious liability and encompasses duties arising from various risks, whether already materialized or potential (Putra & Sulistio, 2019). Responsibility in this context denotes a legal obligation to repair, restore, or compensate for any damage incurred. Under Article 63 of the Construction Services Law, service providers are obliged to repair or compensate for damage to a building resulting from their own errors, as similarly prescribed under Article 60(1). If construction defects are attributable to design errors committed by service providers acting within their scope of competence, they are required to pay compensation proportionate to their degree of responsibility. The amount of compensation is determined by mutual agreement among the design consultant, construction supervisor, and contractor. If building failure arises due to their error, service providers must not only compensate for losses but also carry out necessary repairs as part of their professional duties. Typically, compensation amounts to approximately half of the total damage sustained.

Where damage is not caused by their error, even though the contract value of the service provider is the largest among all parties involved, liability may also extend to construction supervisors and designers. These parties may bear joint or proportionate liability, depending on the contractual value and scope of their work (Christiawan, 2020). Construction management consultants, as independent and professional entities, play a key role in assisting project owners from the design phase to project completion. They are responsible for coordinating consultants and supervising the project to ensure optimal cost, time, and quality performance (Sopamena, 2021). Their authority extends to monitoring, guiding weekly progress evaluations, and preparing schedules for material, equipment, and labor utilization (Kamaluddin, 2021).

Determining which party bears responsibility for building failure can be complex, given the number of stakeholders involved in a construction project. Under civil law, an aggrieved party may claim damages based on contractual liability, tortious liability, or other statutory limitations of responsibility (Kabirifar et al., 2020). The Construction Services Law requires service providers to adhere to safety, security, sustainability, and health standards. Any failure to meet these standards may constitute negligence, exposing service providers or users to liability for resulting building failure (Hayati et al., 2021). Assessment of such failure must be

carried out by an expert appraiser appointed by the Minister, who must issue a determination within thirty (30) working days of receiving notification of the failure.

The principles of construction law contained within construction contracts, as viewed from the general perspective of the Indonesian Civil Code (KUHPerdata) in Book III concerning obligations, are primarily based on the principle of freedom of contract (Eriyanti & Ridwan, 2022). Article 1338 of the Civil Code stipulates that all agreements set forth in Book III adhere to the principle of freedom of contract, meaning that such agreements are binding upon the parties once validly made, provided that the object of the contract is lawful and clearly defined as regulated under various provisions of the Indonesian Civil Code. These principles include: Article 1333 concerning the principle of a lawful and determinate object of the contract; Article 1400 concerning the principle of work guarantees; Article 1820 concerning the principle of suretyship; Article 1243 concerning the principle of compensation and breach of contract (wanprestasi); Articles 1365–1367 concerning the principle of liability for unlawful acts (tort); and Articles 1604–1617 concerning the principle of contracting (construction work agreements). Collectively, these principles form components of Indonesia's positive law and define, among others, the principle of liability relationships between parties at fault, the principle of certainty in obligations between service providers and other parties, and the allocation of responsibility in cases of building collapse due to construction defects, inadequate soil capacity, or environmental factors.

The resolution of construction disputes underscores the necessity of selecting mechanisms that ensure fairness, legal certainty, and enforceability of decisions. Litigation, as a judicial process, serves as a forum for parties to seek remedies through civil claims, including compensation for losses arising from breaches of contractual obligations or negligence. Furthermore, litigation may extend to criminal proceedings where elements of fraud, embezzlement, bribery, or other corrupt practices are evident within the execution of construction work. This judicial pathway ensures that violations of both civil and criminal law within the construction sector are addressed comprehensively, upholding justice and protecting the rights of all stakeholders involved (Manurung, 2022). However, reliance solely on litigation may not always provide an effective or efficient resolution due to the protracted nature of court proceedings, high costs, and potential disruption of business relationships. Therefore, alternative mechanisms such as arbitration, mediation, or adjudication may be utilized to achieve faster, more flexible, and less adversarial outcomes. These mechanisms align with the principles of procedural efficiency, proportionality, and good faith, which are essential in maintaining trust and sustainability within the construction industry. Ultimately, the integration of judicial and alternative dispute resolution frameworks offers a holistic approach to safeguarding legal interests while promoting equitable settlement of construction-related disputes.

