

LEGAL ASPECTS OF CONSTRUCTION FAILURES (Based on Law Number 2 of 2017 on Construction Services)

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Abstract

Law No. 2 of 2017 on Construction Services, which is a revision of Law No. 18 of 1999, aims to improve regulations in the implementation of construction services to support national development. The implementation of construction services involves planning, execution, supervision, and maintenance of buildings, all of which must be carried out professionally and transparently. However, various legal issues may arise, such as work delays, contract violations, or building failures due to non-compliance with safety standards. Contractors are responsible for fulfilling performance according to the contract and applicable safety standards. The legal basis for construction contracts is governed by the Civil Code, which binds both parties as long as the contract is valid. This study examines the contractor's responsibility in performance failure, particularly related to building failures. Emphasizing standard compliance and strengthening regulations and human resources in the construction sector is expected to reduce risks and address global challenges. Construction service associations also play a crucial role in ensuring the implementation of SOPs and workplace safety, as well as improving the quality of construction projects in accordance with the applicable regulations.

Keywords: *Construction Services, Contractor, Safety Standards, Legal Basis*

Abstrak

Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi, yang merupakan revisi dari Undang-Undang Nomor 18 Tahun 1999, bertujuan meningkatkan pengaturan dalam penyelenggaraan jasa konstruksi untuk mendukung pembangunan nasional. Implementasi jasa konstruksi melibatkan perencanaan, pelaksanaan, pengawasan, dan pemeliharaan bangunan yang harus dilakukan secara profesional dan transparan. Namun, berbagai persoalan hukum dapat timbul, seperti keterlambatan pekerjaan, pelanggaran kontrak, atau kegagalan bangunan akibat ketidakpatuhan pada standar keselamatan. Kontraktor bertanggung jawab atas pemenuhan prestasi sesuai kontrak dan standar keselamatan yang berlaku. Dasar hukum kontrak konstruksi diatur dalam Kitab Undang-Undang Hukum Perdata, yang mengikat kedua pihak selama kontrak dibuat sah. Penelitian ini mengkaji tanggung jawab kontraktor dalam kegagalan pemenuhan prestasi, khususnya terkait kegagalan bangunan. Penekanan pada pemenuhan standar dan penguatan regulasi serta sumber daya manusia di sektor konstruksi diharapkan dapat mengurangi risiko dan menghadapi tantangan global. Asosiasi jasa konstruksi juga berperan penting dalam memastikan implementasi SOP dan keselamatan kerja, serta meningkatkan kualitas proyek konstruksi yang dibangun sesuai dengan peraturan yang berlaku.

Kata Kunci: *Jasa Konstruksi, Kontraktor, Kegagalan Bangunan, Standar Keselamatan*

INTRODUCTION

Law Number 2 of 2017 on Construction Services is the most recent amendment to Law Number 18 of 1999 concerning Construction Services. The previous law also addressed construction projects, which are legal actions carried out based on agreements formalized in contracts at a specific time and place. These agreements involve activities to complete a physical structure or provide specific goods or services required by the user of the goods or services, in this case, the government.

When an agreement is signed between the service provider and the service user, following a formal procurement process for construction works, legal issues may arise during the implementation of the construction work. Such issues could include delays caused by the service provider or failures by the service user to manage the project effectively, such as improper financial management of the project within the budget. These scenarios can lead to legal disputes between construction service users and providers.

Construction services play a critical role in economic, social, and cultural activities, contributing significantly to achieving national development goals. Therefore, the regulation of construction services must be further refined to ensure orderly contractual arrangements and construction work implementation.

The implementation of construction services involves a series of interconnected processes, including construction planning, physical execution and supervision, operation and maintenance of buildings or infrastructure, and, when necessary, demolition. Each phase must be carried out responsibly, professionally, and transparently, ensuring accountability. The ultimate goal is the construction of a technically sound and financially feasible structure that meets the needs of the service user in accordance with applicable regulations. The service user, often the government, is responsible for administrative matters and timely payment to the construction service provider once the physical work is completed.

Disputes in the construction services sector often stem from contract deviations, whether in terms of volume, quality, or project timelines. Such cases result in legal consequences, including administrative sanctions and civil penalties in the form of compensation.

