September 5th 2017

THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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"Legal Development in Various Countries"

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INFORMATION OF THE CONFERENCE AND CALL PAPER

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"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM** from SebelasMaret University, **Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discus views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,

Dr. AnisMashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THEDEANOF FACULTY OFLAW

As-*salamu'alaikum Wr. Wb.*

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: "**Legal Development in Various Countries**" which is held by Faculty of Law, Sultan AgungIslamic University (UNISSULA) Semarang, on September5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.

Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme " Legal Development in Various Countries" focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Was*salamu'alaikum Wr. Wb.*

Semarang, September5th 2017

Dean,

Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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RECONSTRUCTION OF LEGAL SANCTIONS ON BUILDING FAILURE IN LAW NO.2 YEAR 2017 ON CONSTRUCTION SERVICES BASED ON THE VALUE OF BENEFIT

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ABSTRACT

Building Failure under Law No.2 of 2017 concerning Construction Services is a state of collapse of buildings and/or non-functioning of buildings after the delivery of the final results of construction services work. Based on that statement, it can be concluded that there are 2 (two) aspects in the Building Failure. The first is the Building Destruction, and the second is the non-functioning building after the Final handover. Based on the law relating to the failure of the building there are some important articles related to the form of legal sanctions and obligations of "service provider" or "service user" to make a change or repair the Building Failure that occurred caused by the mistake. And this is one manifestation of the application of the base of legal certainty, legal justice and legal benefit. However, problems arise when the article is correlated to Article 98 in Law no. 2 of 2017 which reads "The Contractor failing to fulfill the obligation to replace or repair the Building Failure as referred to in Article 63 shall be liable to administrative sanctions. Failures Building as referred to in paragraph (1) and paragraph (2) shall be stated in the Construction Contract of Work; Paragraph (5) further provisions on the obligations and responsibilities of the Contractor for Building Failure as referred to in paragraph (1), paragraph (2) and paragraph (3) shall be stipulated in a Government Regulation. So that the existence of "Contradiction" makes service providers can make choices that benefit their party as the party responsible for the failure of the building. The impact with the existence of article 98 is then the community as the object of the user of the building becomes the most disadvantaged because they cannot use or function the building. And the end of the meaning of legal ideals in the form of legal certainty, legal justice and legal benefits become neglected. With this condition, it is necessary to reconstruct Law no. 2 year 2017 especially in the article related to the failure of the building which still not able to provide benefit for the community as the user of the building object.

Keywords: Building Failure, Legal Sanction, Benefit Value

I. INTRODUCTION.

A. Background

The presence of Law No. 2 of 2017 on Construction Services replacing Law No. 18 of 1999 raised a new paradigm for the rule of law related to construction services activities in Indonesia. The special law is certainly expected to provide many benefits for the arrangement of construction services activities in the era of globalization is growing and growing dynamically.

One interesting aspect that also needs to be noticed in the Construction Services Act, either on the old Law or the latest Law No. 2 of 2017 is Building Failure. Building Failure is a condition of building collapse and/or non-functioning of the building since the final handover of the construction work. [1] So, in the case of this Building Failure, we can divide into 2 (two) consequences. First Impact due to Condition of Building Destruction and second because No Functioning of Building since the final handover of result of construction work. [2] The indicator causes the collapse of buildings can be sorted in 4 (four) things, namely:

1. Failure or error in the stages of construction service work.
2. Decline in quality and quantity of resources (materials, workers, equipment, etc.).
3. Operation / utilization of buildings do not fit the function of the plan.
4. Disaster / force majure.

The second result of the Building Failure is in the form of non-functioning of the building since the final handover of the construction work, which can be seen the indicator cause. The basis of the cause indicator is not much different from the indicators on the collapse of buildings, among others:

1. The existence of negligence or errors in the process of construction of construction services.
2. There is a reduction or decrease in the quality and quantity of resources, whether material, labor or equipment, and the like.
3. The existence of operational / utilization of the building does not fit its function.

