

LEGAL RESPONSIBILITY OF GOODS/SERVICES PROVIDER FOR BUILDING FAILURE

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Abstract

Construction failure can be caused by a failure in the process of procuring goods or services, or it may occur during the construction process itself. Construction work failure refers to a condition where the results of construction work do not comply with the agreed work specifications in the construction work contract, either partially or entirely, due to the fault of the service user or service provider. The purpose of this study is to analyze the responsibility of goods/services providers in the event of a building failure and to examine the form of their responsibility in such cases. This study adopts a descriptive normative approach to answer questions regarding the responsibilities of goods/services providers in cases of building failures, as outlined in Legislation Number 18 of 1999 concerning Construction Services, which was renewed as Number 2 of 2017 Construction Services, Government Regulation Number 29 of 2000 concerning construction service providers, and regulations pertaining to the responsibilities of goods/services providers in the event of building failures, which include meeting the Standards for Security, Safety, Health, and Sustainability, undergoing inspection by a team of experts appointed directly by the Minister, and complying within a maximum period of 10 (ten) years from the final delivery of Construction Services. The responsibility of goods/services providers for building failures is based on the principle of Liability based on Fault and is administered through written warnings, administrative fines, temporary suspension of construction service activities, inclusion in the black list, and even suspension or revocation of permits.

Keywords: Building Failure, Form of Responsibility, Goods and Services Provider

1. INTRODUCTION

Indonesia is a developing country that is earnestly engaged in various development efforts. These efforts encompass both physical and non-physical development in all sectors. The goal is to ensure that the results of these developments are enjoyed by all Indonesian people, aiming for equitable and fair well-being both materially and spiritually, in order to achieve the welfare of the people and create prosperity. The success of development heavily relies on the participation of all citizens, which means that development must be carried out evenly across all layers of society (Djumialdji, 1996).

One of the areas of development is the economic sector, manifested in the form of physical construction such as office buildings, housing, ports, industries, roads, bridges, and more. All of these require strict regulations both juridically and technically, which need to be developed and improved in their implementation (Djumialdji, 1987). Particularly during President Joko Widodo's era, the infrastructure sector has become a priority in his government's programs to drive national economic growth. This infrastructure development is an ambitious program compared to previous presidents (Ir Sulistijo Sidarto Mulyo & Santoso, 2018). Implementing construction works is mandatory for the government, private sector, as well as local and foreign investors collaborating with contractors.

Looking back at the history of development in Indonesia, it began even before Indonesia gained independence, during the Dutch colonial period. At that time, there were only about six construction companies, subsidiaries of Dutch parent companies. Besides these six Dutch contractor companies, there were also several small Indonesian contractor companies that served as sub-contractors and suppliers. After Indonesia gained independence, many Dutch professionals such as engineers, professors, teachers, company directors, and architects returned to their homeland, leaving these positions to be filled by Indonesians. During this period, Indonesia experienced economic instability, and there were limited funds available for development, except for rehabilitation works with foreign aid. As time passed, precisely in 1965, there was a reformation in the development program and its implementation. From the beginning, it was realized that construction processes had different characteristics compared to typical factory productions. The main focus of construction services lies in the quality and capability of human resources, managers, and workers, while in the factory industry, the main focus lies in the quality of machines. Therefore, the development of construction services became an important and strategic public agenda, considering the rapid developments in the contexts of globalization and liberalization, poverty and inequality, democratization, and regional autonomy, all of which are made possible by economic, political, social, and cultural stability (Triyanto, 2004).

Construction, in general, is understood as the creation and development of infrastructure (roads, bridges, dams, irrigation networks, buildings, airports, ports, telecommunication installations, process industries, etc.) as well as the maintenance and repair of existing infrastructure. However, construction can also be understood based on different perspectives, such as services, industries, sectors, or clusters. The construction sector is conceived as one of the economic sectors that encompass planning, implementation, maintenance, and operational activities, transforming various inputs into construction products. The construction industry is essential in its contribution to the development process, providing various facilities and infrastructure necessary for enhancing the quality of life in society. Construction involves various activities and stakeholders, including contractors, consultants, material suppliers, plant suppliers, transport suppliers, laborers, insurers, and banks, all of whom participate in the transformation of inputs into final products used for social and business activities within society.