In general, legal liability (legal liability) refers to the obligation to compensate for losses suffered by another party (Yushar, 2019). Under the Civil Code, any party whose actions cause harm to others may be required to compensate the injured party. A construction work contract, as defined under the Construction Services Law, is a binding legal document regulating the relationship between service users and providers (Mariyati, 2018). Such contracts

must include key provisions regarding project scope, work specifications, pricing, payment terms, project schedule, liability periods, and dispute resolution mechanisms (Handriani & Mulyanto, 2021). Article 1338 of the Civil Code stipulates that all agreements made in good faith are binding as law upon the contracting parties. Accordingly, contractors or service providers are legally obliged to execute and complete work as agreed, and to compensate for damages resulting from defective construction, including repair or rebuilding of damaged structures (Agustina & Purnomo, 2023).

Compensation (damages) is defined as monetary reimbursement for losses incurred. It may include costs, interest, and lost profits, as provided under Articles 1243–1248 of the Civil Code. Under Article 1247, damages must reflect losses foreseeable at the time the agreement was made, except where the breach resulted from fraud, in which case all direct losses may be recovered. Article 1248 allows parties to stipulate the amount of damages contractually, and in the event of a dispute, the court may determine liability based on such provisions. Therefore, the determination of liability and compensation in cases of building failure ultimately depends on contractual terms, statutory obligations under the Construction Services Law, and the application of civil law principles governing obligations and liability.

In selecting a service provider, it is crucial to ensure compatibility between the provider's field of expertise, capacity, workload, and performance. The Principle of Balance serves as a legal justification for the existence of a contract, as well as a basis for challenging its validity or a condition for its enforceability. Both the service provider and the service user are bound to perform obligations in accordance with the terms mutually agreed upon (Sulthanah, 2021). Performance (prestasi) refers to the fulfillment of obligations within a legal bond, representing the essence of a contractual relationship. Article 1234 of the Indonesian Civil Code (KUHPerdata) classifies performance into three forms (Sinaga & Zaluchu, 2017):

1) the obligation to deliver something;
2) the obligation to perform or do something; and
3) the obligation to refrain from performing or doing something.

The Principle of Balance in construction work contracts is fundamental to ensuring that no party suffers unfair disadvantage in the execution of the agreement. Applying this principle optimally, particularly in proportion to the service provider's capacity and workload, is essential to achieving successful project completion and maintaining order in the administration of construction services. Article 65 of the Construction Services Law provides legal protection to service users in cases of building failure, including provisions on retention or maintenance periods. Legal protection is further reinforced through the imposition of administrative sanctions on service providers who fail to fulfill their contractual obligations.

Administrative sanctions are stipulated under Articles 89–102 of the Construction Services Law and may include written warnings, administrative fines, temporary suspension of construction service activities, blacklisting, license freezing, and/or license revocation. Such sanctions aim to ensure that service providers discharge their rights and obligations in accordance with statutory provisions. Administrative sanctions also serve as a form of legal

protection for service users by ensuring that service providers engaged in a project meet the required standards of construction service delivery.

The legal consequences of building failure impose an obligation upon the party at fault to bear liability for losses incurred and to face potential sanctions. The liability of a construction service provider includes compensating for losses arising from building failure and/or defective construction work. Such liability stems from the obligations expressly provided for in the construction work contract, which outlines the rights and duties of both parties. Article 67(1) of the Construction Services Law provides that either the service provider or the service user must pay compensation in the event of building failure, as referred to in Article 65(1), (2), and (3). This obligation encompasses both the payment of compensation and the repair or reconstruction of the failed building, including the costs of purchasing replacement construction materials and undertaking necessary remedial works.

The method of dispute resolution represents an inherent risk for the parties to a construction work contract. Legal disputes arising under such contracts may be resolved through various mechanisms mutually agreed upon by the parties, including consultation, negotiation, mediation, conciliation, expert determination, judicial proceedings, or arbitration (institutional or ad hoc). Article 88 of the Construction Services Law requires that the chosen method of dispute resolution be expressly stated within the contract. Disputes may be settled through court proceedings or alternative dispute resolution (ADR) mechanisms, based on the voluntary agreement of the parties. The primary principle governing dispute settlement is deliberation to reach consensus; however, if consensus cannot be achieved, the parties must proceed with the dispute resolution process as stipulated in their contract.

