



The Study of Legal Aspects of Construction In Civil Building

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Abstract: Development is very beneficial for human life, but it does not escape losses both material losses and casualties if it is not built properly. One of them is the collapse of the Kutai Kartanegara Bridge which caused people to die and be injured. Building failure is one of the consequences that can endanger public safety and state losses. The failure of this building is explicitly regulated in Law Number 2 of 2017 concerning Construction Services starting from Article 60 to Article 67. In addition, building failure is regulated in Government Regulation Number 29 of 2000 concerning the Implementation of Construction Services, namely in Chapter V Articles 34 to Article 48. Criminal liability under the Construction Services Law can only be imposed on individuals who directly carry out construction work and not on construction service providers in the form of corporations because to fund the corporation requires clarity to whom sanctions will be imposed. Based on the results of the analysis that based on the theory of criminal liability, with the shift of legal subjects from *fysieke dader* to *functionale dader*, corporations can be held accountable. This is also supported by theories and doctrines about corporate responsibility. With the birth of Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, where this is intended as an effort to provide legal certainty and encourage the effectiveness and optimization of procedural law in handling criminal cases with corporate actors and / or corporate administrators.

Keywords: Criminal Liability, Building Failure, *Fysieke Dader* ke *Functionale Dader*.

INTRODUCTION

Indonesia is a developing country where in developing countries infrastructure development is an activity that is intensively carried out. In the current government, infrastructure development is underway and the development is spread all over the country. The purpose of infrastructure development intensified by the government is equity in all regions in Indonesia, so that welfare inequality between regions in Indonesia can be reduced. In addition to the high government initiative in carrying out development, the private sector does not stand still to carry out infrastructure development in various regions to support business which is pursued so that the flow of business will be better. This is supported by

infrastructure development intensified by the government. Full support is carried out by the government by issuing regulations, namely Law Number 2 of 2017 concerning Construction Services (hereinafter referred to as the Construction Services Law). Building failure is the biggest risk in infrastructure development. Meanwhile, building failure is a condition where the building is not operational properly and cannot be used. In consideration of letter a of Supreme Court Regulation Number 13 of 2016 concerning procedures for handling criminal cases by corporations said, that the corporation as an entity or subject

In consideration of letter a of Supreme Court Regulation Number 13 of 2016 concerning procedures for handling criminal cases by corporations says, that the corporation as an entity or legal subject whose existence contributes greatly to increasing economic growth and national development, but in reality corporations sometimes also commit various criminal acts (corporate crime) that have an impact on the state and society. Within the corporate criminal liability system, there are still many formulation flaws. As a result of this weakness, it has the impact that corporations as subjects of criminal acts are rarely criminally prosecuted. Therefore, jurisprudence governing corporate matters as a criminal offence is very difficult to find. Even though the law has dimensions to support the national development of a nation, through legislation specifically designed to drive development by mobilizing and motivating the community as development actors, including related government apparatuses. According to the vicarious liability teaching, it is possible for a person to take responsibility for the actions of others. If this teaching is applied to corporations, corporations may be held accountable for acts committed by their employees, proxies or managers or anyone else responsible to the corporation. This doctrine is known as vicarious liability, the legal liability by which a person commits wrongdoing by another person. Law enforcement and justice is a series of processes that are quite long and can involve various agencies or state officials. Legislation and law enforcement should aim to change the mindset of every law enforcer and society to anticipate and overcome increasingly complex crime patterns.

LITERATURE REVIEW

The ongoing development in Indonesia is rapidly making construction development increase. Construction provided by services has a very important and strategic role. This is necessary in achieving various targets used in supporting the realization of national development goals. Development in Indonesia is a national development aimed at realizing a just and prosperous society that is equitable materially and spiritually based on Pancasila and the 1945 Constitution. For this reason, it is felt that detailed and clear arrangements are needed regarding construction services. This law is contained in Law Number 2 of 2017 concerning Construction Services which repeals the previous law. The previous law was Law Number 18 of 1999 concerning Construction Services. With the new law, it is expected to meet the demands of good governance needs and the dynamics of the development of construction services previously outlined in Law Number 18 of 1999 concerning Construction Services (Construction Services Law).

Construction services are a collection of consulting services in the field of construction work planning, construction work implementation services, and construction work supervision consulting services. In construction services there are parties involved in construction work, which includes service users and service providers. Service users and service providers in practice can be individuals / individuals or business entities both in the form of legal entities and those not in the form of legal entities. Construction service providers who are individuals have characteristics by carrying out construction work that is small risk, with simple technology, and at a small cost. Meanwhile, construction work that is high risk and/or high-tech and/or has a large cost can only be carried out by business entities in the form of limited liability companies or similar foreign business entities.