Based on the Republic of Indonesia Law Number 2 of 2017 concerning Construction Services, hereinafter referred to as Law No.2/2017, construction services are defined as consulting services for construction planning and/or construction work. Construction consulting refers to activities that encompass assessment, planning, design, supervision, and management in the construction of a building. On the other hand, construction work refers to activities that involve construction, operation, maintenance, dismantling, and reconstruction of a building.

With the amendment of Law No.2/2017, the definition of construction services has changed. Originally, construction services covered consulting services for construction planning, implementation, and supervision. Now, construction services only cover consulting services for construction and/or construction work.

One of the objectives of the Republic of Indonesia Law Number 2 of 2017 concerning Construction Services, hereinafter referred to as Law No. 2/2017, is to evaluate and improve Law Number 18 of 1999 concerning Construction Services, as it

did not meet the demands for good governance and the dynamics of the development of construction services.

Law No. 2/2017 was enacted by President Joko Widodo on January 12, 2017. Law No. 2/2017 was promulgated by Yasonna H. Laoly, the Minister of Law and Human Rights, in the State Gazette of the Republic of Indonesia Year 2017 Number 11, and the Explanation of Law No. 2/2017 was added to the State Gazette of the Republic of Indonesia Number 6018 on January 12, 2017 in Jakarta.

In the Republic of Indonesia Law Number 18 of 1999 concerning Construction Services, the definition of building failure is as the condition where the building, after being handed over by the service provider to the service user, does not function properly either wholly or partially, and/or does not comply with the provisions stated in the construction work contract or its utilization deviates as a result of the fault of the Service Provider and/or the Service User. While in Law No. 2/2017, building failure is defined as follows: "A condition of building collapse and/or the building not functioning after the final handover of construction services."

The condition of building failure included in the scope of building failure in Law No. 2/2017 is a failure that has been handed over to the service user, and thus does not include building collapse before the final handover of the results. At present, Government Regulation of the Republic of Indonesia Number 22 of 2020 concerning Construction Services (hereinafter referred to as GR No. 22/2020) aims to establish order in the implementation of construction work, ensuring equal position between service users and service providers in terms of rights and obligations. However, in the face of international competition challenges, the provisions in Law No. 18/1999 jo Law No. 2/2017 seem to require improvement, especially concerning efforts to strengthen the competitiveness of construction services to compete internationally, as these regulations are considered no longer in line with the development of the times and have been amended to become Law No. 11/2020 concerning job creation.

The construction services sector currently plays a very important and strategic role, as it produces final products in the form of buildings or other physical forms, including facilities and infrastructure that support the growth and development of various fields, particularly the economic, social, and cultural fields, in order to achieve the goal of a just and prosperous society, both materially and spiritually (Pianandita, 2009). Additionally, construction services play a role in fostering and developing service industries in Indonesia.

In the era of globalization, the development of Indonesia is carried out in a planned, comprehensive, integrated, directed, gradual, and sustainable manner in all sectors of life. National development is carried out in a gradual and sustainable manner to achieve the aspirations of the Indonesian people to improve the welfare of society in order to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) (Lumban Gaol, 2018). The creation of an advanced and prosperous society allows Indonesia to be on par with other nations that have progressed before. The development and progress of such a society have a significant impact on legal relations, where agreements or contracts become crucial aspects in these legal relations.

In legal theory and practice, the terms "construction" and "contracting" are considered synonymous, especially when related to the legal terms of construction contracts or contracting law. In fact, the term "contracting" has a broader scope than the

term "construction" because contracting covers both construction and the provision of services (Fuady, 1998).