Disputes or conflicts arising from construction claims constitute a demand or petition concerning a particular condition. In general, the settlement of construction disputes shall be as follows:

a. Settlement of disputes through the court (litigation):
    1) Filing a civil lawsuit for compensation;
    2) Filing a criminal report where the construction work involves elements of a criminal offense, such as fraud, embezzlement, bribery/corruption, and other related acts.
b. Out-of-Court Settlement (Non-Litigation)
    Settlement of disputes arising from construction service work may be conducted in accordance with the provisions of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, as follows:
    1) Negotiation
        Negotiation may be conducted directly between the disputing parties. At times, the involvement of a third party as an independent expert may be required to assess the issues in dispute. The assessment provided by such a third party shall serve as the basis for negotiation between the disputing parties in resolving the conflict.
    2) Mediation
        The process may involve each party being accompanied by its respective expert, and the negotiations shall include the participation of a Mediator who acts as a catalyst in

resolving the dispute. All contested matters shall be disclosed, and possible solutions shall be sought through this process.

3) Conciliation (Mini-Trial)
   Conciliation reflects a spirit of cooperation to resolve a dispute. This step serves as a continuation of the Mediation process in the event no agreement has been reached, by engaging a Neutral Advisor (Conciliator) to assist in achieving resolution.
4) Arbitration
   Arbitration constitutes a private judicial system for civil matters, meaning that the authority and obligations of the parties are governed by the parties themselves and not by the State. Arbitration is a contractual method of dispute resolution whereby the parties create a forum, appoint private arbitrators deemed qualified, waive certain rights of investigation or prosecution, set aside procedural formalities, and allow issues to be determined on considerations of equity and fairness. The decision rendered by the Arbitrator is final and binding, thereby concluding the dispute in accordance with the agreement of the parties (Agustina & Purnomo, 2023).

From the perspective of procurement law in the event of building failure in construction, where the contract type is lump sum, the parties generally include a clause stipulating that in the event of risk, including building failure, the contractor shall bear such risk. Accordingly, pursuant to the provisions of Article 27 paragraph (3) of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, the contractor shall be liable for any building failure arising under a Lump Sum contract.

To enforce liability, a claim must be filed by the aggrieved party, in this case, the service user (employer). The service user may bring a claim for breach of contract (wanprestasi) against the service provider as follows:

1. The service user may demand specific performance only from the service provider;
2. The service user may demand performance along with compensation from the service provider (Article 1267 of the Civil Code);
3. The service user may demand and claim compensation, which may only cover losses arising from delays;
4. The service user may seek rescission of the contract;
5. The service user may seek rescission of the contract along with compensation from the service provider, which may take the form of a penalty payment.

The purpose of a breach of contract claim is to place the claimant in the position they would have been in had the agreement been duly performed, meaning restoring the parties to their initial position where rights and obligations were agreed upon and executed in good faith. Thus, compensation includes loss of expected profit.

Implementation of compensation may also be carried out through an indemnity mechanism, the application of which shall be adjusted to the level of development of the indemnity system applicable to construction planners and supervisors (Samuel, 2016).

Liability of construction contractors in the business sector shall be imposed on the main contractor as well as subcontractors in the form of administrative sanctions commensurate with the degree of fault. The amount of compensation for which the contractor is liable in the event of failure of construction works shall be determined by considering, inter alia, the degree of such failure (Samuel, 2016). Compensation may also be implemented through an indemnity mechanism, the application of which is aligned with the level of development of the indemnity system for construction contractors (Samuel, 2016).

In the implementation of construction works under Government Procurement of Goods/Services, legal uncertainty still arises, particularly regarding contract performance. As provided under Presidential Regulation Number 16 of 2018 on Procurement of Goods/Services, service providers as referred to in Article 8 letter i must meet the qualifications according to the goods/services procured and in accordance with statutory provisions, whereby the service provider shall be responsible for contract performance. However, this creates legal uncertainty, as each stage of contract performance must comply with procedures, and performance under Article 8 letter i of Presidential Regulation Number 16 of 2018 is not entirely the responsibility of the service provider. Such legal uncertainty affects the form of legal liability arising from the contractual relationship, specifically in the form of enforceable claims (*tanggung gugat*).