Meeting standards for safety, security, health, and sustainability in construction is crucial for both service users and providers to prevent structural failures. Strengthening the human resources in the construction services sector, supported by regulatory enhancements, is essential to address global competition.

Agreements must be executed in good faith, implying that all terms agreed upon by the parties must be honored and respected. The fulfillment of obligations within each agreement should align with the parties' intentions at the time the agreement was formed⁴. The general principles of contract performance in construction are governed by the Indonesian Civil Code (KUH Perdata), specifically in Book III on Obligations, based on Article 1320 of the Civil Code. Furthermore, agreements lawfully made between parties are binding and serve as law for the contracting parties, as stipulated in Article 1338 of the Civil Code.

Performance or counter-performance in contractual law is regarded as an obligation. A party making a promise to fulfill a performance or counter-performance is obligated to do so. The obligated party is referred to as the debtor, while the party entitled to receive the obligation is the creditor.

Based on this premise, the author is interested in conducting research to examine the implementation of contractor liability and evaluate the extent of accountability of service providers toward service users in cases where performance (in this context, building failure) is not fulfilled.

METHODS

RESULTS AND DISCUSSION

1. Stages of Construction Work Implementation

The implementation of construction work encompasses the planning stage and the execution stage, along with its supervision. Each stage is carried out through activities of preparation, execution, and completion. For certain construction projects, the construction executor and supervisor may appoint subcontractors or sub-supervisors with specialized expertise, provided they first obtain approval from the service user.

The implementation of construction work must comply with technical, labor, and environmental management standards, as well as fulfill the obligations required to ensure orderly execution. The stages of construction work are as follows:

- a. Planning Stage → The scope of the planning stage includes pre-feasibility studies, feasibility studies, general planning, and technical planning. The service provider is required to deliver the results of their work, which consist of outputs from the planning stage, initial submission results, and final submission results, ensuring accuracy in cost, quality, and timing. The service user, in turn, is obligated to make payments for the work delivered by the service provider in the correct amounts and within the agreed timeframe.
- b. Execution and Supervision Stage → The scope of this stage includes physical execution, supervision, testing, and submission of the project results. The execution and supervision of construction work must be supported by the availability of work sites, documentation, facilities, equipment, construction workforce, and building materials/components. Each of these resources must align with the activities required for the execution and supervision stages.

2. Contractors

A contractor generally refers to an entity, organization, or individual engaged in procuring goods or services, compensated according to a pre-agreed contractual value. Civil contractors specifically provide goods and services related to civil works, such as roads, buildings, bridges, and other constructions. The term "contractor" is synonymous with "builder" or "subcontractor" and originates from the word "contract," meaning an agreement or contract document. Contractors are entities or individuals contracted or hired to carry out project work as specified in the contract they have been awarded by the project owner.

According to Article 1, Paragraph 6 of Law Number 2 of 2017 on Construction Services, a contractor is defined as one of the service providers responsible for delivering construction services. A service provider may be an individual or a business entity capable of offering construction-related services to service users. The term encompasses three roles: construction planners, construction supervisors, and construction executors.

Article 1, Paragraph 3 of Presidential Decree Number 80 of 2003 defines contractors as providers of goods or services, which may be individuals or business entities whose activities focus on supplying goods or services. Contractors are a result of the procurement of goods or services.

In a construction contract, the second party is typically the contractor or service provider. Contractors are bound by the following contractual obligations:

- a. Carry out construction work in accordance with the drawings and specifications obtained, provide the goods, materials, and contractor documents needed, and complete the project according to the agreed time (general obligations).
- b. Fulfill every acceptance of the quality of procurement of goods and materials and labor.
- c. Be responsible for the stability and safety of the implementation of the work.
- d. Submit details and work methods when requested by the project owner or supervising consultant.
- e. Submit a guarantee of work implementation and other guarantees in accordance with those stated in the contract.