One of the fundamental changes in Law No. 11/2020 concerning job creation, which amends Law No. 2/2017 concerning Construction Services to replace Law No. 18/1999, concerns sanctions in the event of building failure. Building failure is the biggest risk in infrastructure development. Building failure refers to a situation where the building does not function properly and cannot be used. In the context of construction in Indonesia, one of the building failure cases that has garnered public attention is the collapse of Mahakam II Bridge in East Kalimantan in November 2011, followed by criminal sanctions imposed on the officials responsible for the technical implementation of the project, budget users, and project managers. The regulation on building failure can create a climate for the construction services business to be more responsible and at the same time provide opportunities for healthy competition to achieve high-quality production. Considering the current physical conditions that are still concerning, regulations alone will not be effective if all stakeholders are not willing to facilitate or implement them. However, if we still have the desire and willingness to act in accordance with our competencies, then this regulation can better protect the rights, obligations, and responsibilities of each construction service provider.

Previous researchers who have discussed the issue of building failure include, first, Nur Amanah Yuliani, with the title "Juridical Study of Agreements between Developers and Home Buyers in Building Failure Issues in Pemalang City." The topic discussed is building failure, but the difference lies in the juridical study, whereas the author's research focuses on the legal responsibility of goods/service providers for building failure and legal issues; second, the research conducted by Andrew Timothy with the title "Legal Responsibility of Construction Service Providers and Service Users in Building Failures." There is a general similarity in the topic of building failure. The difference lies in the application of the principles of security and safety and the implementation of responsibilities by construction service providers and service users, whereas the author examines the legal responsibility of goods/service providers for building failure and legal issues; third, the research conducted by Tamatompol Marviel Richard with the title "Legal Responsibility of Construction Service Providers and Service Users According to Law Number 18 of 1999 Concerning Construction Services." The similarity lies in the topic of building failure. The author examines the legal responsibility of goods/service providers for building failure and legal issues. Based on the description of the background above, the author is interested in determining the legal issues and further examining the Legal Responsibility of Goods/Service Providers for Building Failure, especially concerning Article 85 of GR No. 22/2020, which is of a discretionary nature in terms of its responsibility.

2. RESEARCH METHODS

The research at hand is a normative legal study, which focuses on analyzing and interpreting legal norms, principles, and rules. To conduct this research, the problem-based approach is utilized, allowing the researcher to address specific legal issues in a targeted manner. Two primary approaches are employed in this study: the statute approach and the conceptual approach. The statute approach involves an in-depth examination of relevant laws and statutes governing the subject matter, while the

conceptual approach delves into the theoretical foundations and philosophical principles underlying the law.

In terms of the research methodology, a normative analysis is adopted, employing various legal reasoning methods such as legal interpretation, synchronization, and legal discovery. Legal interpretation aims to understand the meaning and intent of legal provisions, while synchronization seeks to harmonize conflicting laws and create a coherent legal framework. Legal discovery involves identifying pertinent legal principles and precedents relevant to the research topic.

The primary objective of this research is to provide well-founded answers and recommendations pertaining to the identified legal issues. By thoroughly examining the legal framework and applying normative analysis, the researcher seeks to gain valuable insights into the subject matter and offer informed proposals to address the legal challenges at hand. However, to obtain a comprehensive understanding of the research findings, one must refer to the complete research document or thesis, which further explores and details the outcomes of the investigation.

3. RESULT AND DISCUSSION

Construction failure is a failure that can occur due to deficiencies in the procurement process of goods or services or during the construction execution phase. Construction work failure refers to the condition where the results of construction work do not comply with the specified job specifications agreed upon in the construction contract, either partially or entirely, resulting from errors made by service users or service providers.

In building construction work, building failures are often encountered, which can be caused by either the service providers or the service users. All construction work progresses through stages (cycles) that begin with planning, the nature of building materials used, testing of materials and structures, execution, supervision, and building maintenance.

The factors causing construction failures are likely to occur in the construction industry due to its complexity, involving numerous parties, and being carried out in open environments. Both the failure of construction and building failures can be attributed to the competence of resources, including the competence of business entities, expertise, and skills. Among these factors, the labor force becomes one of the causes of construction failures, as the proper placement of labor according to specific expertise ensures efficiency and effectiveness in the resulting work.