Many things are quite interesting if the Building Failure is seen from the cause of not functioning of the building. If we look more careful and thorough at the facts on the ground, it will be found so many cases of building failure through terms related to the function of this building. In the case of not functioning the most buildings need attention is when caused by the third indicator that is "operationalization or utilization the building is not like a planned function."

Related Legal sanctions Building failures under Law No. 2 of 2017 concerning Construction Services only focus on sanctions civil and administrative sanctions and do not

[1] Article 1, paragraph 10 of Law Number 2 Year 2017
[2] Seng Hansen, 2015, **Manajemen Kontrak Konstruksi : Pedoman Praktis Dalam Mengelola Proyek Konstruksi,** Gramedia Pustaka Utama, Jakarta, page. 209..

recognize criminal sanctions. Responsibility in case of failure of the building is only 2 (two) parties, the Service Provider and the Service Users. In Act No. 2 of 2017 this seen the treatment of both parties is quite different. When examined chapter by article related to Building Failure, then it is worth questioning the content of aspects of justice, certainty and benefit.

The other side of the division of the Type of Service Business Construction according to Law No. 2 of 2017 is divided into 3 (three) types, namely: group of Construction Consulting Services, group of Service Business Works Construction and group of Integrated Construction Service Business Services[3]. Added 1 (one) new business group through the development of business type in the form of Type of Building Supply Business. [4]

Given this, the problem of responsibilities in terms of building failure is increasingly complex. Understanding of the parties involved in the work of Construction Services such as Service Providers or Service Users need to be further clarified and confirmed. This is so that if there is a failure aspect of the building, it can easily determine the form of accountability and who is responsible, or the sanctions will be easier to determine and apply.

In the Construction Services Act as we go further into the article on the Act is mainly related to the failure of buildings that intersect with the subject of accountability as set out in Article 63, Article 67 paragraph 1 and 2. The contents and meaning of the article is essentially good enough and contains elements of legal certainty, legal justice and legal benefits. The new problem arises when the articles are correlated with Article 98 in Law No. 2 of 2017. As we relate, it turns out that the hope for the emergence of sanctions based on legal certainty, legal justice and legal benefits becomes vanish and raw.

With the existence of contradictory articles, then the aspect of justice and benefit for the society as the main goal of sanction in case of failure of the building become neglected. Because service providers have a choice of forms of sanctions that can be more beneficial to them if they are guilty and asked to replace the failure of the building.

Those service providers may choose to 'take' a step or act of 'not willing' to meet the obligation to replace or repair the failure of the building and only 'choose' subject to

[3]Article 12 of Law Number 02 Year 2017 About Construction Services
[4]Article 36 of Law Number 02 Year 2017 About Construction Services

administrative sanctions. This option is done because based on the cost of replacement or repair is much higher/expensive compared with only getting administrative sanctions.

A good law at least fulfills the very principal point to be achieved, namely the value of benefit. Having seen and examined from the supporting side as the foundation in achieving the expected legal objectives, it is clear that it is very important to make the law both in a narrowly formal sense and in a broad material sense, as a code of conduct in every legal act to give as much as- the number of benefits both by the legal subjects concerned and by the official enforcement officers are given the duty and authority by law to ensure the functioning of the legal norms applicable in the life of society and the state.

For example in the case of a Building Failure , there are many parties who get losses outside of the parties in construction work contracts, such as many people who should enjoy the results of the building but instead cannot enjoy the consequences of building failure. In this case, the community will receive loss where the consequences of building failure can cause minor injuries, severe injuries to the death of a person. Likewise the investors who will get a lot of losses due to failed building failure. This is what makes the basis that the location of the value of expediency in the case of construction does not cause a significant impact on society a lot.

The use of the law also needs to be considered in terms of law enforcement because everyone expects the benefits in the implementation of law enforcement process. Do not let law enforcement actually cause public unrest. Because if we talk about the law, we tend to only look at the laws and regulations, which sometimes the rule is not perfect and not aspirational with the life of the community. In accordance with the above principles, Prof. Satjipto Raharjo stated that: justice is one of the main values, but still beside others, there is no less important that is utility, doelmatigheid. By it is in law enforcement, the comparison between benefit and sacrifice must be proportional.

