

## The Role of a Notary for Construction Service Providers on Failed to Build Disputes

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**Abstract.** *The 1999 Construction Services Law and the 2017 Construction Services Law realize that the implementation of construction services is a complex matter and involves many interests, so in the event of a building failure a party is needed who is able to provide an objective and professional view regarding responsibility for the failure. This thesis research was carried out using sociological juridical because it was carried out by collecting various data. The efforts to resolve the construction failure dispute in Madiun City have not been carried out based on the rules Act No. 2 of 2017 related to Construction Services, Legal protection for construction service providers in construction failure disputes caused by third parties in Madiun City still has weaknesses, namely the limited protection of the position of construction service providers from criminal threats due to the absence of criminal sanctions, as well as weaknesses in the form of most of the agreements for the use of building construction services that were made were not agreements made by deed before a notary.*

*Keywords: Dispute; Legal; Protection.*

### 1. Introduction

Act No. 2 of 2017 concerning Construction Services does not regulate construction failures in the form of criminal sanctions as a result of construction failures. Construction failure is not regulated in Act No. 2 of 2017 concerning Construction Services as an attempt to act as an act of deviation or discrepancy in the results of work or errors in the stages of development starting from planning, implementing and supervising the construction of a construction or building.<sup>1</sup>

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<sup>1</sup>Aras Firdaus, Normative Perspective of Criminal Law on Construction Failures in Indonesia, Journal of Law, Volume 1, Number 1, July 2020

In fact, law enforcement in cases of failure to construct buildings is often resolved through complaints to the police. This is because most development failures are often associated with fraud, embezzlement, and money laundering. This can be seen in the case of Tirtasani Royal Resort which was policed due to delays in completing the construction of housing units which had been paid in full by investors, this made the disadvantaged investors feel that there was fraud and embezzlement.

Development service providers, procurement of goods and services often become victims of law enforcement errors, due to the threat of corruption public infrastructure development should be threatened to public officials holding the authority who have tools for corruption, while implementing parties only carry out work according to plans agreed between themselves and officials related.<sup>2</sup> Sri Endah Wahyuningsih stated that there needs to be good coordination between existing law enforcement agencies regarding an issue of existing law violations or crimes.<sup>3</sup>

At the same time, Gunarto stated that the substance of law enforcement is the elaboration of the decisions of the judiciary which stated that for the sake of justice and based on God.<sup>4</sup> Based on the various explanations above, it is clear that the owner of a construction service business has a big risk when running his business. This is due to the ambiguity of the provisions regarding the failure to build disputes in the provisions Act No. 2 of 2017 concerning Building Construction which does not regulate the abolition of penal provisions when the building construction service provider has carried out its responsibilities by compensating the building owner when a failure to build occurs. Then in Article 164 of Government Regulation Number 14 of 2021 concerning Amendments to Government Regulation Number 22 of 2020 concerning Regulations for the Implementation of Act No. 2 of 2017 Concerning Construction Services it also only contains fines and administrative sanctions in the form of blacklisting construction service business actors. so that the operational and business permits were abolished. Meanwhile, criminal provisions are also not clearly regulated in this government regulation.

## **2. Research Methods**

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<sup>2</sup> Banjarmasin District Court Number 6/Pid.Sus-TPK/2019/PN.BJM, Obtained on 12 December 2020.

<sup>3</sup>Sri Endah Wahyuningsih and Agus Sunaryo, THE ROLE OF PROSECUTOR OFFICE IN THE ERADICATION OF CORRUPTION CRIMINAL ACTS IN INDONESIA Journal, Pembaharuan, Hukum Volume IV No. 2 May - August 2017, p. 248.

<sup>4</sup>Gunarto, Ansharullah Ida, Jelly Leviza, The 2nd Proceeding, Indonesia Clean of Corruption in 2020, Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe, UNISSULA Pess, Semarang, 2016.

This thesis research was carried out using sociological juridical because it was carried out by collecting various data related to research, then the data was presented descriptively (exposition) and analyzed in accordance with related laws and related theories.