Thus, proper planning, preparation, and distribution of resources with the appropriate structure and quantity significantly contribute to the success of the implementation. The contribution of the labor force to the smooth progress of a project depends on their skills and motivation.

Overcoming construction projects is not an easy matter. It requires precision and creativity in generating ideas. As is known, projects, especially in construction, are the most complex industries with numerous risks that, if not well managed, can lead to project losses. To address these challenges, systematic steps are needed to find strategies to overcome project losses.

Construction failures in building structures occur in various elements, with the average deviations observed in structural elements being 4.36% of the contract value, roof

elements 2.53%, foundations 0.15%, utilities 0.12%, and finishing 0.07%. The success of construction projects also greatly depends on the role of supervisors, both internal (contractors) and external (consultant supervisors), which significantly affect project quality. Internal supervision (contractors) influences the quality, while external supervision (consultant supervisors) is highly dependent on quality. The management of each civil engineering project encompasses fundamental management functions: planning, supervising, and construction.

Infrastructure development provides benefits that can be felt by the community in conducting activities, and construction infrastructure is built to facilitate community mobility in work and business. The government believes that besides achieving equal distribution of goods and services, this development will also enhance productivity and competitiveness, leading to public welfare. During implementation, various risks, including construction and building failures, cannot be overlooked. Major issues in building construction indicate not only weaknesses in Standard Operating Procedures (SOPs) but also incorrect systems during the construction process. Furthermore, the frequent occurrence of dishonest contractors who prolong project completion or neglect SOP implementation, endangering the safety of building users, can result in accidents with minor, severe, or fatal injuries.

From legal events or construction cases, there are several issues in implementing Law No. 2/2017 regarding Construction Services, including:

- a. The lack of separation between Construction Failure and Building Failure in Law No. 2/2017 regarding Construction Services may lead to future problems, such as property losses. This condition directly impacts the construction process, as construction failures can cause building failures. Both instances have adverse effects on the costs incurred, increased capital, time, risks, and social aspects or the level of public trust in building quality, resulting in a negative perception of building quality. Consequently, people become unwilling to use such buildings for their activities.
- b. The sanctions imposed on contractors for any negligence in carrying out construction still leave loopholes for contractors to evade responsibility.
- c. When discrepancies are found during the construction process with the clauses in the contract, this issue cannot be brought to court.
- d. It has not become a reference for several cases of construction failures that have occurred in Indonesia. This issue should be examined from the perspective of legal certainty guided by Law No. 2/2017 regarding Construction Services.
- e. Law No. 2/2017 regarding Construction Services has not established a measure of success in its application.
- f. Law No. 2/2017 regarding Construction Services has not been assessed for its success in the implementation of construction services.

Referring to Law No. 2/2017 regarding Construction Services, the article related to Building Failure is Article 1 of Law No. 2/2017 regarding Construction Services, which defines Building Failure as a condition of building collapse and/or non-functionality after the final delivery of Construction Services results.

Article 63 states that construction Service providers are obligated to replace or repair Building Failures as referred to in Article 60 paragraph (1) caused by the errors of the Construction Service provider.

Meanwhile, article 67 consists of statement that construction Service providers and/or Service Users are obliged to provide compensation for damages in the event of Building Failures as referred to in Article 65 paragraph (1), paragraph (2), and paragraph (3). Further provisions regarding the provision of compensation as referred to in paragraph (1) are regulated in Government Regulations.

Article 98 stated that construction Service providers who fail to fulfill their obligation to replace or repair Building Failures as referred to in Article 63 are subject to administrative sanctions, which include:

- a. Written warning;
- b. Administrative fines;
- c. Temporary suspension of Construction Service activities;
- d. Inclusion in a blacklist;
- e. Freezing of permits; and/or
- f. Revocation of permits.

The Form of Legal Liability of Goods/Services Providers in the Event of Building Failures under the application of Law No. 2/2017 regarding Construction Services, which needs to be improved, as it must consider aspects of legal certainty, legal consequences, and legal protection.