Building Failure as a Criminal Offense

The enactment of Law Number 2 of 2017 on Construction Services, replacing Law Number 18 of 1999, aims to provide legal certainty while accommodating the interests of various parties in construction implementation. Creating a conducive business climate for construction services and strengthening human resources has become an urgent need in facing increasingly competitive global competition, making regulatory reinforcement inevitable. Standards for the provision of construction services must be reflected in contractual clauses based on applicable building regulations. A construction contract must essentially include technical, legal, administrative, financial, taxation, socio-economic aspects, as well as dispute resolution mechanisms. However, in practice, legal aspects are often overlooked as parties tend to prioritize economic considerations; legal concerns only emerge when disputes arise.

Before the enactment of Law No. 2 of 2017, the regulation of construction services referred to Law No. 18 of 1999, which prescribed criminal sanctions for construction business actors in cases of building failure. Article 45 of Law No. 18 of 1999 provided for criminal penalties of up to five years imprisonment or a fine of up to ten percent of the contract value for planners, executors, and supervisors of construction works who neglected technical standards resulting in building failure. While these provisions were intended to assure service users of work quality, they were also criticized for creating a sense of "criminalization" among business actors and discouraging industry growth. In response, Law No. 2 of 2017 abolished criminal sanctions and instead limited service providers' liability to a specific period corresponding to the construction's service life, with a maximum of ten years after final handover. This shift has led to increased legal issues concerning building failure, as seen in the 2011 collapse of the Mahakam II Bridge, which resulted in criminal liability for officials and project stakeholders.

Law No. 2 of 2017 also redefines building failure as the collapse or non-functionality of a building after final handover of the construction works. Damage occurring before final handover does not constitute building failure under this definition, thereby making written evidence of final handover a critical document in determining legal liability. Dispute resolution mechanisms are provided under Article 88, emphasizing amicable settlement through consensus, with litigation or non-litigation methods available if agreement cannot be reached. Construction disputes commonly arise from issues concerning time, financing, work standards, or conflicts of interest, often triggered by inaccurate design information, inadequate site investigation, poor communication, or defective contract administration.

Furthermore, the high rate of work-related accidents in the construction sector presents a significant challenge. Data from BPJS Ketenagakerjaan indicates that construction accounts for 32% of national work accidents annually. The primary causes include insufficient attention to health, safety, and environmental (HSE) aspects, weak supervision, and poor compliance with the use of personal protective equipment (PPE), leading to moral and material losses. Construction work failure may also stem from technical factors such as design errors, miscalculations, material selection, or execution, and non-technical factors such as poor corporate competency, unprofessional management, or negligence in utilization and maintenance of buildings. To determine the cause of building failure and the responsible parties, the Construction Services Law assigns forensic engineering experts to conduct objective and professional assessments.

Other legal issues in construction services arise from cost overruns, delays, substandard work quality, and poor coordination among parties. Disputes frequently originate from contractual breaches in both public and private projects. In public projects, legal issues often stem from procedural defects that may result in criminal liability if proven to involve intentional misconduct or gratification. In private contracts, disputes generally arise from material defects, such as work specifications not conforming to the agreed terms. Hence, construction contracts must be drafted with clarity and precision to avoid interpretive gaps that could lead to disputes.

In terms of liability, Law No. 2 of 2017 stipulates that service providers remain liable for building failure during the contractual liability period, after which liability shifts to the service user. Considering the complexity of construction activities involving multiple parties with distinct roles, the role of expert assessors is crucial in determining legal responsibility. Moreover, criminal law should serve as an ultimum remedium, meaning a last resort. Issues in public procurement should primarily be resolved through administrative and civil law mechanisms, except where clear evidence of malicious intent causing state losses exists.

Finally, government procurement of goods and services must adhere to the principle of value for money, meaning correct quality, quantity, price, provider, location, and timing. Achieving this principle requires competent and ethical procurement personnel. Professional human resource development must be accelerated through innovative approaches to ensure that the delivery of construction services is not only efficient and of high quality but also safe, sustainable, and based on legal certainty.

Legal Implications of Corruption Offenses in Relation to Building Failure

Construction services comprise planning, execution, and supervision of construction works involving two primary parties: the service user and the service provider, either as individuals or business entities, whether incorporated or unincorporated. Business entities providing construction services must comply with licensing requirements in the field of construction services and possess certificates, classifications, and qualifications obtained through registration, qualification, and certification mechanisms conducted by authorized institutions. Accordingly, only certified business entities may operate in the construction services sector.

