

The Determination of the Time Period and the Burden of Responsibility of Construction Services Organizer upon the Building Failure on the Public Facilities Building

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Abstract

Public facility building is a part of national development program with the financing of state finance should be enjoyed until the end of age of construction plan. To eliminate the potential of state loss and guarantee public safety on building failure, so time period of responsibility on building failure of public facility building should be until the end of age of construction plan, with responsibility burden both administration and civil and also criminal laws. Constitution number 2 of the year 2017 about Construction Service only regulates the time of responsibility upon building failure at most 10 years with responsibility burden only on administration and civil, without criminal. This determination could potentially causes a state loss and threatening public safety. This determination has the potential to cause norm conflict, legal uncertainty and legal vacuum in legal arrangement of time period and responsibility burden on building failure in order to ensure the realization of the right to public facilities building budget, appropriate quality, timely and proper utilization for the national development of Indonesia.

Keywords: Public Facility Building, Building Failure, State Loss, Public Safety

a. Introduction

Public facility building is the result of national development implementation done by government as the effort of government or state to fulfill responsibility in serving needs of people, nation and state, in order to achieve the state's goal as mandated in the Opening of the 1945 Constitution. The Opening of the 1945 Constitution is the statement of politics of law from proclamation of Indonesian Independence and it is formed the government of Indonesia¹.

In the consideration weighs the letter of a Constitution number 2 2017 about construction service (Construction Service Constitution) is mentioned that the national development aims to realize a just and prosperous society based on "Pancasila" (Five Principles) and 1945 Constitution. It has the meaning that "Pancasila" contained in the fourth paragraph of the Opening 1945 Constitution is the ideals of law (*rechtideea*) and 1945 Constitution as source of national law, mandating to the government or state organizer to give guarantee to Indonesia citizen so that they can live prosperously in inner birth. The mandate is poured in the fifth precept of "Pancasila", "Social Justice for All the People of Indonesia" and in the article of 28 H paragraph (1) 1945 Constitution the fourth amendment which mentions that everybody deserves live prosperously in inner birth, having residence, and they deserve get well and healthy environment and they deserve get health service². The condition then confirms in article 34, among them in paragraph 3 which obliges to the country to be responsible in the providing well health service and public service facilities.

Next, in the consideration weighs the letter of b about construction service is stated that the construction service sector is the community activity realizing the building which functions as the supporting or the infrastructure of community social economy activity to support the realization of national development goal, construction service is one of the businesses in field of service based on the expertise in field of construction. Generally, construction service business is given the limit as one of the businesses in economy services

¹ Hirsch Ballin said that the state's existence is for the law so that the state is obliged to empower the law. While according to U.S.S. Tambunan, which is meant by Hirsch Ballin with the aim of it is the goal or target near it, because the state is not just for the sake of law only. A nation or a people of a nation does not establish its own country only for the sake of law only. The State is for the benefit of its people or its people and the law is one of the most important means to be able to make it happen. Thus it is necessary to know what the purpose of a nation to establish a state. By itself will be known what is the purpose of political politics and what issues are contained therein. (Tambunan, A.S.S., Political Law Based on the 1945 Constitution, (Jakarta: Fuporis, 2002), p.15)

² Rachmad Safa'at, Political Reconstruction of Food Law From Food Security to Food Sovereignty, (Malang: Universitas Brawijaya Press (UB Press), 2013), p. 23.

transforming various sources to become the building¹.

Furthermore, in the consideration weighs the letter of c about construction service is stated that the organization of construction service should ensure order and legal certainty. Construction service business can be spelled out in detail as a business in the field of service relating with planning, building and building maintaining which in the implementation, utilization or using concerns with interest and the safety of building user society, orderly development and environmental sustainability². Construction service is the construction consulting service or construction work (Article 1 number 1 Construction Service Constitution). Construction consultation is the whole service or in part activity covering assessment, planning, designing, monitoring, and managing the organization of building construction (Article 1 number 2 Construction Service Constitution), while construction work is the whole or in part activity covering development, operation, maintenance, demolition, and rebuilding the building (Article 1 number 3 Construction Service Constitution).

The stage of public facility development is begun with the planning done by construction planner service which produces planning document containing about technical specification, engineering drawing, cost budget estimation and age of the construction plan (the serve age of building), then it becomes implementation guidance document of public facility development by construction service as a part of construction work contract. The implementation of the development of public facility building is supervised by construction supervisory service. The development financing of public facility building since planning, implementation, and monitoring as stated on construction work contract, all of it are financed by state finance poured in state budget or regional income and expenditure budget.

On the condition of article 23 paragraph (1) 1945 Constitution is required that state finance should be held openly and responsibly for as big as the prosperity of the people. It means that the procurement of goods and services by the government, including the procurement of public facility building which is poured in the construction work contract made by government, it should refer to the principle of openness (transparency) and responsibility (accountability). Transparency is the most important principle in the contract made by the government. The implementation of the principle is addressed to protect the state finance. The consequence of the implementation of this principle is the necessity to be given the access to the public of all legal products (public accessibility of legal texts) which is related with the contract made by the government. Transparency is one of the most important principles in United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Good, Construction and Services. Meanwhile, accountability in this case is oriented to the result. In the context of procurement by the government, such as in the construction work contract, accountability principle should also be addressed to the protection of public safety. The inspection by the government on the contract implementation by the contractor to determine the specification requirement has been obeyed. It is the example of an action in order to protect public safety³.