Construction service providers in the form of business entities must meet the following:

1. terms / conditions of business licensing in the field of construction services and
2. Have certificates, classifications, and qualifications of construction service companies.

Classification standards and qualifications of work skills are recognition of the level of work expertise of every business entity, both national and foreign, working in the construction services business. Such recognition is obtained through examinations conducted by the body/institution in charge of carrying out these tasks. The process to obtain such recognition is carried out through registration activities, which include classification, qualification, and certification. Thus, only business entities that have such certificates are allowed to work in the construction services business.

With regard to construction service business licenses, it has been further regulated in Article 14 of Government Regulation Number 28 of 2000 concerning the Business and Role of the Construction Services Community (PP 28/2000) jo. Government Regulation Number 4 of 2010 concerning Amendments to PP 28/2000 (PP 4/2010) and Decree of the **Minister of Settlement and Regional Infrastructure Number 369/KPTS/M/2001 concerning Guidelines for Granting National Construction Services Business Licenses.**

METHOD

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RESULT AND DISCUSSION

Contractor's criminal liability for the Kutai Kartanegara bridge collapse incident resulting in death and injury based on the corporate criminal liability system In this consideration, it can be seen that the panel of judges is of the opinion that whoever is a person as a supporter of rights and obligations. Where, in the case referred to in decision number 103 / PID. B/2012/PN.Tgr is Muhammad Syahriar Fakhurrozi, ST bin Noor Hadi as Project Manager, decision number 104/PID. B/2012/PN.Tgr is defendant H. Setiono, ST bin H. Ponidi as PPTK (technical activity implementation officer), decision number 105/PID. B/2012/PN.Tgr is the defendant H. Yoyo Suryana, ST.MT bin Sali Afandi as the power of attorney for the anggrana user (KPA) as well as the commitment making official (PPK) whose identity is the same as the identity in the case file. Regarding the subject of criminal law, Teguh Prasetyo said that the formulation of criminal acts in the second and third books of the Criminal Code usually begins with the word whom, this means that those who can commit criminal acts or the subject of criminal law in general are humans. Judging from the criminal threats imposed in accordance with Article 10 of the Criminal Code, such as the death penalty,

imprisonment, imprisonment, fines and additional penalties regarding disenfranchisement, and so on, it shows that those who can be sanctioned are generally humans or persons. In the legal association in the midst of society, it turns out that humans are not the only legal subjects (supporters of rights and obligations), but there are still other legal subjects who are often called legal entities (rechtspersoon). Corporation is a terminology commonly used in criminal law to refer to legal entities (rechtspersoon or legal entities) that have been institutionalized in the field of civil law.

According to Moeljatno, criminal responsibility is not enough with the commission of criminal acts alone, but besides that there must be mistakes or mental attitudes that can be reproached, in the legal principle it is stated that it is not punishable if there is no mistake. (geen straf zonder schuld, onhe schuld keine strafe). In the doctrine of criminal liability is the necessity of guilt, however, the general requirement of the existence of error in the doctrine adopted in some countries is exempt for certain criminal acts, namely what is known as strict liability and vicarious liability.

Application of the doctrine of error in Decision No. 103/PID. B/2012/PN.Tgr, stated that: "The defendant Muhammad Syahriar Fakhurrozi is not careful or vigilant where the defendant can imagine the consequences that will occur and take precautions, as the Project Manager of Kutai Kartanegara bridge maintenance, the defendant has the responsibility of ensuring project activities run according to the contract, appointing and coordinating personnel according to the scope of work in the project, responsible for personnel work according to technical, financial and customer satisfaction plans.

It is known that in the process of maintaining the bridge there has been no permit or approval to close the road but the defendant has directed the work only by telephone without directly controlling the work site. The defendant ordered his personnel to jack the bridge floor chamber from the bridge span point by jacking it up per 2 cm tolerance of 1 cm so that it was a maximum of 3 cm. The accused also allowed the work to be carried out without taking into account the safety and security factors of road users. The defendant knew that technically the permit to open and close the bridge had not been issued by the Regent and stopped the work but ignored it, thus, the element of wrongdoing had been fulfilled".

In law, that in order for an act to be considered negligence, it must meet the following main elements:

1. There is a conversation or neglect of something that should be done.
2. The existence of a duty of care
3. Not carrying out the duty of prudence.
4. There is a loss to others.
5. There is a causal relationship between the act or not doing the act and the losses incurred.