In government-initiated construction projects, land procurement is imperative to realize the development of facilities and infrastructure for the public interest, with the ultimate objective of enhancing societal welfare. However, construction failures resulting in loss of life—stemming from technical or non-technical causes—demand serious attention, particularly as socio-engineering system factors contribute to risks of up to 66.7%. These risks originate from the planning stage, document preparation, and procurement process, which are often tainted by bribery (90%), price manipulation outside proper procedures (80%), and pressure on consultants and contractors to secure unjustified profits (76.7%).

The Construction Services Law does not provide for criminal sanctions for building failure. Instead, it defines failure as the non-functionality of a building in terms of technical performance, safety, or utility due to the fault of the service provider or user, as regulated under Government Regulation No. 29 of 2000. Available sanctions are administrative in nature, including written warnings, fines, temporary suspension, freezing, or revocation of business licenses. The construction community plays a vital role in preventing building failure through supervision, maintaining order, and averting violations endangering public interest. Such roles are institutionalized through independent construction service forums that uphold professional codes of ethics as regulated under Government Regulation No. 4 of 2010.

Furthermore, the concept of sustainable construction or green construction has been adopted to ensure environmentally friendly development, efficient use of resources, and minimal negative impact on the environment for present and future generations. From a criminal law perspective, legal policies regarding construction failure emphasize preventive measures, as criminal liability may also arise under provisions outside the Construction Services Law. For instance, Article 359 of the Indonesian Criminal Code (KUHP) prescribes up to five years of imprisonment for negligence causing death, while Article 201 KUHP stipulates four months and two weeks imprisonment for negligence resulting in damage to a building.

However, where construction failure is caused by an individual who is not a licensed engineer, as regulated under Law No. 11 of 2014 on Engineering, the perpetrator may be subject to two years imprisonment or a fine of IDR 200 million. If the negligence results in accidents, injuries, fatalities, property damage, or failure of engineering works, the sanction may increase to ten years imprisonment and/or a fine of IDR 1 billion.

For professional engineers holding valid licenses as evidence of competence and quality assurance, negligence in adhering to engineering standards leading to accidents, material losses, or fatalities may result in a penalty of up to five years imprisonment and a maximum fine of IDR 1 billion, pursuant to Article 50(2) of Law No. 11 of 2014 on Engineering.

Thus, the legal framework governing construction and infrastructure failures places responsibility upon service providers, service users, and licensed engineering professionals, with a focus on prevention, accountability, and the protection of public interest.

Conclusion

The main issue in cases of construction failure is that the parties harmed by the failure—such as the building owner or the public—must receive fair compensation proportionate to the losses suffered, and the failed structure must be repaired or reconstructed so that it may function properly. The legal implications of such failure have been subjected to the application of the Anti-Corruption Law (UU Tipikor), thereby preventing the realization of the legal objectives intended under the Construction Law (UU Konstruksi) and resulting in additional losses to the state and beneficiaries. Therefore, harmonization of regulations between the Construction Law and the Anti-Corruption Law is necessary.

The reformulation of the criminalization of building failure as an act of corruption in the context of public procurement of construction services underscores the continuing lack of clarity regarding the boundaries between criminal, civil, and administrative liability. This ambiguity results in legal uncertainty for both construction providers and law enforcement authorities in determining the proper classification of violations. In practice, there is frequent overlap in dispute resolution through civil, administrative, and criminal channels, causing confusion as to the criteria for classifying a building failure as a criminal act of corruption. Accordingly, a reformulation of the relevant norms is required to clarify the elements of fault, the limits of liability, and the causal connection between the act and the resulting loss to the state.

Furthermore, such reformulation must observe the principles of legal certainty, fairness, and utility while maintaining a balance between the protection of public interests and the interests of construction service providers. A more comprehensive regulatory framework is necessary to integrate criminal, civil, and administrative law provisions to minimize interpretative conflicts. Consequently, the revised legal regime should provide clearer guidance for law enforcement, prevent excessive criminalization, and strengthen efforts to prevent corruption in the procurement of construction services effectively.

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