Construction work contract is made between the provider of construction service with the government as the construction service user. The contract made basically is the commercial contract although inside of it contains element of public law. In one side the law relation is made because of the contract, but in other side it is loaded with the regulations for provider of goods and services. In the countries with law system of common law this contract is called prevalently as government contract, while in France, it is called administrative contracts. Government contract is also meant as the procurement of goods and services (government procurement)⁴. In the construction work contract, the government is represented by the authorized officials of the utilization of goods and services of state property or belong to the region in each Ministry/Institution/ Regional Work Unit/other institutions, (K/L/D/I), that is the agency/institution using State budget and Regional Income and Expenditure Budgets which in the implementation is represented by the project leader or committed officer.⁵

After the public facility building has been finished by the contractor and it is submitted to the construction service user (final handover of construction work), then the public facility building will be used by community, government or country. Based on development cost budget and the age of construction plan which has been planned to the public facility building, public facility building must be used until the end of age of the construction plan. When the public facility building can not be used because it does not function well partly or wholly or it has collapse before the end of age of the construction plan, so it is said that it has happened failure of

¹ Project for Upgrading of Labor Technology Construction Bureau of Corporate Facility Secretariat General Ministry of Public Works, Implementation Management of Construction Works, Series of General Knowledge, Book A, Prints IV, (Jakarta: Ministry of Public Works, 1997), p.1

² Ibid

³ Yohanes Sogar Simamora, Law of Contracts, Principles of Contracts for Procurement of Goods and Services by the Government, (Yogyakarta: LaksBang PRESSindo, 2009), p. 16-17

⁴ Ibid, p. 2 – 3.

⁵ In accordance with the provisions stipulated in Presidential Regulation No. 54/2010 concerning Procurement of Government Goods / Services as amended by Presidential Regulation No. 35 of 2011 on Amendment to Presidential Regulation No. 54/2010 on Procurement of Government Goods / Services and Presidential Regulation No. 70/2012 Concerning the Second Amendment to the Presidential Regulation Number 54 of 2010 on the Procurement of Goods / Services

the building. The failure of the building is the collapse condition of the building and the building does not function after submitting the final result of construction service (Article 1 number 10 Construction Service Constitution).

The failure of the building on public facility building certainly has a big potency to make loss of state finance and it also endangers the public safety. If the failure of the building is not caused by circumstances force (overmacht or force majeure), then it is allegedly that there is a failure of the building on public facility building happens because there is an element of error from one, some, or whole construction service organizers. The extent of error covers intention, it is the action known and desired, and negligence that is it does not know but only knows the existence the possibility that the result will happen. This intention in constitution usually called as “arglist”¹. The error used to state that somebody is stated to be responsible to the result bringing loss happened by the error action.

On Construction Service Constitution has been arranged the accountability to the failure of the building as determined in Article 65 paragraph (1) stating that “Service provider is obligatory to be responsible on building failure within the specified timeframe in accordance with plan of construction age”. But, this condition becomes blurred in meaning because duration of responsibility is restricted maximum for 10 years as arranged in the next condition, namely on the condition Article 65 paragraph (2) stating that “In term of plan of construction age as mentioned on Article (1) more than 10 (ten) years, service provider must be responsible to the failure of the building in time period maximum for 10 years starting from the date of final submission of construction service”.

The limit condition of time period on the failure of the building above has the potency to cause loss of state finance and it endangers public safety, because (1) it does not guarantee the quality of public facility building which can not be used according to age of the construction plan, and (2) the service provider can not be asked the responsibility after time limit of responsibility has passed. Even, the responsibility after time limit of responsibility of service provider is delegated to the service user, namely the government. This matter is shown in the next condition, namely Article 65 paragraph (3) Construction Service Constitution stating that “Service user is responsible on the failure of the building happened after the specified time period as mentioned on article (1) paragraph (2)”.

The limit condition of the time period and the arrangement of responsibility on the failure of the building as arranged on the condition of article 65 paragraph (1), paragraph (2) and paragraph (3) Construction Service Constitution causes the norm inconsistency, vague of norm and legal vacuum at once (rechtvacuum) because the service user can not be asked the responsibility after the limit of time period of responsibility although the failure of the building happened after the limit of the time period of the responsibility is proved happened because his/her error, even the responsibility switches to the service user that is nothing else is the government, in term of development to public facility building.

Construction service constitution only regulates civil sanction to the occurrence of the failure of the building in the form of replacing sanction or repairing the building failure or giving compensation as arranged on the condition of article 63 and article 67, and giving administration sanction as arranged on the condition of article 98, as follows:

Article 63

Service provider is obligatory to replace or repair the failure of the building as mentioned on Article 60 paragraph (1) caused by error of the service provider.

Article 67

- (1) Service provider and/or service user is obligatory to give compensation in term of the occurrence of failure of the building as mentioned on article 65 paragraph (1), paragraph (2), and paragraph (3).
- (2) The next condition about giving compensation as mentioned on paragraph (1) arranged in government regulation.

Article 98

Service provider that does not fulfill the obligation to replace or repair the failure of the building as mentioned on Article 63 subject to administrative sanction in form :

- a. Written warning;
- b. Administrative fine;
- c. Temporary suspension of construction service activity;
- d. Blacklisting;
- e. Freezing permit; and/or
- f. Revocation of permit.

The condition about form of responsibility on the failure of the building on construction service only arranges form of responsibility in the form of civil liability and administration causes the occurrence legal vacuum (rechtvacuum) and causes the occurrence of legal uncertainty, because it can not charge criminal

¹ Purwahid Patrik, Legal Foundation of Alliance, (Bandung: CV Mandar Maju, 1994), p. 10

responsibility though it has been proved legally and convincingly that service user and/or service provider because of his/her error has caused the occurrence of the failure of the building at public facility building enters in the formulation of criminal offense.