Considering, that in addition, to a series of roles that the defendant has performed together with Sdr. H. Setiono, ST and sdr. Muhammad Syahriar Fakhurrozi, ST., was carried out on the basis of an agreement, where the defendant as KPA had appointed/chosen H. Setiono, ST., to be PPTK in the implementation, then with the role of each party, be it sdr. H. Setiono, ST as PPTK (technical implementation officer of activities) and sdr. Muhammad Shahriar Fakhurrozi, ST. as the executing contractor of PT. Bukaka Main Techniques.

Everything that works together is starting from the planning process. Where the defendant as KPA and PPK project asked H. Setiono, ST as PPTK (technical activity implementation officer) to carry out the making / planning process. That is by making or determining the type of work and compiling HPS (self-estimated price), both in terms of techniques, bridge maintenance methods, and methods regarding safety / security of

work. Furthermore, the project auction process was prepared by H. Setiono, ST., with the approval of the defendant until the winner of the auction was formed, namely PT. Bukaka Teknik Utama, then a construction work agreement (contract) number: 2285/630/DPU/X/2011, dated October 11, 2011, was then signed by the defendants as KPA/PPK and SDRI. Sofiah Balfas (Director of PT. Bukaka Teknik Utama), and a work start order (SPMK) ordering the work to start on October 12, 2011 until December 12, 2011, accompanied by a field handover letter dated October 12, 2011 from the power of attorney for budget users / PPK (defendant) to PT. Bukaka Teknik Utama received by Ir. Sofiah Balfas (Director of PT. Bukaka Teknik Utama), until finally appointed sdr. Muhammad Shahriar Fakhurrozi, ST. as the project manager of Kutai Kartanegara bridge maintenance activities, who clearly and in detail has duties and responsibilities (number: 2285/630/DPU/X/2011, dated October 11, 2011, namely carrying out work including ensuring project activities run in accordance with the provisions stipulated in the contract appointing and coordinating personnel in accordance with the scope of work in the project, ensuring personnel work in accordance with the plan both in terms of Technical, financial and customer satisfaction.

Then with that authority, then sdr. Muhammad Syahriar Fakhurrozi, ST did a series of jobs. Work starts from mobilizing tools or workers to the work site by ordering or through the coordination of sdr. Makmur Azis appointed by sdr. Muhammad Syahriar Fakhurrozi, ST and known by H. Setiono, ST as PPTK, as well as making an organizational structure or list of personnel for the Kutai Kartanegara bridge maintenance project (including appointing sdr. Makmur Azis) as well as inspection manual guidelines along with a letter requesting the closure of bridge access and the opening of PLN electrical power outlets coordinated / approved by the defendant and sdr. H. Setiono, ST arrived in the implementation of work in the form of installing jack mounts in the middle position of the Kutai Kartanegara bridge, the work has been reported / approved by sdr. Setiono, ST as PPTK and sdr. Muhammad Syahriar Fakhurrozi, ST as Project Manager, where the reporting / inspection of the working method of implementing Kutai Kartanegara bridge maintenance delivered by sdr. Makmur Azis to Muhammad Syahriar Fakhurrozi, ST via email or telephone, to H. Setiono, ST as PPTK immediately came and saw for himself the work at the work site, but waived the provisions as stipulated in the contract and applicable regulations, for example handing over the supervisory function to other people sdr. Sugyana who is not a supervisor.

Based on the chronology of the roles of each perpetrator, it can be seen that the actions committed by one perpetrator contribute to the occurrence of a criminal act that gives rise to responsibility for the other perpetrators. This can be seen in the indictment made by the Public Prosecutor, namely decision number 103/PID. B/2012/PN.Tgr is Muhammad Syahriar Fakhurrozi, ST bin Noor Hadi as Project Manager, decision number 104/PID. B/2012/PN.Tgr is defendant H. Setiono, ST bin H. Ponidi as PPTK (technical activity implementation officer), decision number 105/PID. B/2012/PN.Tgr are defendants H. Yoyo Suryana, ST.MT bin Sali Afandi as the power of attorney for anggrana users (KPA) as well as commitment making officials (PPK) (each prosecution separately). According to Chairul Huda, there are two things that allow corporations as perpetrators of criminal acts (pleger), namely: 1. In a general participation relationship (nonvicarious liability crime) In this relationship, the material actors are the leaders of the corporation, namely those who have the position to determine policies in the corporation. Judging from the general participation relationship as referred to in Article 55 of the Criminal Code, the corporation as a criminal offender. 2. In the case of vicarious liability crime In this relationship, the material perpetrators are subordinates or executors or employees who act within the framework of their authority and over

CONCLUSION

Based on the theory of criminal liability, with the shift of legal subjects from *fysieke dader* to *functionale dader*, corporations can be held accountable. This is also supported by theories and doctrines about corporate responsibility. However, in its implementation, the handling of criminal cases by corporations is still very minimal in practice.

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