



Legal Implications Period of Liability for Building Failure in Construction Services: A Case in Indonesia



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Abstract

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In Indonesian Law no. 2 of 2017, concerning Construction Services in Indonesia, liability for building failures has been regulated as stipulated in Article 65 paragraph (1). It is stated that "Service Providers must be responsible for Building Failures within a specified period following the construction age plan". However, this provision has blurred its meaning because the period of responsibility is limited to a maximum of 10 years as stipulated in the following provision, namely in the provisions of Article 65 paragraph (2), which states that "If the planned construction age as referred to in paragraph (1) is more than 10 (ten) years, the Service Provider must be responsible for the Building Failure within a maximum period of 10 (ten) years from the date of the final delivery of the Construction Services. This study aims to analyze the legal implications of limiting the period of liability for building failures of a maximum of 10 (ten) years in Law no. 2 of 2017 concerning Construction Services.

1. Introduction

Funding for the construction of public facilities comes from state finances as outlined in the State Revenue and Expenditure Budget (APBN) or Regional Revenue and Expenditure Budget (APBD). In the provisions of Article 23 paragraph (1) of the 1945 Constitution, it is indicated that "the State Budget must be implemented openly and responsibly for the greatest prosperity of the people". The definition of being implemented openly means that it must fulfil the principle of transparency while being responsible for the greatest prosperity of the people means fulfilling the principle of accountability. This means that the construction of public facilities, as outlined in a construction work

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contract as a contract made by the government, must refer to the principles of transparency and accountability.

If the building is partially or completely damaged and cannot function properly within the span of the construction plan, it is said that a building failure has occurred. The failure of the building certainly has the potential to cause state losses, as well as endanger public safety (Barkan et al., 2015). Potential losses to the state can be eliminated or minimized by giving the construction operator the responsibility to be responsible for the failure of the building until the end of the construction plan life.

Indonesian Law No. 2 of 2017 concerning Construction Services only regulates the period of responsibility for building failures of a maximum of 10 (ten) years with only administrative and civil responsibilities, without criminal charges (Yustiarini et al., 2019). This provision has the potential to cause state losses and threaten public safety.

Transparency is a very important principle in government contracts (Abdunayimova, 2020). The application of this principle is primarily aimed at protecting state finances. The consequence of applying this principle is the need to give the public access to all legal products (public accessibility of legal texts) related to contracts made by the government (Rumiarta & Indradewi, 2020). Transparency is one of the most important principles at United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Good, Construction and Services. Meanwhile, accountability, in this case, is result-oriented. In the context of the procurement of public facilities, the principle of accountability must be directed at protecting public safety. Inspection by the government of the implementation of construction work contracts by construction service providers to determine whether the specification requirements (in the technical specifications) have been complied with is an example of action in order to protect public safety.² This study aims to analyze the legal implications of the limitation of the period of liability for building failures of a maximum of 10 (ten) years in Law no. 2 of 2017 concerning Construction Services. Finally, the research aims at presenting the legal implications as a result of limiting the period of liability for building failure to a maximum of 10 (ten) years in Law no. 2 of 2017 concerning Construction Services.

2. Materials and Methods

The type of this research is normative legal research that was conducted by examining positive norms in the applicable laws and regulations regarding the legal implications resulting from the limitation of the period of liability for building failures in Law no. 2 of 2017 concerning Construction Services.

3. Results and Discussions

That in Law no. 2 of 2017 concerning Construction Services, liability for building failures has been regulated as stipulated in Article 65 paragraph (1), which states that "Service Providers must be responsible for Building Failures within a specified period of time in accordance with the construction age plan". It is just that this provision has blurred its meaning because the term of responsibility is limited to a maximum of 10 years as stipulated in the next provision, namely in the provisions of Article 65 paragraph (2), which states that "In the case of an age plan construction as referred to in paragraph (1) is more than 10 (ten) years, the Service Provider must be responsible for the Building

² Cf. Schwartz & Scott (2003)

Failure within a maximum period of 10 (ten) years from the date of the final delivery of the Construction Services.

Provisions on the limitation of the period of responsibility for building failures as regulated in the provisions of Article 65 paragraph (2) of Law no. 2 of 2017 concerning Construction Services has the potential to cause state financial losses and endanger public safety because (1) the quality of public facilities buildings is not guaranteed for public facilities buildings that are planned to have a construction age plan of more than ten years, which are generally in the form of strategic public facility buildings. Such as bridges, dams, piers, high-rise buildings and (2) the service provider cannot be held responsible after the expiration of the time limit of his responsibility.

Even more ironic, it is not only the potential loss to the state and the insecurity of public safety that will arise as a result of the implementation of the provisions of Article 65 paragraph (2) of Law no. 2 of 2017 concerning Construction Services, even the responsibility for building failure after passing the time limit, the responsibility of the service provider is actually delegated to service users which of course, in this case, is the government, as regulated in the next provision, namely Article 65 paragraph (3) of Law No. . 2 of 2017 concerning Construction Services which states that "Service Users are responsible for Building Failures that occur after a predetermined period of time as referred to in paragraph (1) and paragraph (2)".