The implied obligations of the contractor are to complete the work within a reasonable time, carry out the work diligently and with proper skills, use materials of appropriate quality and function according to their designation, provide early warning of possible changes in the scope of work or force majeure, and provide information on incorrect designs. In relation to the contractor's obligations regarding safety aspects, the contractor must:

- a. Comply with all applicable work safety regulations.
- b. Maintain the safety of all people working in the field.
- c. Securing the field and work (including work results)
- d. Supervising the field and work (including work results) until handover is carried out.
- e. Carrying out temporary works as necessary to maintain public safety.

3. The Role of Associations in Construction Services

The government recognizes the significant role of associations in the construction sector as highlighted in Law Number 2 of 2017 on Construction Services. Syarif Burhanuddin, Director General of Construction Development at the

Ministry of Public Works and Housing (PUPR), expressed high expectations for construction service associations, including ASPEKINDO, as government partners. These associations are expected to act as key players in accelerating development programs, ensuring adherence to orderly construction service implementation, and contributing constructive ideas to the sector.

To this end, the government encourages participatory processes to enhance the capabilities of stakeholders in the construction services sector. This includes the formulation of implementing regulations for Law Number 2 of 2017 on Construction Services. Key focus areas include occupational health and safety (K3) in construction, the readiness of the construction supply chain, the structure of construction businesses, workforce distribution, and the institutional dynamics of construction worker certification.

Occupational Health and Safety (K3) in Construction

Workplace accidents and building failures in the construction sector have demonstrated that such incidents not only harm workers but also the public, property, the environment, and project progress. Therefore, tangible improvements in project management systems are essential, including active participation from contractor associations. Strict adherence to K3 principles and Standard Operating Procedures (SOPs) must be enforced with zero tolerance to ensure the goal of zero accidents is achieved.

Construction Supply Chain

Currently, the majority of construction service businesses in Indonesia are dominated by small enterprises, accounting for 85%, followed by medium-sized enterprises at 14%, and large enterprises at only 1%. The business structure is similarly skewed, with specialized business certifications (SBU) making up just 4%, while the remainder is dominated by general contractors. This imbalance, coupled with the low ratio of specialized contractors to general contractors, has resulted in poor productivity, low-quality construction products, high accident rates, and weak competitiveness. The Construction Services Development Agency (LPJK) is focusing on accrediting construction service associations to address these challenges.

Through these efforts, associations are expected to play a pivotal role in improving standards, fostering professionalism, and enhancing the overall performance of Indonesia's construction sector.

4. Code of Ethics

According to Martin (1993), ethics is defined as "the discipline which can act as the performance index or reference for our control system." Ethics, therefore, establishes boundaries and standards that regulate human interactions within social groups. When specifically associated with the art of human interaction, ethics is formulated into written rules (codes) systematically designed based on existing moral principles. These codes can then serve as tools to evaluate actions that, through common sense and rational logic, deviate from the established ethical code. Hence, ethics represents a form of self-control, as it is created and applied by and for the benefit of the social (or professional) group itself.

The existence of professional organizations equipped with "built-in mechanisms" such as professional codes of ethics is essential. These codes help safeguard the dignity and honor of the profession while also protecting the public from any form of malpractice or misuse of expertise.

A code of ethics refers to a set of norms or principles accepted by a specific group as a foundation for daily behavior, both in society and in the workplace. It serves as a guiding framework to ensure the conduct of professionals aligns with the values and standards expected within their profession.

5. Responsibility

According to the Kamus Besar Bahasa Indonesia (KBBI), responsibility is defined as the obligation to bear the consequences of any actions, making one liable to be held accountable, blamed, or prosecuted if anything goes wrong. In legal terminology, responsibility refers to an obligation imposed on an individual to fulfill what has been assigned to them. From a legal perspective, responsibility is the consequence of an individual's freedom to act, particularly in matters related to ethics or morality. As stated by Titik Triwulan, responsibility must have a foundation, which is the basis that grants someone the legal right to demand accountability from another party while simultaneously imposing a legal obligation on the other party to provide such accountability.

The foundation of responsibility, according to civil law, is rooted in fault and risk inherent in every legal event. Theoretically, responsibility arising from legal relationships between the party demanding accountability and the party obligated to be accountable can be classified into the following types:

- a. Responsibility Based on Fault. This type of responsibility arises from occurrences such as breach of contract (wanprestasi), unlawful acts, or negligent actions.
- b. Responsibility Based on Risk. This refers to the responsibility borne as a consequence of the risks undertaken by a business operator in relation to their business activities.