The legal sanction given by the Construction Services Act is still very weak, and it has not shown legal certainty and is still far from the value of expediency so it needs reconstruction in legal sanction in order to clarify the implementation of sanction given by law, so that in the Law of Services Construction needs to have a refinement of the contradictory article in the Act as well as in the application of sanctions in cumulative both civil and administrative for the function of development is more beneficial to the public

interest and the achievement of harmonization of social life with justice and have legal certainty.

B. Problem Formulation

The formulation of the problem in this paper is how the reconstruction of legal sanctions of building failure in Law No. 2 of 2017 about construction services based on the value of utility.

C. Research Objectives

The purpose of this paper is to find out how the reconstruction of legal sanctions of building failure in Law No. 2 of 2017 about construction services based on value of utility.

D. Method

The method used in this paper was the Book Review, either from books, journals, legislation, or articles and other sources from the internet.

II. LITERATURE REVIEW

A. Understanding of Building Failure.

Building Failure under Law Number 2 Year 2017 is a state of collapse of buildings and/or non-functioning of buildings after the final handover of the results of Construction Services. So it is not included in the collapse of the building before the final handover of the results. Therefore, the final delivery of the result of construction services is a crucial matter which in practice is proved by a written proof as stipulated in the construction work contract.

In the context of building failure, in addition to planning errors, and not being able to bear the burden or damage due to external environmental influences can also be caused due to dishonest project workers or corruption/mark up so as to cause job losses. One of the fundamental changes in the Construction Services Act is sanctions in the event of a building failure. In a construction record in Indonesia, one of the few cases of building failure that received enough attention from the public was the collapse of the Mahakam II bridge in East Kalimantan in November 2011, followed by the imposition of criminal sanctions imposed on technical activity executives, the power of budget users and project managers and the latest case of the collapse of the Bangkit Baru village bridge - Tanifah Village in Mandastana Sub-

district, Barito Kuala District, South Kalimantan in August 2017 followed by investigation by the local police.

The new Construction Services Act does not contain any criminal code, including in the case of building failure, but this law only regulates civil sanctions and administrative sanctions. [5] However, in the case of civil sanctions in Article 60 and Article 63 of the Construction Services Act is easily countered by Article 98 which brings the direction of the policy of legal sanction to the administrative domain and as if eliminating criminal sanctions because there is no strong legal consequences in managing the service user/provider services that do the failure of the building so that there is no legal certainty in the occurrence of building failure.

B. Theory of Justice and Utilization

Theory of Justice

The justice that is expected today is justice between the parties, as Aristotle draft quoted by John Rawls in A Theory of Justice on commutative justice is the determination of rights and obligations in the arrangement of public service arrangements agreed by the parties.

In government, the society is very much based on the right that it receives from the good public service from the clean government. However, in the event of a Building Failure of a projection of public services, then it is very detrimental to the public to get a good service and in terms of loss is the aspect of justice in the community and legal efforts can be done both in criminal and civil law in accordance with the facts visible because of failure of the building.

Justice is one of the most discussed legal goals throughout the course of the history of legal philosophy. The purpose of the law is not just justice, but also legal certainty and legal benefit. Ideally, the law should accommodate all three. The judge's verdict, for example, is as far as possible the resultant of the three. Nevertheless, some argue that, among the three objectives of the law, justice is the most important legal objective, and some even argue that justice is the sole legal objective.

[5]Siti Yuniarti dalam http://business-law.binus.ac.id/2017/03/26/kegagalan-bangunan-tiada-lagi-pidana-bagi-pelaku-jasa-konstruksi/ download on 21 Desember 2017 at 15.00 WIB.