### **3. Result and Discussion**

#### **a. Efforts to Settle for Disputes Failed to Build in the City of Madiun**

The responsibility that must be carried out by business actors or housing developers if defective goods and/or services have arrived at consumers and results in losses for consumers is to provide compensation for consumer damage or losses resulting from goods and/or services produced or traded. Normatively, the responsibilities of business actors are regulated in Article 18 of Act No. 8 of 1999 concerning Consumer Protection. Mentioned in the provisions of Article 18 of Act No. 8 of 1999 concerning Consumer Protection:

1. Business actors are responsible for providing compensation for damage, pollution and/or consumer losses as a result of consuming goods and/or services produced or traded.
2. Compensation as referred to in paragraph (1) can be in the form of a refund or replacement of goods and/or services of the same or equivalent value or health care and/or compensation in accordance with the provisions of the applicable laws and regulations.
3. Compensation is made within 7 (seven) days after the transaction date.
4. The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of a criminal charge based on further evidence regarding the existence of an element of intent.
5. The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the mistake is the fault of the consumer.

Absolute responsibility (strict product liability) hasThe principle of unlawful act (tort) is based on a special form of strict liability, namely an error that is not based on tort regarding the principle of liability as a general tort. Because of the unlawful act, the private business actor must be responsible for the loss. Errors that exist are no longer questioned in this strict liability or absolute liability principle. However, business actors must be responsible for consumers who suffer losses due to business actors who are not careful and for losses caused by

defective products because business actors should be able to prevent this unpleasant thing.<sup>5</sup>

The responsibility of business actors apart from absolute responsibility (strict product liability) is also towards contractual liability (responsibility based on an agreement). Contractual liability (responsibility based on agreements), namely as civil liability on the basis of agreements or contracts from business actors for losses suffered by consumers due to actions using goods and/or services produced or utilizing services provided by business actors in this case the developer housing area.

*Contractual liability*(responsibility based on an agreement) is regulated in article 134 of Act No. 1 of 2011 Concerning Housing and Residential Areas which states that "Everyone is prohibited from carrying out housing construction, who does not build housing in accordance with the criteria, specifications, requirements, infrastructure, facilities , and public utilities that were agreed upon". Because there are so many disputes that arise between consumers and business actors from non-compliance with the provisions or not building housing according to the agreed criteria, specifications, requirements, infrastructure, facilities and public utilities. As well as providing legal certainty for housing consumers that what is in the agreement made must be in accordance with the goods and/or services agreed upon.

Failure to get up is also regulated in Law no. 18 of 1999 concerning Construction Services which is now present in the laws and regulations in the country of Indonesia, in further steps it has been followed up with a Government Regulation one year later namely Government Regulation No. 28 of 2000 concerning the Business and Role of the Construction Services Community, Government Regulation. No. 29 of 2000 concerning the Implementation of Construction Services and Government Regulation no. 30 of 2000 concerning Implementation of Construction Service Development.

Construction services are a sector that plays an important role in Indonesia's development. Through this sector, physically the progress of development can be seen directly, for example the construction of multi-storey and non-storey buildings, apartment/rusunawa buildings, malls spread across cities, residential housing and bridges, roads, factories, weirs and irrigation dams, including construction of power plants. electricity and its transmission and distribution and many more construction buildings that are all around us.

The 1999 Construction Services Act, the definition of building failure is as follows:<sup>6</sup>

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<sup>5</sup>Sidharta, Indonesian Consumer Protection Law, Grasindo, Jakarta, 2000, page 62

As the state of the building, that is after being handed over by service providers to service users does not work in whole or in part, and/or does not comply with the provisions stated in the construction work contract or distorted use as a result of the fault of the Service Provider and/or Service User.

The 2017 Construction Services Law, building failure is defined as follows "A situation building collapse and/or malfunction of the building after the final handover results of Construction Services".<sup>7</sup>

The 1999 Construction Services Law and the 2017 Construction Services Law realize that the implementation of construction services is a complex matter and involves many interests, therefore in the event of a building failure a party is needed who is able to provide an objective and professional view regarding responsibility for building failure. The following table is presented which contains the form of accountability by construction service actors in the event of a building failure as follows:

**Table:**

Comparison Of Provisions Of Act No. 18 Of 1999 With Act No. 2 Of 2017  
Concerning Construction Development

PROVISION	ACT NO. 18 OF 1999	ACT NO. 2 OF 2017
Building replacement/repair	-	Article 63  The Service Provider is obliged to replace or repair the Building Failure as referred to in Article 60 paragraph (1) which is caused by the Service Provider's fault.
Compensation	Article 26  1. If a building failure occurs	Article 67  (1) Service Providers and/or

<sup>6</sup><https://business-law.binus.ac.id/2017/03/26/kegagalan-bangun-tiada-lagi-pidana-bagi-pelaku-jasa-construction/>, Retrieved January 24, 2023.