6. Construction Services

Article 1, Paragraph 1 of the Construction Services Law (UU Jasa Konstruksi) defines construction services as:

"Construction Services are consulting services for construction planning, services for the execution of construction work, and consulting services for the supervision of construction work. Construction Services hold an important and strategic role, as they produce final products in the form of buildings or other physical structures, whether infrastructure or facilities, that support economic, social, and cultural activities."

According to the Construction Services Law, the construction services industry is divided into three categories:

a. Construction Planning

Construction planning involves providing consultancy services for construction projects. These services include a series of activities or segments of activities ranging from feasibility studies to the preparation of construction work contract documents.

b. Construction Execution

Construction execution involves providing services to carry out construction work. These services cover a series of activities or segments of activities, starting from site preparation to the final delivery of the completed construction work.

c. Construction Supervision

Construction supervision involves providing consultancy services to oversee all or part of the construction execution process. This includes activities from site preparation to the final delivery of the completed construction work.

7. Construction Work Contracts

A contract serves as a medium for regulating business relationships between parties, specifically addressing legal relationships involving private or civil interests, particularly in contract formation. Fundamentally, a contract is a critical component of a business process, which inherently involves the exchange of interests between the parties involved. Drafting a contract essentially means translating the business process into a legal framework. Standardized contracts are often pre-determined and presented in a pre-prepared format, with the terms set unilaterally by one of the parties.

In alignment with Article 1313 of the Indonesian Civil Code (KUH Perdata), Seng Hansen defines a contract or agreement as "an act by which one or more individuals bind themselves to one or more others."

Similarly, in accordance with Article 1320 of the Indonesian Civil Code, Nheezwa R. N. explains that the validity of a contract is subject to specific requirements: 1) Subjective requirements: These pertain to the agreement and competence of the contracting parties. If these are not met, the contract may be annulled. 2) Objective requirements: These involve a specific subject matter and a lawful cause. If these are not fulfilled, the contract is void by law¹⁶.

Article 1, Paragraph 8 of Law No. 2 of 2017 on Construction Services defines a construction work contract as the entirety of documents that govern the legal relationship between the service user and the service provider in the implementation of construction services.

The purpose of a construction contract serves at least four key roles: Establishing a legally binding relationship; Distributing risks; Clearly stating all rights, obligations, and responsibilities of the parties involved; Outlining all events, conditions, and procedures related to the contract.

A construction work contract encompasses three areas: planning, execution, and supervision. In principle, each of these tasks must be conducted separately by a

service provider to avoid conflicts of interest. Therefore, overlapping functions—such as a construction executor also acting as a supervisory consultant or a planning consultant also serving as a supervisor—are not permissible.

Exceptions to this principle are allowed for projects of a complex nature, requiring advanced technology and posing significant risks, such as oil refinery construction, power plant development, or nuclear reactor projects. These exceptions are accommodated in Presidential Regulations.

The legal framework governing the implementation of construction procurement in Indonesia includes the following regulations:

- a. Law No. 2 of 2017 on Construction Services, which amends Law No. 18 of 1999 on Construction Services (Specific Regulation).
- b. Government Regulation No. 28 of 2000 on Business and Community Roles in Construction Services, as amended by Government Regulation No. 40 of 2010 (Supplementary Regulation).
- c. Government Regulation No. 29 of 2000 on Construction Implementation, as amended by Presidential Regulation No. 59 of 2010 (Supplementary Regulation).
- d. Government Regulation No. 30 of 2000 on Construction Services Development (Supplementary Regulation).

According to Stephen Furst and Vivian Ramsey, as cited by Dwi Mariyati, the principles of construction law in construction contracts are generally found in the Indonesian Civil Code (KUH Perdata), specifically in Book III on Obligations (Perikatan):

- a. Freedom of Contract Principle, found in Article 1338 of the Civil Code, which states that all legally made agreements serve as binding laws for the parties involved.
- b. Validity of a Contract Principle, Stipulated in Articles 1320 and 1340 of the Civil Code, requiring mutual consent, legal capacity of the parties, a specific subject matter, and a permissible cause for a contract to be valid.
- c. Object of the Contract Principle, Detailed in Article 1333 of the Civil Code, which governs the requirements for the subject matter of a contract.