Based on problem background mentioned above, then there are 3 (three) problems discussed in the research, namely: (1) What becomes the legal foundation of construction service constitution to determine the limit of time period of responsibility to the failure of the building maximum for 10 (ten) years; (2) What is the legal implication as a result of the condition of the limit of the time period of the responsibility to the failure of the building maximum for 10 (ten) years on construction service constitution at public facility building; and (3) How should the setting of time period and form of responsibility to the failure of building on public facility building in the future.

b. Research Methods

The type of research is normative law research with reviewing the positive norms in applicable positive system of legislation related with the determination the time period and form of responsibility of construction service provider to the occurrence of the failure of building at public facility building.

The research used constitution approach (statue approach), namely it used the provision of the law related with the time period and form of responsibility of construction service organizer to the occurrence of the failure of building at public facility building made reference to solve the law issue proposed, the approach concept (conceptual approach), namely it searched to the meaning of one concept (meaning) in making effort to understand the law concepts related the time period and the burden of accountability of building failure at public facility building contained in the rule of law, the view of lawyer and court ruling, so it is expected to make norm in next rule of law is no longer happened vague understanding and ambiguous, case approach, namely it is done by doing study to cases of building failure at public facility building which have the power of fixed law, historical approach, namely it understood the philosophy of the rule of law from time to time, and understood the change and development of the philosophy underlying the rule of law, it is done by studying the background and the development of the rule to the law issue faced, and the comparative approach, namely by comparing the rule of law or court ruling in one country with the rule of law in others (it can be one country or more than one) about the same thing, to have the equality and diversity between the court law or the court ruling.

The law material used consisted of the primary law material consisting of the rule of law related with construction service, namely the laws of the Republic of Indonesia 1945, Code of Civil Law, Criminal Code, Constitution Number 25 2004 About National Development Planning System, Constitution Number 2 2017 about Construction Service, Constitution Number 17 2007 About National Long-Term Development Plan 2005-2025, Constitution Number 12 2011 About Formulation of Legislation, Constitution Number 20 2001 About The Changes to The Law Number 31 1999 About Eradication of Corruption, Constitution Number 8 1999 About Consumer Protection, Government Regulation of The Republic of Indonesia Number 29 2000 About Construction Service Organizer, The Court Rulings related with; secondary law material consists of Bill, research result, books, papers, internet article and tertiary law material consisted of relevant dictionary.

c. Result and Discussion

Legal Foundation of Construction Service Constitution Determines Limit of Time Period of Responsibility to the Failure of Building at Most 10 (Ten) Years

To be able to understand the legal foundation of the determination of time period of responsibility to the building failure in Construction Service Constitution, it needs to know the history of construction law influencing the birth or the existence of construction law applied in Indonesia and it includes the birth of Constitution of Construction Service, which can help the analysis of problem based on legal theory namely, error theory, theory of responsibility and theory of government function.

The construction or the establishment of the building has been known by human being since long time ago when human being need the residence to stay and no longer to become human being that keep moving (nomadic). The building needed is not only the residence or palace for the rulers, but also for others to support the life and protection from all kinds of danger both of nature and of the enemy. The buildings like the building for public facility and infrastructure, like the bridge, the irrigation, the dam, the street, and others for life's interest and public welfare, also the buildings like fortress, reconnaissance building, tunnel and others as the defense and security buildings from the attack of the enemy or the natural hazard, like wild animals, natural disasters and many other.

The law regulating about construction activities or the development of the buildings mentioned above born and created along with the birth of the need of human to the construction or building, both the unwritten one to become the understanding together with local community and written one from the simplest, written on the stones, then written on the palm leaf or paper and they become books and laws.

On the book of Hammurabi that is the oldest law book that has ever been recorded by history, it is made

less than 4000 years ago, it has been regulated about chartering or construction contract. It is written there that if the contractor makes a building but the building then becomes collapsed and befalls the child of the house owner until he dies, so the child of the contractor should also sentenced to death¹. Hammurabi emperor (1792-1750 BC), is the greatest emperor from the first dynasty of the Babylonians (ancient empire located in Southwest Asia, in the lowest valley basin of Tigris river which currently it enters the territory of Iraq and Euphrat river which nowadays it enters the territory of Syria). The ruler of Babylonia started to occupy power in 1750 BC. Under his rule, Hammurabi codification was written by carving on the surface of the pillars made of coral reef. The famous proverb says “an eye for an eye” (a cruel treatment should be revenged with a cruel treatment too)².

In the kingdom era, many building which is built, primarily in the form of temple and palace or royal palace. The temple is the ancient building made of the stone and usually used as place for adherents of Hindu religion and Buddha in ancient time, for example: Borobudur Temple in Magelang, Central Java; Padas Temple in Tampak Siring, Bali; Kidal Temple in Malang, East Java; Sewu Temple in Magelang, Central Java; Prambanan Temple in Klaten, Central Java; Tikus Temple in Mojokerto, East Java. The palace is the building made as the residence of a king in ancient time. Some palaces in Indonesia, such as Mangkunegaran Palace in Surakarta, Paku Alam Palace in Yogyakarta, Kasepuhan Palace in Cirebon, Maimun Palace in Medan, Raja Goa Palace in South Sulawesi, Raja Klungkung Palace in Klungkung Bali.