Understanding of justice is a balance between what should be obtained by the parties, either in the form of profit or in the form of loss. In its practical language, justice can be interpreted as giving equal rights to a person's capacity or enforcement to each person proportionally, but it can also mean giving everyone equal to what is his share based on the principle of equilibrium. Law without justice is meaningless.

From the many jurists have argued about what justice really is and from the existing literature can give us an idea of the meaning of justice. Fairness or justice is about human relationships with other human beings concerning rights and duties. That is how the parties are interconnected considering the right which is then faced with its obligations. That is where justice works.

Talking about justice is not as easy as we imagine, because justice can be subjective and can be individualistic, meaning it cannot be equated. Being fair to A is not necessarily fair to B. Therefore, to discuss a more comprehensive formulation of justice, it may be more objective if it is done or assisted with other disciplinary approaches such as philosophy, sociology and others. While the words "sense of justice" refers to the various psychological and sociological considerations that occur to the parties involved, namely the defendant, the victim, and others. It is this sense of justice that entitles "discretion" to law enforcers to decide "somewhat out" of the existing articles of the rule on which the law lies. This is indeed a danger, because this authority can be misused by those who have authority, but on the other hand this authority needs to be given to implement the "sense of justice" before, because the existing legal instruments have not fulfilled the "sense of justice".

The first Muslim philosopher to preach philosophical justice was Al-Kindi. He classified justice into two categories. First, divine justice, that is, justice formulated from reason and revelation; and secondly, natural justice is justice derived from reason alone, which is also termed rational justice.

Utilization

The use of the law should be noted because everyone expects the benefits in the implementation of law enforcement. Do not let law enforcement actually cause public unrest. Because if we talk about the law we tend to only look at the laws and regulations, which sometimes the rule is not perfect and not aspirational with the life of the community.

The utilitarian theory pioneered by the English philosopher Jeremy Bentham (1748-1832) [6], and then Utilitarism was refined and reinforced by the great British philosopher John Stuart Mill (1806-1873), in his Utilitarianism (1864). Bentham's utilitarian principle is: the greatest happiness of the greatest number of people. The principle of utility should be applied quantitatively, because the quality of pleasure is always the same while the quantity aspect can vary. In the view of classical utilitarianism, the principle of utility is the greatest happiness of the greatest number.

Bentham further explained that the principle of utility underlies all activities based on the extent to which the action increases or diminishes happiness; or, in other words, increase or decrease that happiness. More concretely, within the framework of utilitarian ethics can be formulated 3 (three) objective criteria that can be used as an objective basis as well as a norm to assess a policy or action.

The first criterion, the benefit, is that the policy or action brings certain benefits or uses. So, good wisdom or action is a good thing. Conversely, bad wisdom or actions are the ones that cause certain losses.

The second criterion, the greatest benefit, is that the policy or action brings substantial benefits (or in certain larger situations) compared to other alternative wisdom or action. Or if the consideration is a matter of the good and bad consequences of a policy or action, then a policy or action is judged morally good if it brings more benefits than loss. In certain situations, when losses are inevitable, it can be said that good action is the act that causes the least harm (including when compared to the losses incurred by alternative wisdom or action).

The Third criterion concerns the question of the greatest benefit to whom, for me or my group, or also to all others concerned, affected and exposed to the policies or actions I will take? In answering this question, the ethics of utilitarianism then propose the third criterion of the greatest benefit for as many people as possible.

Thus, a wisdom or action is judged morally good if it not only brings the greatest benefit, but if it brings the greatest benefit to as many people as possible. Conversely, if it turns out a policy or action cannot circumvent the loss of the wisdom or action is considered good if it brings the smallest possible loss for the least possible person.

[6]Bentham, J, 1960,**Introduction to the Principles of Morals and Legislation**, Basil Blackwell, Oxford.