Theoretically, this study is expected to provide an understanding of Legal Certainty, Legal Consequences, and Legal Protection in relation to agreements between users and construction service providers regarding Construction and Building Failures in Indonesia. Additionally, it is hoped to contribute to the development of legal knowledge. Practically, this study is expected to contribute thoughts and input for the Government of the Republic of Indonesia, State-Owned Enterprises, the Ministry of Public Works and Housing, private sector contractors, and Construction Service providers based on the agreements stipulated in contracts.

Procurement of goods and services, commonly known as tendering, is widely practiced by government agencies and the private sector. This activity is carried out to obtain goods and services by an institution/organization, starting from the planning of needs to the completion of all activities to obtain those goods and services.

According to H. Subagya M.S (in Mahendra Romus and Virna Museliza), Procurement is all activities and efforts to increase and fulfill the needs for goods and services based on applicable regulations, creating something that was previously nonexistent.

Construction failure is work that does not comply with technical specifications, either partially or entirely, resulting from the errors of the service provider or service user (Siregar & Azzahra, 2022). In terms of timing, building failure and construction failure are different. Construction failure occurs during the construction phase when the building is not yet completed. On the other hand, building failure occurs after the final handover of work between the service provider and the service user. According to government regulations, both failures are caused by the errors of the service provider or service user. Therefore, it is essential to know, examine, and analyze the Legal Certainty of Agreements between Users and Construction Service Providers regarding their responsibility for Construction and Building Failures, as well as the Legal Consequences of Users and Construction Service Providers in the event of Construction and Building Failures based on Law No. 2/2017 regarding Construction Services. Furthermore, it is

necessary to assess and analyze the Legal Protection for Users and Construction Service Providers who suffer losses due to Construction and Building Failures.

The criteria for building failure, according to the laws and regulations, are work that does not comply with technical specifications, either partially or entirely, resulting from the errors of the service provider or service user. In terms of timing, construction failure and building failure are different. Construction failure occurs during the construction phase when the building is not yet completed. On the other hand, building failure occurs after the final handover of work between the service provider and the service user. According to government regulations, both failures are caused by the errors of the service provider or service user.

Building failure can be caused by human errors themselves. Human errors can be the result of ignorance or performance errors (carelessness and negligence). Ignorance can be caused by a lack of training, education, and experience. Performance errors (carelessness and negligence) include errors in calculations, misreading drawings and specifications, and construction defects. Nevertheless, the consultant must plan everything well to achieve the best results.

The criteria for a construction experiencing building failure are:

- 1) The building does not function after the final delivery of construction services.
- 2) It does not comply with the job specifications as agreed upon in the construction work contract.
- 3) It does not meet safety, health, and sustainability standards, making the service provider responsible.
- 4) The construction age is still within the liability period as specified since the final delivery of construction service.

According to Hilebrant, the Construction Service Industry is an industry that includes all parties involved in the construction process, including professional labor, construction workers, and suppliers who together fulfill the needs of industry stakeholders.

Generally, the market share of high-tech construction jobs has not been fully dominated by National Construction Service businesses due to two factors:

a. Internal factors which are:

- 1) National construction services generally still have weaknesses in management, technology mastery, and capital, as well as a shortage of skilled and expert personnel;
- 2) The structure of national construction service businesses is not fully organized and strong, reflected in the lack of synergistic partnerships among service providers in various classifications and/or qualifications;

b. External factors, which are:

- 1) Inequitable working relationships between service users and service providers;
- 2) Inadequate support from various sectors, directly or indirectly affecting the performance and reliability of national construction services, including access to capital, professional and skilled workforce development, and the availability of standard building materials and components;

- 3) The national regulation and development of construction services is still partial and sectoral.

Legal cases in construction projects may arise due to deviations from contracts, including deviations from volume, quality, and project timelines. Such legal cases can lead to legal sanctions, both administrative, civil, and criminal. To prevent all parties involved in construction project management from facing such issues, it is essential to have a clear understanding of the legal aspects, obligations, and rights in project execution. Law No. 18 of 1999 concerning Construction Services mandates that in the event of "building/construction failures," all parties involved may be investigated and held accountable, including owners, planners, implementers, and consultants.