In the Mataram Kingdom era, the description of judicial administration can be designed based on a number of inscriptions that are judicial decision (*jayapatra*) and the information of part of the inscription called *sukha dukha*. The fair law and reliable law enforcement is then continued by the government of Majapahit Kingdom. According to the law book from Majapahit era, a judge must be a priest who the knowledge is excellent to the all literary books and he is not confused to face the difficulty in finding the conformity between literary books and customary law. He also must be firm and able to give the best decision in court. It is said, before taking the decision, the judges firstly must study literary books, local regulations, customary law, parenting advices, and law books. Even, Parung inscription from Hayam Wuruk regime, giving instruction about the existence of other legal basis, that is an swearing to the God or deified figure. It is not clear, whether like *pocong* swearing nowadays or it is different³.

In the Colonial era in Indonesia, the rules of law building or construction applied in Indonesia comes from the law applied in Continental Europe. The milestone is when *Burgerlijk Wetboek* (BW) is applied in Indonesia by the Government of Dutch East Indies in 1848. BW codification is announced on 30 April 1847 through *Staatblad* Number 23 and applied on January 1848. In BW contains the rules related with the law of building chartering arranged in the Article 1604 until the Article 1617. The same condition with the responsibility of the failure of building arranged in the condition Article 1609 BW stating that “If the building, which has been chartered and made for the certain price, all or part are destroyed caused by the disable in arranging or even because of the disability of the soil, so the development experts along with the contractor are responsible to all of those for 10 (ten) years”.

Besides BW, which becomes legal basis of building in Indonesia is building regulation known as AV 1941, it is the abbreviation of *Algemene Voorwaarden voor de uitvoering by aanneming van openbare werken* (AV). The AV is often called standard regulation (*Standard Voorwaarden*). The condition is legitimated by the government (*Regeringsverordening*) of Dutch East Indies Number 9 1941 on 28 may 1941 and loaded in the addition of Sheet of the Country (*Bijblad op het Staatsblad*) Number 14751. The regulation of AV 1941 then translated to become General Terms to the Implementation of Auctioned Public Building 1941, abbreviated SU 1941 and General Terms for The Inspection of Building Materials 1956, abbreviated PUBB 1956-NI 3.

After Indonesia Independence on 17 August 1945, The Government of RI based on the Article 2 Transitional Rules 1945 Constitutions, which in the essence determine that all the regulations stated are still applicable before it is held the new regulations according to the constitutions, including BW or Civil KUH (Concord Principle). The matter to prevent the legal vacuum (*rechtvacuum*) in the field of civil law. On the progress, it was born some legislations related with the development of physical facilities and infrastructure, namely technical legislations and they become Indonesia National Standard (INS) in the field of construction.

In reformation era started in 1998 after the occurrence of the monetary crisis which strikes the world including Indonesia in 1997, in an attempt to fulfill the reformation demand, in 1999 is determined the special rules and regulations regulating construction service in Indonesia, namely the Special Constitution Number 18 1999 about Construction Service (Construction Service Constitution 1999). In the consideration weighs the letter of C Construction Service is mentioned that “The consideration is needed the Construction Service Constitution because of various legislations applied at that time has not oriented yet both to the development of construction service in accordance with its characteristic, so it causes the business climate which can support increasing

¹ Munir Fuady, *Mega Project Contracting Contract*, (Bandung: Citra Aditya Bakti, 1998), p. 1

² Herman Bakir, *Philosophy of Law of Design and Architecture of History*, (Bandung: Refika Aditama, 2009), p. 25-26

³ Djulianto Susanto, “Majalah Arkeologi Indonesia : Penegakan Hukum di Kerajaan Majapahit”, <https://hurahura.wordpress.com/2010/03/02/penegakan-hukum-di-kerajaan-majapahit.html>, 02/03/2010.

competitiveness optimally less develops and to the interests of the society”.

In Construction Service Constitution 1999 has been arranged about responsibility the service user and the service provider to the failure of the building, namely it corresponds to the age of construction plan but it is limited at the longest time 10 (ten) years as arranged in the condition of Article 25 Paragraph (1) and Paragraph (2) stating that the service user and the service provider are responsible to the failure of the building; (2) The failure of the building which has become the the responsibility of the service provider as meant in Article (1) is determined to be counted since the final submission of the construction and in the longest time 10 (ten) years.

In the completion of government property projects so things related with the special chartering has been arranged in the Decree of the President of the Republic of Indonesia (KEPPRES RI) Number 80 2003 about the guidelines on the procurement of government goods and services. Article 1 (one) Number 1 Decree of the President of the Republic of Indonesia Number 80 2003 mentions that “The procurement of government goods and services is the activity of procurement of goods and services financed by the State Budget (APBN) or the Regional Income and Expenditure Budgets, both it is done on a self-managed basis and by the provider of services or goods”. The regulation has been replaced and changed several times with the Presidential Decree Number 54 2010 about the procurement of government goods and services as it has been changed with the Presidential Decree Number 35 2011 about the change to the Presidential Decree Number 54 2010 On the Procurement of Government Goods and Services and Presidential Decree Number 70 2012 about The Second Change On Presidential Decree Number 54 2010 On The Procurement of Goods and Services.

After almost 18 years, Construction Service Constitution 1999 becomes a positive law in construction service in Indonesia, on 12 January 2017 it is promulgated Constitution Number 2 2017 about Construction Service (Construction Service Constitution) changing Construction Service Constitution 1999. In the academic text Construction Service Constitution Plan on 27 January 2015 is mentioned that the determination of the limit of responsibility time period of the failure of the building remains the same as which has ever been arranged in the Construction Service Constitution 1999.