C. Procedures for Formulating the Law

The stages of formulating legislation include planning, drafting, discussion, ratification, and enactment.

a. Planning

Planning is an early stage in drafting legislation. In inventoried planning issues are solved along with the background and purpose of drafting legislation. Problems to be solved after thorough review and alignment, set forth in academic texts. Once ready with an academic script, then it is proposed to be incorporated into the rules drafting program. For legislation, the drafting program is called the National Legislation Program (Prolegnas).

b. Arrangement

The preparation of legislation can be interpreted in 2 (two) intentions. First is the preparation in the sense of process, ie the process of delivering the design of the President / Governor / Regent / Mayor or DPR / DPD after going through the planning stage. This drafting process is different for laws, government regulations, and presidential regulations. Second, compilation in the sense of composing techniques, namely knowledge of the procedure of making the title, opening, torso, cover, explanation, and attachment.

c. Discussion

Discussion is the discussing the substance of legislation among the parties concerned. For the regulation, the discussion is done by the House of Representatives with the President or the minister through the levels of talks. For the regulations below, the discussion was conducted by the relevant agencies without the involvement of the DPR.

d. Ratification

For the law, the draft which has been jointly approved by the House and the President is submitted by the House Leadership to the President to be passed into law. For legislation under the law, it is submitted by the Minister of Law and Human Rights to the President through the Ministry of State Secretariat or the Cabinet Secretariat.

e. Enactment

Enactment is the placement of statutory regulations in the State Gazette of the Republic of Indonesia, Supplement to the State Gazette of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to State Gazette of the Republic of Indonesia, Regional Gazette, Supplement to Regional Gazette or Regional News. The purpose of the enactment is for the public to know the contents of the legislation and can be a reference when legislation comes into force and binding.

General things to know in the framework of legislative drafting are academic texts, dissemination, and sources of material and information legislation.

a. Academic Text

Academic text is a text of research result or study of a certain problem that can be scientifically justified about arrangement of the problem in a draft of legislation as solution to society problem and requirement of law. In research and assessment, ROCCIPI (Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology) methods are often used, RIA (Regulatory Impact Assessment), or Cost and Benefit Analysis. Although academic texts are only required for local laws and regulations only, it is good academic texts are also made for the preparation of government regulations, presidential regulations, and other legislation.

b. Dissemination

Dissemination is done by DPR (including DPD) and Government since the preparation of Prolegnas, drafting of laws, discussion of draft laws, to promulgation. Dissemination is done to provide information and / or obtain public input. Once the legislation is enacted, it is usually disseminated either by photocopy of a copy of the relevant legislation of the institution or through the website of relevant agencies to the public. For the laws and regulations, they are signed by the President, disseminated by the State Secretariat and Cabinet Secretariat.

In addition to the dissemination of legislation, the State Secretariat and the Cabinet Secretariat also keep original codes of legislation and authentic copies as archives. While the legislation in the form of the State Gazette and State Gazette are disseminated and archived by the Ministry of Justice and Human Rights.

c. Resources

Sources of information in drafting legislation online/over the internet can be accessed through www.setkab.go.id[7], www.setneg.go.id[8], www.ditjenpp.org[9], and the respective ministry or agency website. In addition, there are also private parties that develop database systems, both online and offline, commercially provided. In addition to online information sources, it is also necessary to use traditional regulatory information sources, such as materials in the library.

d. Language Usage

In drafting legislation, the use of language is very important. If the language used in the legislation can be understood by the community, it can be expected that the legislation will be enforceable. On the contrary, if language is incomprehensible, it will be difficult to expect the objectives of the legislation to be achieved. The language in the legislation should be easily understood by the ordinary person, not only by the author, legal scholar, or legal practitioner. The language of statutory law is basically subject to Indonesian grammar rules, both word formations, sentence composition, writing techniques, and spelling. But the language of legislation has its own style characterized by clarity or clarity of understanding, straightforward, standardization, harmony, and observance of principles in accordance with the needs of the law, both in formulation and the way of writing.