- d. Prinsip Work Guarantee Principle, Regulated in Article 1400 of the Civil Code, emphasizing guarantees over the quality of the work performed.
- e. Prinsip Indemnity Principle, Explained in Article 1820 of the Civil Code, addressing obligations to compensate for damages under specific conditions.
- f. Default and Compensation Principle, Article 1243 of the Civil Code provides guidelines for dealing with breaches of contract and compensation for damages.
- g. Default and Compensation Principle, Article 1243 of the Civil Code provides guidelines for dealing with breaches of contract and compensation for damages.
- h. Provisions on Subcontracting Principles, Articles 1604–1617 of the Civil Code outline rules related to subcontracting, including the following principles:
 - 1) Correlation Between Responsibility and Fault: Accountability of parties is linked to negligence and the provision of materials.
 - 2) Definitive Responsibility of Service Providers: Liability lies with service providers if the structure collapses due to defects in construction or factors not supported by soil or environmental conditions.
 - 3) Prohibition on Altering Contract Prices: No changes to agreed contract prices are permitted.
 - 4) Right to Unilaterally Terminate Contracts: Employers retain the freedom to terminate contracts unilaterally.
 - 5) Attachment of Contracts to Subcontracting: The contract binds directly to the subcontracting entity.
 - 6) Replacement Liability: Responsibilities are assigned to replace any damage or failure.
 - 7) Existence of Contractual Relationships: Ensures the continuity and integrity of contractual obligations.
 - 8) Retention Rights: Rights to withhold work or payments under specific circumstances.

8. Legal Policy Regarding the Replacement of Law Number 18 of 1999 on Construction Services with Law Number 2 of 2017 on Construction Services

The preamble of Law Number 2 of 2017 on Construction Services states the following considerations:

- a. National development aims to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.
- b. The construction services sector is a societal activity that facilitates the development of infrastructure and buildings serving as enablers for socio-economic activities, thereby supporting the achievement of national development goals.
- c. The implementation of construction services must ensure order and legal certainty.
- d. Law Number 18 of 1999 on Construction Services is deemed inadequate in meeting the demands of good governance practices and addressing the dynamic developments in the construction services sector.
- e. Based on the aforementioned considerations outlined in points a, b, c, and d, it is necessary to establish a new Law on Construction Services.

Table 1
Renewal of the Construction Services Law

Law No. 18 of 1999 on Construction Services	Law No. 2 of 2017 on Construction Services
Replacement/Repair of Buildings	Article 63 The Service Provider is obligated to replace or repair the Building Failure as referred to in Article 60 paragraph (1) caused by the Service Provider's error.
Compensation for Damages	Article 67 (1) The Service Provider and/or the Service User are obliged to provide compensation in the event of a Building Failure as referred to in Article 65, paragraphs (1), (2), and (3). (2) Further provisions regarding the provision of compensation as referred to in paragraph (1) will be regulated in a Government Regulation.
<p>Article 26 (1) If a building failure occurs due to the fault of the designer or construction supervisor, and it is proven to cause losses to other parties, the designer or construction supervisor is obligated to be responsible in accordance with their professional field and will be subject to compensation. (2) If a building failure occurs due to the fault of the construction contractor, and it is proven to cause losses to other parties, the construction contractor is obligated to be responsible in accordance with their business field and will be subject to compensation.</p> <p>Article 27 If a building failure occurs due to the fault of the service user in managing the building, and it causes losses to other parties, the service user is obligated to be responsible and will be subject to compensation.</p> <p>Article 28 The provisions regarding the time period and expert assessment referred to in Article 25, the responsibility of the construction designer,</p>	