Based on the historical descriptions mentioned above, the determination of the limit of the responsibility time period to the failure of the building maximum 10 (ten) years in Construction Service Constitution it is very influenced by the application the theory of government function, mainly in accommodating the interest of all stakeholders of construction service, with the goal to ensure that the perpetrator of every part of the supply structure of the organizer of construction work has the capacity, competence and high competitiveness to make the process of the organizing of construction service becomes efficient, effective, and cost effectiveness and fair so it becomes productive, in producing quality, helpful, sustainable construction service products. Therefore, the legal foundation of the determination of the limit of the responsibility time period of the failure of the building in the Construction Service Construction is the application of government function theory with ignoring a little about the error theory and the theory of responsibility, underlying the determination to the historical foundation and the juridical foundation, namely the condition in the Article 1609 BW and Construction Service Constitution 1999 and Sociological foundation in the form of accommodating the interests of all construction service stakeholders.

Legal Implication Due to the Terms of the Limit of the Period of Liability for the Failure of the Building for a Maximum of 10 (Ten) Years in the Construction Service Law On Public Facility Building

In order to find out what the legal implications of the limits of the period of responsibility for the failure of buildings in public facilities buildings are used the theory of justice, the theory of error, the theory of responsibility, the theory of government functions and the theory of punishment in conducting its analysis. To facilitate the analysis of what the legal implications of the limit terms of the liability period for the failure of buildings in the Construction Services Act 2017 on public facilities buildings, need to be done understanding of the building and the failure of the building itself, especially from the branch of science that studies the building Science of Civil Engineering.

Etymologically, the failure of the building consists of two words of "failure" and "building". Failure comes from the word "fail" which means unsuccessful, not achieved (goal / purpose). So failure means the failure or the ineffectiveness of the goal. Building means something that is established, something built (like a house, building, tower). Thus the failure of buildings means buildings that do not succeed in achieving the purpose of building the building. In English the building failure is called "building failure" or "building fallacy"¹.

Buildings must be protected. That is why the establishment of a building, whether private homes or spaces intended for public gatherings, should ensure the birth of a sense of security. Both feel safe that is personal and group. For personal gain, the home - for example - will allow the inhabitants to feel free, free of natural threats and unwanted intervention of others. Whatever the residents are about to do nothing will be annoying. Activities at home and resting in it is an indication of the fulfillment of home functions as a private and secure territory. So

¹ Explanation of Minister of Public Works in Working Meeting with Commission IV of DPR RI Discussion on Draft of Law on Construction Services 1999.

is the building dedicated to the interests of collective facilities (general). That is why, a number of building service actors or the perpetrator of construction services, must understand and appreciate the meaning of the security¹.

Civil engineering is one of the branches of engineering that learns about how to design, build, renovate not only buildings and infrastructure, but also cover the environment for the benefit of human life. Civil engineering has a wide scope, in which there is knowledge of mathematics, physics, chemistry, biology, geology, environment until the computer has its own role. Civil engineering developed in line with the level of human needs and movement, to say this science can turn a forest into a big city².

Building is the result of engineering from something that has not existed into something that exist in an effort to meet human needs to meet their needs that protect themselves and facilitate its activities to be more secure, comfortable and productive. The building is a physical form of construction work that integrates with a good place above, below ground and / or in water. Buildings are usually connoted with houses, buildings or all facilities, infrastructure or infrastructure in culture or human life in building civilization as well as bridges and their construction and design, roads, telecommunication facilities, and others. The buildings referred to above include:

- a. Building is the work of people who have a specific purpose for the benefit of individuals and for the public.
- b. Buildings that are additions or changes from existing ones into something else / different, but also with a specific purpose and for the benefit of individuals and the public³.

In the view of civil engineering science, buildings should be able to provide benefits to humans as users based on the strength and resilience of buildings, so as to provide a sense of security to its users. Strength of the building is the power of shouldering loads both the burden of the building itself and the burden from the outside. As an example of a bridge, the bridge should be able to provide benefits to transport people and goods safely from one point to another, therefore the bridge must be strong to carry the heavy load of the bridge itself plus the burden of people and / or goods passing through the bridge. The strength of the bridge building has previously been calculated and poured into the planning, the total amount of maximum load that can be borne by the bridge building, especially the maximum load of people and goods passing and how long the construction plan is the estimated length of the bridge building can be used safely. This will be related later with the operation and maintenance procedure (OM Procedure), until the building can provide benefits until the planned age limit of the plan.

Based on the definition of the building as described above, then a building, let alone building public facilities, must have been designed in such a way from aspects of engineering and kemanfaatannya and must meet the terms and conditions as follows:

- the building must be realized in the form, completeness, aesthetics, strength and resilience of the structure in accordance with the planning;
- the building must be able to achieve the purpose and purpose of the building of the facility building;
- buildings should be able to function as a whole,
- the building must provide benefits to the people, nation and state in the economic, social, cultural, security, safety, comfort, and other aspects of the plan;
- buildings must be functional and provide benefits up to the limit or even beyond the age of the building plan in accordance with the planning.