III. DISCUSSION

A. Legal sanctions in terms of Criminal, Civil and Administrative Aspects.

Criminal sanctions

Criminal sanctions are sanctions that are sharper when compared with the imposition of sanctions on civil law as well as in administrative law. The approach that is built is as one of the efforts to prevent and overcome crime through criminal law with violation of sanctions imposed in the form of criminal. According to Roeslan Saleh, as quoted by Samsul Ramli and Fahrurrazi[10], argued that the criminal act is a reaction to the offense and this tangible a deliberately imposed by the state on the offender (acts that may be subject to punishment for

[7]www.setkab.go.id
[8]www.setneg.go.id
[9]www.ditjenpp.org
[10]Samsul Ramli dan Fahrurrazi, 2014, **Bacaan Wajib Swakelola Pengadaan Barang/Jasa**, Visimedia Pustaka, Jakarta, p. 192.

being a violation of the law). Criminal law determines sanctions against violation of prohibition rules. The sanction in principle consists in the deliberate increase of suffering.

The existence or nature of the criminal act is against the law and/or the actions are also harmful to the community, in the sense of contradicting or inhibiting the implementation of the governance of society that is considered good and fair. However, the act of a person is said to be a criminal offense if the act has been contained in the law. In other words, to know the nature of the act is prohibited or not, must be seen from the formulation of the law.

The source of Indonesian criminal law is a code of criminal law (KUHP) as the parent of general rules and other special laws and regulations outside the Criminal Code. As a parent of the general rule, the Criminal Code binds specific legislation outside the Criminal Code. However, in certain matters the specific laws and regulations may be self-regulating or different from the parent general rules, such as Law no. 39 of 2004. Forms of criminal punishment are as follows[11]: set forth in Article 10 of the Criminal Code, namely:

1. Criminal Penalty, which is divided into:

a. Death Penalty;

b. Prison Crime;

c. Criminal Prison

d. Criminal fine;

e. Criminal Cover.

2. Additional Criminal, which is divided into:

a. Revocation of certain rights

b. Deprivation of certain goods

c. Announcement of judge's verdict

[11]The form of criminal punishment is as set forth in Article 10 of the Criminal Code

Civil Sanction.

Civil law regulates the relationship between residents or citizens of the day, such as maturity, marriage, divorce, death, inheritance, property, business activities, and other civil acts. The form of civil law sanction may be an obligation to fulfill the performance (obligation) and or the loss of a legal state, followed by the creation of a new legal state. The form of judgment of judges may be:

1. Constitutive verdict, a decision which removes a state of law and creates a new law, for example is the divorce decision of a marriage bond;
2. Condemnatoir's verdict is a punishment that punishes the defeated party to fulfill its obligations, for example is a legal decision to be obliged to pay the losses of certain parties;
3. Declaratoir Decision, namely the decision which creates a lawful condition, explains and affirms a legal circumstance solely, for example is a land dispute over the plaintiff over legal ownership.

Administrative Sanctions

In essence, the law of state administration allows state administrators to perform their functions and protect citizens against the administration of the state, and protect the administration of the state itself. The government's roles by state equipment or the administration of the country must be based on the laws governing and underlying the state administration in carrying out its functions. The law that provides such a foundation is called the law of state administration.

The sanction in Administrative Law is "a tool of public legal power that can be used by the government in response to non-compliance with the obligations contained in the norms of the State Administration Law." Based on this definition there appear to be four elements of sanction in the law of state administration, namely the power tool (machtmiddelen), public legal (publiekrechtlijke), used by the government (overheid), in reaction to non-compliance (reactive op niet-naleving).

Types of Administrative Sanctions can be seen from the aspect of the target are:

a. Reparatoir sanctions, meaning sanctions imposed in reaction to violations of norms, aimed at returning to the original state prior to the offense, eg bestuursdwang, dwangsom;
b. Sanctions punitive, meaning sanctions intended to impose penalties on a person, for example is in the form of administrative fines;
c. Regressive sanctions are sanctions imposed in response to non-compliance with the provisions contained in the published provisions.