	Law No. 18 of 1999 on Construction Services	Law No. 2 of 2017 on Construction Services
	construction contractor, and construction supervisor as referred to in Article 26, as well as the responsibility of the service user as referred to in Article 27, will be further regulated by Government Regulation.	
Criminal Penalties	<p>Article 43</p> <p>(1) Any person who conducts the planning of construction work that does not meet technical requirements and results in construction failure or building failure shall be subject to a criminal penalty of up to 5 (five) years in prison or a fine of up to 10% (ten percent) of the contract value.</p> <p>(2) Any person who executes construction work that is contrary to or does not comply with the established technical requirements and results in construction failure or building failure shall be subject to a criminal penalty of up to 5 (five) years in prison or a fine of up to 5% (five percent) of the contract value.</p> <p>(3) Any person who supervises the implementation of construction work and intentionally allows another person to carry out construction work in violation of technical requirements, resulting in construction failure or building failure, shall be subject to a criminal penalty of up to 5 (five) years in prison or a fine of up to 10% (ten percent) of the contract value.</p>	
Administrative Sanctions	Note: Administrative sanctions are mentioned in the 1999 Construction Services Law, but it does not explicitly state the types of administrative sanctions for building failures.	<p>Article 98</p> <p>The Service Provider who fails to fulfill the obligation to replace or repair Building Failures as referred to in Article 63 shall be subject to administrative sanctions in the form of:</p> <ul style="list-style-type: none"> b. Written warning; c. Administrative fine; d. Temporary suspension of Construction Services activities; e. Blacklisting; f. License suspension; and/or g. License revocation.

With the removal of criminal sanctions for construction service providers, the 2017 Construction Services Law positions the relationship between service users and construction service providers within the realm of civil law, aligning with the legal basis of their relationship, namely the construction work contract .

9. Structural Failure

Building failure, in terms of its causal factors, can be categorized into human actions, natural or environmental factors, or a combination of both. The concept of building failure can be understood from two perspectives: legal regulations and construction theory.

From the legal perspective, the applicable regulations are outlined in Law Number 18 of 1999 concerning Construction Services (updated by Law Number 2 of 2017) and Government Regulation Number 29 of 2000 on the Implementation of Construction Services (hereinafter referred to as the Regulation on the Implementation of Construction Services). According to Article 1, paragraph 6 of the Construction Services Law, building failure is defined as:

"The condition of a building, after being handed over by the service provider to the service user, which becomes non-functional either in whole or in part and/or does not comply with the provisions stipulated in the construction work contract or its utilization deviates as a result of errors by the service provider and/or the service user."

Meanwhile, in the Regulation on the Implementation of Construction Services, building failure is defined as:

"The condition of a building that does not function, either wholly or partially, in terms of technical aspects, usability, occupational safety and health, and/or public safety, due to errors by the service provider and/or service user after the final handover of the construction work."

From a theoretical perspective, according to the Indonesian Society of Construction Experts (HAKI), building failure can be understood in two main ways as follows:

a. General Definition

A building, whether partially or entirely, is considered to have failed when it does not meet or exceeds certain performance values (minimum, maximum, and tolerance requirements) as specified by the applicable regulations, standards, and specifications at the time, rendering the building unable to function properly.

b. Definition of Structural Failure

A building, whether partially or entirely, is considered to have experienced structural failure when it does not meet or exceeds certain performance values

(minimum, maximum, and tolerance requirements) as specified by the applicable regulations, standards, and specifications at the time, resulting in the building structure failing to satisfy the elements of strength, stability, and usability.

CONCLUSION

The legal aspects of construction related to building failures, as regulated by Law Number 2 of 2017 concerning Construction Services, include the following:

1. Responsibility of Service Providers

Service providers are held accountable for building failures for a maximum period of 10 years from the final handover of construction services.

2. Criminal Sanctions

Individuals involved in the planning, execution, or supervision of construction work that leads to building failure may face imprisonment for up to 5 years and/or a fine of up to 10% of the contract value.

3. Administrative Sanctions

Violations of the Construction Services Law may result in administrative sanctions, such as written warnings, temporary suspension of construction work, restrictions on business and/or professional activities, or temporary prohibition on the use of completed construction works.

Construction failure refers to a condition where the results of construction work do not comply with the specifications agreed upon in the construction work contract. This failure can arise from errors made by either the service user or the service provider.

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