Terms and conditions mentioned above was not in line with the provisions of the Act Construction Services 2017, especially in determining the period of liability for the failure of the building, because in the Construction Services Act 2017 it is determined that the responsibility for the failure of the building which is the responsibility of the service provider is determined as of the final handover of the construction work and no later than 10 (ten) years, as contained in the provisions of Article 65 paragraph (2). Since public facility buildings are financed by state finances and are intended for the benefit of the general public so as to ensure public safety, the legal implications of the term limits of liability for failure of buildings in public facility buildings will have an impact on the state's financial losses and will also have an impact on safety general.

Based on the theory of justice formulated by Aristoteles⁴ which states that justice is a political policy whereby its rules become the basis of state regulations and these rules are a measure of what is right, and therefore one must control oneself from pleonexia, the self by grabbing what belongs to another person, or rejecting what should be given to others, then the fixing of the limit of the period of responsibility for the failure

¹ Irwan Kartiwan, Kamajaya Al Katuuk, Hendra N. Soenardji, Face of Construction Services of Indonesia Review of Alignment, (Jakarta: PT Gramedia Pustaka Utama, 2010), p. 1

² Excerpted from Wikipedia, the free encyclopedia, https://en.wikipedia.org/wiki/Teknik_sipil, accessed on November 19, 2015

³ Building Science, <https://www.facebook.com/Seputar Building And General Buildings / posts / 816033415080064>, accessed on November 25, 2015

⁴ Satjipito Rahardjo, Law Science, (Bandung: Alumni, 1982), p. 49

of the building maximum of 10 (ten) years is clearly contradictory or not in line with the theory of justice because it has the potential to provide benefits to the Construction Service Provider, when in fact it is the right of the state or the public to obtain the appropriate building quality of the plan and can be utilized during the life of the construction plan, so the determination of the deadline of responsibility for the failure of the building will have legal implications for loss of state finances and threaten public safety.

Based on the error theory as formulated by Purwahid Patrik¹, the actual failure of the building fulfills 3 (three) elements for the existence of errors that is: (1) The action made by the construction service provider can be regretted because he should build according to the standard of quality that has been set, 2) the construction service provider either as a normal human being or a construction expert, should be able to guess the consequences of improper construction work implementation, and (3) be accountable because the construction service provider must be in good condition. Thus the mistakes made by construction service providers that cause the failure of the building will certainly cause harm to the state and society. Therefore, the determination of the time limit of responsibility for the failure of the building will give legal implications in the form of financial loss of the state and threaten public safety.

Under the responsibility theory, the responsibility of the construction service provider for building failure includes professional liability, contractual liability, product liability, strict liability and responsibility for error (fault liability). Product liability actually refers to the responsibility of a construction service provider as a manufacturer of public facility buildings. The responsibility may be contractual or statutory (its lawsuit is based on unlawful acts), but in its product responsibility the emphasis is on the latter (tortious liability). Product responsibility² shall be made on the basis of: (1) breach of warranty, in which the construction service provider does not carry out construction work in accordance with the established quality; (2) negligence of construction service providers not paying attention to the standards of building quality and safety standards; and (3) the absolute liability of public facility buildings should be used in accordance with their quality and usefulness during the life of the construction plan. Thus, the determination of the limit of the failure period of the building will give legal implications in the form of loss of the state and threaten public safety because construction service products in the form of public facility building can not be used perfectly.

Based on the theory of government function, the state is obliged to guarantee the implementation of the law in achieving the legal objectives of legal certainty, justice and legal benefit. The building of public facilities should be utilized 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 the legal certainty of responsibility for the failure of the building, justice for the failure of the building and legal benefit in ensuring the proper construction of public facilities, timely and appropriate quality, then the period of responsibility for the failure of the building should be during the life of the construction plan. Therefore, the determination of the deadline of the failure of the building will give legal implication in the form of loss of state and threaten public safety because construction service product in the form of public facility building can not provide legal certainty, justice and legal benefit in its utilization.

Based on the theory of punishment, in a law-based democracy (Indonesia is a law-based democracy), sentencing is part of the authority of the state³. One of the criminal purposes is to protect the welfare of the people. The building of public facilities should have quality in accordance with the provisions of quality established in the construction work contract and / or in the legal provisions governing the quality standard of construction, so that the building of public facilities can be utilized at least during the life of the construction plan. Building failure is suspected to occur due to the existence of criminal elements in the form of a construction service provider error that is not in accordance with quality standards and construction safety, which is very potential to cause financial losses of the state. Thus, the determination of the limit of the failure period of the building will give legal implications in the form of loss of the state and threaten public safety by mistake provider construction services that do not carry out construction of public facility buildings that are not in accordance with the standards of construction quality and safety, so the building can not be utilized during the life of the construction plan.

Formulation of Timing Arrangements and Forms of Accountability for Building Failure In Building Public Facilities In The Future

The legal arrangement of liability for failure of buildings in public facility buildings has very specific characteristics because of the following matters:

- (1) the funding source for the construction of public facilities shall be state finances, public transparency and accountability shall be performed,
- (2) the utilization of public facility buildings shall be the public and the government therefore shall ensure

¹ Purwahid Patrik, Legal Foundation of Alliance, (Bandung: CV Mandar Maju, 1994), p. 10

² Sidahrta, Consumer Protection Law of Indonesia, (Jakarta: Grasindo PT Gramedia Widiasarana Indonesia, 2004), p. 80-81

³ Artidjo Alkostar, "Need for Responsiveness of Treatment of Criminal Procedure Law and Basic Criminal Consideration and Judicial Immunity", 2011 Rakernas Paper Supreme Court With All Indonesia Courts, Jakarta, 18-22 September 2011, p. 7-8

- the safety of the public,
- (3) the construction of public facility building is an important part of the national development program in an effort to achieve the state goal of a just society, prosperous and prosperous,
 - (4) the government involves itself into a contractual relationship with the private sector by binding itself into a procurement contract of goods and services, and
 - (5) contracts formed are essentially commercial contracts in which there is a public legal element, on the one hand the legal relationship is formed by contract, but on the other hand it is laden with rules for the provider of goods and services.