The regulation of the liability of goods/services providers in the event of building failures is governed by Law No. 18/1999 concerning Construction Services, which has been evaluated and revised with Law No. 2/2017 concerning Construction Services in response to the growth of the construction sector in Indonesia.

According to Law No. 2/2017, the responsibilities of goods/services providers in the event of construction failures are as follows:

- a. If Construction Service Providers fail to meet Safety, Security, Health, and Sustainability Standards as specified in Article 59, Service Users and/or Service Providers may be held responsible for Building Failures. In other words, Construction Service Providers must comply with Safety, Security, Health, and Sustainability Standards.
- b. To determine building failures, an Expert Evaluator appointed and determined by the relevant Minister is required. Based on the examination results by the Expert Team, as stipulated in Article 60 of Law No. 2/2017, the deadline for evaluating building failures is a maximum of 30 (thirty) working days from the receipt of the failure report.
- c. Based on Regulation of the Minister of Public Works and People's Housing of the Republic of Indonesia Number 8 of 2021 concerning Expert Evaluators in building failures, the expert evaluator is directly appointed by the Minister, and the payment of compensation must begin within 30 (thirty) calendar days after being determined by the competent authority. This is explained in Article 36, assessing the amount of compensation resulting from building failure incidents, including:
 - 1) Calculation of technical losses
 - 2) Calculation of financial losses experienced by third parties other than service users and service providers
 - 3) Calculation of economic losses experienced by service users or building owners/building administrators.
- d. Based on Article 63 of Law No. 2/2017, the provider of goods/services must replace or repair building failures caused by their own errors.
- e. Based on Article 65 of Law No. 2/2017, the maximum period of responsibility for building failures is ten (10) years from the date of final delivery of Construction Service.

The regulation of the "Construction Age Plan" in "Construction Work Contracts" is regulated based on Article 86 of Government Regulation No. 22/2020 concerning the

Implementation Regulation of Law No. 2/2017 concerning Construction Services. Legally, the purpose of this regulation is to include the planned construction age in the construction work contract, providing legal certainty to Service Users that the delivered building will have a minimum life span of ten (10) years. In Article 86(3), this regulation shifts the responsibility from Service Providers to Service Users after the specified period has elapsed.

The procedure for including the "Construction Age Plan" in "Construction Work Contracts" is governed by Article 87 of Government Regulation No. 22/2020, which states:

- a. The determination of the construction age plan as referred to in Article 86(1) must be clearly and explicitly stated in the design documents and incorporated into the construction work contract.
- b. The period of responsibility for building failures as referred to in Article 86(3) must be clearly and explicitly stated in the construction work contract.

Failure to include the construction age plan in the construction work contract does not constitute a criminal act in the context of criminal law. However, it may be considered an administrative act, as the failure to fulfill the legal obligations in the construction work contract is a legal administrative error. Consequently, the liability for such failure would be in the context of administrative law.

4. CONCLUSION

In conclusion, the responsibility of providers of goods and services in the event of building failures is a crucial aspect in the construction industry. Construction failures can occur due to deficiencies in the procurement process or during the construction execution phase, and they may result from the incompetence of the service provider or the service user. Various factors contribute to construction failures, including the competence of resources and the proper placement of skilled labor. Addressing construction project challenges and minimizing failures requires a clear legal framework, compliance with regulations, and systematic approaches to risk management.

The legal responsibility of service providers for construction failures is defined in UU No.2/2017, which outlines the obligations in case of construction failures. Providers must ensure that construction meets safety, health, and sustainability standards. Expert appraisers, appointed by the Minister, assess construction failures within a specified timeframe. Providers are required to replace or repair the failures caused by their errors, and the liability for construction failures remains for a maximum period of ten years from the completion of the construction service. Strengthening legal clarity and protection in the construction industry is vital to avoid legal issues and ensure successful project execution, benefiting all stakeholders involved in infrastructure development. By implementing these measures, the construction industry in Indonesia can continue to grow and thrive, providing safe and reliable structures for the benefit of society.

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