<sup>7</sup>Loc, cit.

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due to the fault of the construction planner or supervisor, and this is proven to cause harm to other parties, the construction planner or supervisor must be responsible according to their profession and be subject to compensation.

2. If a building failure occurs due to the fault of the construction implementer and this is proven to have caused harm to other parties, the construction contractor must be responsible according to the field of business and be subject to compensation.

#### Article 27

If a building failure occurs due to a service user's mistake in managing the building and this causes harm to other parties, the service user must be responsible and subject to compensation.

#### Article 28

Provisions regarding the time period and expert appraisers as referred to in Article 25, the responsibilities of construction planners, construction implementers and construction supervisors as referred to in Article 26 and the responsibilities of service users as referred to in Article 27 are further regulated by Government Regulations.

Service Users are required to provide compensation in the event of a Building Failure as referred to in Article 65 paragraph (1), paragraph (2), and paragraph (3).

(2) Further provisions regarding the provision of compensation as referred to in paragraph (1) are regulated in a Government Regulation.

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Criminal

Article 43

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1. Whoever carries out a construction work plan that does not comply with technical requirements and results in construction work failure or building failure is subject to imprisonment for a maximum of 5 (five) years or a maximum fine of 10% (ten percent) of the contract value.

2. Whoever carries out a construction work that is contrary to or not in accordance with the technical provisions that have been stipulated and results in construction work failure or building failure is liable to a maximum penalty of 5 (five) years in prison or is subject to a fine of up to 5% (five percent) of the value contract.

3. Whoever supervises the implementation of a construction work intentionally gives the opportunity to other people carrying out the construction work to deviate from technical provisions and causes construction work failure or building failure to occur, is subject to imprisonment for a maximum of 5 (five) years or a maximum fine of 10%. (ten percent) of the contract value.

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Administration action	Information:	Article 98
	Administrative sanctions are listed in the 1999 Construction Services Law, but do not explicitly state the type of administrative sanctions for building failure.	Service Providers who do not fulfill their obligations to replace or repair Building Failures as referred to in Article 63 are subject to administrative sanctions in the form of:  a. written warning;  b. Administrative fines;  c. Temporary suspension of construction service activities;  d. Blacklisting;  e. License suspension; and/or  f. License revocation.

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Comparison between Act No. 18 of 1999 and Act No. 2 of 2017 concerning Building Construction shows that Act No. 2 of 2017 concerning Building Construction no longer stipulates criminal penalties for perpetrators causing building failure from an existing building construction development .

**b. Legal protection for construction service providers in construction failure disputes caused by third parties in the city of Madiun**

problemlegal protection for construction service providers in construction failure disputes caused by third parties in the City of Madiun, namely:

1. It is necessary to regulate the mechanism for implementing sanctions against the problem of failure to build, where the issue of criminal threats needs to be emphasized that criminal sanctions are not carried out if the construction service provider is willing to make compensation to the service user;
2. There is a need for provisions guaranteeing the protection of construction service providers through an audit mechanism for failure to build whether



caused by the performance of the construction service provider or due to other circumstances, for example due to natural conditions that damage buildings;

It is necessary to regulate the position of the Notary as the party who makes the deed of the contract for the implementation of construction services, and it is also necessary to regulate the position of the Notary as a mediator in cases of construction failures that are oriented towards the problem of failure agreements.

#### **4. Conclusion**

Efforts to resolve the construction failure dispute in Madiun City have not been carried out based on the rule corridor Act No. 2 of 2017 related to Construction Services, the legal vacuum regarding the absence of criminal threats for building construction organizers, has resulted in many cases of failure to build being resolved by criminal reporting that is more oriented towards fraud, even though failure to build is not always due to building service providers, it could have been because nature, and the actions of building service providers can be settled with civil compensation sanctions and can be with the obligation to repair and maintain buildings. Legal protection for construction service providers in construction failure disputes caused by third parties in Madiun City still has various weaknesses, namely the limited protection of the position of construction service providers from criminal threats due to the absence of criminal sanctions, as well as weaknesses in the form of most of the agreements for the use of building construction services that were made were not agreements made by deed before a notary.

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