In the international world, the problem of responsibility for the work in the construction world has received considerable attention and seriousness. One of the most important institutions is FIDIC (Federation Internationale des Ingenieurs Conseils), a recognized consultant engineer at the international level. FIDIC has created Standing Committee on Professional Liability and has provided some valuable reports such as; Aspects of Professional Liability (1973), Liability and Safety (1974), Implied Warranty / Strict Liability (1975), Indemnity Insurance Programs (1976), Project Insurance / Field Services (1977), Project Participant Insurable Interest (1978), Limits on Litigation of Liability (1979), Risk to the Owner (1980), Limitation of Liability (1981), Loss Prevention (1982), Lessons to be Learnt (1983), Investigate, Do not Capitulate (1984), The Spectrum of Risk in Construction (1985)¹.

From the above reports it can be seen that the problem of liability (limit of guarantee on the work) is not a simple matter. Liability involves technical aspects and legal aspects which in most cases are interconnected and complex enough. Liability should be addressed as a separate topic of discussion where its scope should be seen in relation to the range of terms relating to the legal aspects, also to be seen in connection with failure, with third party guarantees, to the fairness of services, with applicable laws, codes and standards, its relationship with various risks, with standard services and others.²

The occurrence of building failures in public facility buildings is very likely due to "unlawful acts". The law is a set of rules regarding the behavior of people as members of society, while the sole purpose of law is to establish salvation, happiness and order in society. Law creates certain relationships in society. In regulating all these relationships, the law aims to establish a "counterweight" between various interests. Only when society embodies a straight balance can be said to be safe and happy in a useful society. This straightness of the social account can only be achieved if the law governing it is implemented, respected, not violated. So, if something unlawful happens, this should not necessarily result in the balance of the balance sheet. The shock must have resulted in an oddity, seen in physical life and felt in the spiritual life-of-life (versoring van magisch evenwicht).³

Response to unlawful acts should not be an attempt to rectify the balance of the already shaken community balance. This effort is in the form of 3 (three) kinds of sanctions namely administrative sanction in the field of Constitutional Law and State Administration Law, civil sanction in Civil Law and sanction in Criminal Law. This balance can not be measured only by the mind or ratio, but must also be perceived as fair. Even this justice can sometimes be felt as impossible to think about. The norms or rules in the field of Constitutional Law and State Administrative Law shall first be responded by administrative sanction, as well as the norms in the field of Civil Law must first be responded by civil sanction. Only when administrative sanctions and civil sanctions are insufficient to achieve the objectives of rectifying the social account, then criminal sanctions are also made as ultimate weapons or "ultimum remedium".⁴

To be able to compile a formulation or concept of law regulation about time period and form of responsibility for building failure in public facility building in the future, in this research is used analysis by using legal theories that is theory of authenticity, error theory, responsibility theory, theory of government functions and the theory of punishment. To assist in the analysis, it is necessary to understand the political concept of national development law especially in the construction of public facility buildings, especially related to the national development of public facilities infrastructure, transparency and accountability of public facilities development, and the national standardization of the Indonesia Construction Field.

Development is a process of change that takes place in a conscious, planned and sustainable with the main objective is to improve the welfare of human life or society of a nation. This means that development always departs from a state or condition of life that is not good to a life which is better in order to achieve the national goals of a nation⁵. National development is a series of sustainable development efforts covering the whole life of society, nation and state to carry out the task of realizing the national goals set forth in the Preamble of the 1945 Constitution.

The overall direction, spirit and motion of national development are carried out as the practice of the Five

¹ Hamid Shahab, *Legal Aspect of the Construction Sector Dispute*, (Jakarta: Djambatan, 1996), p. 92

² Hamid Shahab, *op. cit.*, p. 92

³ Wirjono Prodjodikoro, *Principles of Criminal Law In Indonesia*, (Bandung: PT Eresco Jakarta, 1979), p. 12-13.

⁴ *Ibid.*, p. 14

⁵ Tjokroaminoto B. & Mustopadidjaja, *Theory and Strategy of National Development*, (Jakarta: Haji Masagung, 1988), p. 9

Principle or “Pancasila” precepts in harmony and as a unified whole. The essence of national development is the complete development of the Indonesian people and the development of the whole Indonesian society, with “Pancasila” as the foundation, goal and guidance of national development. The national development is carried out evenly throughout the country and must be truly felt by all the people as the improvement of the social justice, which is the goal and the ideals of the Indonesian nation's independence. National development is implemented in a planned, comprehensive, integrated, directed, gradual, and sustainable manner to spur the improvement of national capabilities in order to realize a parallel and equal life with other advanced nations.

In the reform era in Indonesia, national development has been developed in a national development planning system and enacted in Law Number 25 Year 2004 on National Development Planning System (UU SPPN). The SPPN Law has been regulated on the preparation of the national long-term national development plan (RPJP Nasional), national medium-term development plan (RPJM Nasional) and annual development plan as outlined in the form of government work plan (RKP Pemerintah). The vision and mission of national development is set forth in Law No. 17 of 2007 concerning the National Long Term Development Plan 2005 - 2025 (National RPJP Law). Based on the condition of the Indonesian nation today, the challenges faced in the next 20 years by taking into account the basic capital owned by the Indonesian nation and the development mandate contained in the Preamble of the Constitution of the Republic of Indonesia Year 1945, the vision of national development in 2005-2025 is Indonesia Independence, Advance, Fair and Prosperious.