The provisions of Article 65 of Law no. 2 of 2017 concerning Construction Services causes inconsistency of norms, the ambiguity of norms (vague of norms) and at the same time, a legal vacuum (reach vacuum) because service users cannot be held responsible after passing the limit of their responsibility period even though the building failure occurs after the limit of the period of responsibility. the answer proved to be due to his fault. In fact, the error is used to state that a person is declared responsible for the detrimental consequences that occur by his wrong actions. Thus, the provisions of Article 65 of the Construction Services Law contradict or are not in line with the legal principle, which states that a person must be responsible for his mistakes.

Indonesian Law No. 2 of 2017 concerning Construction Services only stipulates civil sanctions for building failures in the form of sanctions for replacing or repairing building failures or providing compensation as stipulated in the provisions of articles 63 and 67, and administrative sanctions as stipulated in the provisions of article 98.

Based on the theory of justice formulated by Aristotle³ which states that justice is a political policy in which the rules are the basis of state regulations, and these rules are a measure of what is right, and therefore people must control themselves from pleonexia, which is to gain benefits for the people by seizing what belongs to others, or refusing what should be given to others, then the determination of the limit of the liability period for building failures of a maximum of 10 (ten) years is clearly contrary to or not in line with the theory of justice because it has the potential to provide benefits to the Construction Service Providers themselves, when in fact it is the right of the state or the community to obtain a quality building that is in accordance with the plan and can be utilized for the duration of the construction plan so that the determination of the limit of the period of responsibility for the failure of the building will have legal implications to state financial losses and threaten public safety.

In the theory of responsibility, the responsibility of the construction service provider for the failure of the building should include professional responsibility, contractual responsibility, product liability, main responsibility (strict liability) and responsibility. on fault (fault liability). Product liability actually refers to the responsibility of the construction service provider as the producer of public facility buildings. The responsibility can be contractual (agreement) or based on the Law (the

³ Cf. Wayan (2018)

lawsuit is based on an unlawful act), but in product responsibility, the emphasis is on the latter (tortious liability). Product responsibility⁴ is carried out on the basis of (1) breach of warranty, where the service provider construction does not carry out construction work in accordance with the specified quality; (2) negligence of construction service providers who do not pay attention to the signs of building quality and safety standards; and (3) strict liability, namely that public facility buildings must be able to be used according to their quality and usefulness during the life of the construction plan. Thus, the determination of the time limit for building failure will have legal implications in the form of state losses and threaten public safety because construction service products in the form of public facility buildings cannot be used perfectly.

In the theory of punishment, in a democracy based on Law (Indonesia is a democracy based on Law), sentencing is part of the state's authority.⁵ One of the goals of the crime is to protect the welfare of the community (Singer, 2013). Public facility buildings should have quality in accordance with the quality provisions that have been stipulated in the construction work contract and in the legal provisions governing construction quality standards so that public facilities buildings can be utilized for a minimum of the life of the construction plan. The failure of the building should be suspected to have occurred because of a criminal element in the form of a construction service provider's fault that was not in accordance with construction quality and safety standards, which has the potential to cause state financial losses. Thus, the determination of the time limit for building failure will have legal implications in the form of state losses and threaten public safety, which should be suspected due to the fault of the construction service provider who does not carry out the construction of public facilities buildings that are not in accordance with construction quality and safety standards so that the building does not can be utilized at least during the design life of the construction.

Based on the theory of the function of government, the state is obliged to guarantee the implementation of the Law in achieving the legal objectives, namely legal certainty, justice and expediency. Public facility buildings should be able to be used during the life of the construction plan, therefore in order to ensure the implementation of the Law in achieving the objectives of the construction law, namely legal certainty of responsibility for building failures, justice for building failures and legal benefits in ensuring the implementation of the construction of public facilities buildings on a budget. On-time and with the right quality, then the period of responsibility for building failures should be for the life of the construction plan. Thus, the determination of the time limit for building failure will have legal implications in the form of state losses and threaten public safety because construction service products in the form of public facility buildings cannot provide legal certainty, justice and legal benefits in their use.

The legal implication as a result of the stipulation of the liability period limit for building failures in public facilities buildings is a maximum of 10 (ten) years is the legal implications for state financial losses in the form of potential state financial losses, because public facilities buildings that should be used or utilized optimally in accordance with the plan for the use of the building until the end of the life of the construction plan (fully construction services period) so as to provide benefits and state financial income from economic activities that can be provided by the building, is lost or reduced, even the state loses the value of the investment in the building itself, which in the end the state have to spend again for the construction of these public facilities considering their usefulness, benefits and functions are important for the economy of the community, nation and state; as well as legal implications for public safety in the form of potential threats to public safety in the form of public concern about security, comfort and safety in the use of public facility buildings because public facility

⁴ Cf. Shidarta & Koos (2019)

⁵ Cf. Bibas & Bierschbach (2004)

buildings do not guarantee security and safety and there is no guarantee for the quality of public facilities building products because they are not guaranteed. Its use during the life of the construction plan (fully construction service period).

4. Conclusion

Based on the discussion presented above, it is stated that the Indonesian government should revise Law No. 2 of 2017. It is concerned with Construction Services or the establishment of a particular law for implementing construction services in public facility buildings that must contain a period of responsibility for building failures in public facilities following the age of the construction/building plan (fully construction services period). It must refer to the planning document and must be stated in the construction work contract. At the same time, the forms of responsibility for building failure are administrative sanctions, civil liability and criminal sanctions in imprisonment and fines.

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