B. Legal Sanctions on Utilization Principles

Law is a number of knowledge formulations that are set to manage the traffic of human behavior can run smoothly, not an overlapping and fair. As is common knowledge, the law is not born in a vacuum. He was born based on the flow of human communication to anticipate or be a solution to the occurrence of a congestion caused by the negative potentials that exist in humans. Actually the law is to be obeyed. After all, the goal of law-making is to create justice.

Therefore, the law must be obeyed even if it is bad and unfair. The law may be wrong, but as long as it applies, the law should be observed and obeyed. We cannot make laws 'that are considered unfair'. It gets better by breaking the law. All violations of the law impose respect for the law and the rules themselves.

The use of the law also needs to be considered in terms of law enforcement because everyone expects the benefits in the implementation of law enforcement process. Do not let law enforcement actually cause public unrest. Because if we talk about the law we tend to only look at the laws and regulations, which sometimes the rule is not perfect and not aspirational with the life of the community.

In accordance with the above principles, Prof. Satjipto Raharjo stated that: justice is one of the main values, but still beside others, there is no less important that is utility, doelmatigheid. By it is in law enforcement, the comparison between benefit and sacrifice must be proportional.

The new Construction Services Act does not contain any criminal code including in the case of building failure but this law only regulates civil sanctions and administrative sanctions. The Construction Services Act in Article 60 paragraph 1 state "In the event that the

implementation of Construction Services does not meet the Security, Safety, Health and Sustainability Standards as referred to in Article 59, Service User and / or Service Provider may be the party responsible for Building Failure". And continued in Article 63 states "The Contractor shall replace or repair the Building Failure as referred to in Article 60 paragraph (1) caused by the Service Provider's error". So the settlement of legal sanctions in the failure of buildings here tends to be liability for compensation or repair buildings in the scope civil law.

In addition, in the same law, Article 98 states that "Providers who do not comply with the obligation to replace or improve the Building Failure as referred to in Article 63 shall be liable to administrative sanctions in the form of:

a) written warning;
b) administrative fines;
c) temporary suspension of construction service activities;
d) blacklisting;
e) permit freezing; and / or
f) revocation of permits. "

So that civil sanction in article 60 and article 63 is countered by article 98 which brings the direction of policy of legal sanction to the administrative aspect and as if eliminating criminal sanction, because there is no strong legal consequences in managing the service user / service provider who failed building. In other cases that may occur if the non-fulfillment of a job in accordance with the contents of the contract that caused the failure of the building, especially change the volume and material that cause losses on the cost and loss of life and proved the existence of gratuities, bribery and Operation Capture Hand done by Law Enforcement Officials it will allows the occurrence of elements of Fraud and Embezzlement, Corruption, etc.

The Importance of Legal Aspects in Building Failure

Building Failure can be caused by 2 things: Technical Fault/Negligence and consequence of "Engineering" and or "mark-up" quality and quantity which in this case can be in condition from the beginning. In the laws and regulations relating to Construction Services does not describe how the consequences of criminal law in case of building failure,

only regulate what caused the failure of the building and accountability in civil and administrative.

In the case of legal consequences, it should be reflected on what things can be done legal efforts for the community/environment that suffered losses due to the failure of the building either criminal or civil. Civil administer related errors / omissions technically and criminally regulate legal acts "Engineering "And/or" mark-up "the quality and quantity of development planning implemented by the service provider and the service provider.

But then as soon as we go further into the article on the Act, especially to matters related to the failure of buildings that intersect with accountability issues as mentioned in article 63, article 67 paragraph 1 and 2. The contents and meaning of the article is essentially quite good and contains elements of legal certainty, legal justice and the benefit of the law. The new problem arises when the article of article is correlated with article 98 of the Act No.2 year 2017.

Once we associate it, it turns out the hope for the emergence of sanctions on the basis of legal certainty, legal justice and legal benefits become vanish and raw. With the provision of articles that vanquish each other is the aspect of justice and benefit for the society as the main goal of sanctions in case of failure of the building becomes neglected. Because service providers have a choice of forms of sanctions that can be more beneficial to them if they are guilty and asked to replace the failure of the building.

IV. CONCLUSION

A. Summary

1. Building Failure may be interpreted as a State of Building Ruins an /or non-functioning of the Building after the final delivery of construction services work. From this understanding there are 2 (two) important aspects in the failure of the building. First aspect of Building Destruction, and second aspect, No Functioning of Building after Submission of Construction Services Work.
2. In the application of legal sanctions related to the Building Failure , the Law on Construction Services still has not demonstrated legal certainty and it is still far from the value of benefit for the public interest in social life with justice and have legal certainty

3. Illustrations of legal sanctions should be more appropriate in case of building failure so that legal interpretation is not ambiguous and there is no legal contradiction in the application of legal sanctions

B. Suggestions

Based on the above matters, the suggestions are:

1. Construction Services Law should further reinforce the rule of law, civil and administrative sanctions that should be cumulative, not an alternative choice so there is firmness in the application of sanctions and no rebuttal related articles that regulate legal sanctions for Building Failure.
2. There needs to be a review / reconstruction of the articles deemed problematic in relation to legal sanctions in the Constructive Services Act and placing the principle of benefit as a priority aspect considering that construction services are closely related to the public interest.

REFERENCES

Books

Bentham, J, 1960, **Introduction to the Principles of Morals and Legislation**, Basil Blackwell, Oxford

Rahardjo, Satjipto, 2009, Hukum Progresif : Sebuah Sintesa Hukum Indonesia, Yogjakarta: Genta Publishing.

Ramli, Samsul dan Fahrurrazi, 2014, Bacaan Wajib Swakelola PengadaanBarang/Jasa, Jakarta: Visimedia Pustaka

Sucipto, 2013, **Tanggung Jawab Pidana Dalam Kegagalan Konstruksi Dan Kegagalan Bangunan Yang Berimplikasi Pada Tindak Pidana Korupsi**, Tesispada Magister Hukum UniversitasAirlangga, Surabaya.

Samsul Ramli dan Fahrurrazi, 2014, **Bacaan Wajib Swakelola Pengadaan Barang/Jasa**, Visimedia Pustaka, Jakarta.

Seng Hansen, 2015, **Manajemen Kontrak Konstruksi : Pedoman Praktis Dalam Mengelola Proyek Konstruksi,** Gramedia Pustaka Utama, Jakarta

Regulation

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Kitab Undang-Undang Hukum Perdata

Kitab Undang-Undang Hukum Acara Perdata

Kitab Undang-Undang Hukum Pidana

Kitab Undang-Undang Hukum Acara Pidana

Undang-Undang Nomor 18 Tahun 1999 Tentang Jasa Konstruksi

Undang-Undang Nomor 02 Tahun 2017 Tentang Jasa Konstruksi

Peraturan Pemerintah Nomor 28 Tahun 2000 Tentang Usaha dan Peran Masyarakat Jasa Konstruksi

Peraturan Pemerintah Nomor 29 Tahun 2000 Tentang Penyelenggaraan Jasa Konstruksi

Peraturan Pemerintah Nomor 30 Tahun 2000 Tentang Penyelenggaraan Pembinaan Jasa Konstruksi

Peraturan Pemerintah Nomor 04 Tahun 2010 Tentang Perubahan atas PP No. 28 Tahun 2000

Peraturan Pemerintah Nomor 40 Tahun 2009 Tentang Perubahan atas PP No. 51 Tahun 2008.

Internet:

www.setkab.go.id

www.setneg.go.id

www.ditjenpp.org

http://business-law.binus.ac.id/2017/03/26/kegagalan-bangunan-tiada-lagi-pidana-bagi-pelaku-jasa-konstruksi

Siti Yuniarti dalam http://business-law.binus.ac.id/2017/03/26/kegagalan-bangunan-tiada-lagi-pidana-bagi-pelaku-jasa-konstruksi/ diunduh pada tanggal 21 Desember 2017 jam 15.00 WIB.