The effort of the state or government of the Republic of Indonesia in realizing social justice for all Indonesian people is to carry out national development. One of the national development activities is the construction of public facilities infrastructure infrastructures such as roads, bridges, irrigation, docks, dams, government buildings, school buildings, markets and so on. This is in line with the purpose and purpose of the construction service as stated in consideration letter b of the Construction Services Act 2017 which states that "the construction service sector is a community activity to realize the building that serves as a support or infrastructure of social economic activities in order to support the realization of national development goals".

The source of financing for public facility building by the government is the State Budget (APBN) or the Regional Revenue and Expenditure Budget for regional-level projects. In the provisions of Article 23 paragraph (1) of the 1945 Constitution requires that the state budget should be implemented openly and responsible for the greatest prosperity of the people. This means that the procurement of goods and services by the government, including the public facility building which is set forth in a construction contract as a contract made by the government, should refer to the principles of transparency and accountability.

Public facility building must have quality standard or building quality standard in accordance with Indonesian National Standard (SNI) Construction Sector which is the implementation of the provisions of Law Number 20 Year 2014 on Standardization and Conformity Assessment. One of the important factors in supporting development is standardization. With standardization is expected to create regularity in various activities, especially those concerning product quality assurance and services in trade and services activities, as well as those concerning safety, security and the environment in order to ensure the protection of the users of products and services.

The existing national standards are in harmony with international standards in accordance with the World Trade Organization (WTO) Technical Barriers to Trade (TBT) agreement which requires the formulation of a national standard to harmonize with international standards. It is therefore expected that in the course of trade and protection of peoples related to safety, security and health and the environment, it can refer to a harmonious national standard with international standards. Thus, this national standard can be used as a reference or guidance for interested parties such as business actors as well as community service users.

Based on the above description, the building of public facilities built by the state must be appropriate budget, precise quality and proper benefits. Exact budget as the cost of building a common facet is sourced to state finances that have been regulated or decided in the APBN or APBD with the amount of costs that have been determined and decided jointly by the government / local government together with the DPR / DPRD and set forth in the Law on State Budget or Local Regulation APBD. Building public facilities built by the state must also be appropriate quality and proper benefits, so as to provide benefits to the community, nation and state in accordance with the planning that has been made and approved before the age of the construction plan. The benefits of such public facilities include:

- the usefulness of which services should be provided by the building of the public facilities in accordance with what has been planned (usability),
- the period of service ie the period of time the building of public facilities is utilized ie in accordance with the planned age of the building (services period).

If usability and service period according to the age of the construction plan (fully construction services period) can not be achieved, it is said that the building of public facilities has been failed or there has been a building failure. Thus the definition of building failure can be given a re-definition as follows:

"Building Failure is a partial usability or null usability structure, not full service period either due to partial

damage or building collapse totally (totally damage) and even no collapse of the building (null damage) ".

Building failure as redefined above may occur due to internal or external factors. Internal factors are the factors causing the failure of the building due to errors of the occurrence of acts or deeds done either intentionally or because of negligence from the party or the parties to the construction service providers that can occur at the time of construction planning, construction implementation, construction supervision, operation and maintenance of buildings. While external factors are the factors causing the failure of the building other than the internal factors that are factors beyond human capabilities or the occurrence of extraordinary and unexpected events (extreme condition, overmacht, force majeure).

By knowing the form of errors as grouped above, it can be done the study of the scope of responsibility for the failure is as follows:

1. Errors caused by internal factors alone, then the scope of liability for the failure of the building will cover the responsibility of civil, criminal and administrative;
2. Mistakes caused by external factors and accompanied by internal factors, the scope of liability for the failure of the building encompasses civil, criminal, and administrative responsibilities;
3. Mistakes caused by external factors alone, then are not liable for the failure of the building.

Further redefinition (redefinition or renewal definition) for what is meant by the failure of the building. Based on the previous studies, it can be given a definition for a more comprehensive building failure:

"Building Failure is a partial usability or null usability and / or full time period either due to partial damage or completely destructed buildings or even null damage, either caused by internal factors and / or external factors ".

Based on the theory of justice, according to Thomas Aquinas differentiating justice over two groups: general justice and special justice¹, where general justice is justice according to the will of law which must be run for public interest, whereas special justice is justice on the basis of similarity or proportionality, consisting of distributive justice (*justitia distributiva*) namely justice proportionally defined in the field of public law in general; *justitia commutativa* justice by equating between achievement and contracting; and justice vindicativa (*justitia vindicativa*) that is justice in the case of sentencing or compensation in a crime where a person is considered fair if he is convicted of the body in accordance with the amount of punishment that has been determined for his criminal acts, for the sake of justice for public interest (society and state) which should be able to enjoy the building of public facilities comfortably and safely during the life of the construction plan (fully services period) as a form of state service to the community, which due to the failure of the building causes public interest (society and state) suffered losses both morally, material and even soul, then the element of the provision of construction services proven to cause a failure of the building shall be given the penalty of the body and the fine and damages to the public and / or the state, and to him also given administrative sanctions and civil liability during the life of the construction plan.

Based on the theory of error where the error is used to declare that a person is held liable for the adverse consequences of his wrongdoing, the civil liability of a person for his unlawful acts has caused a loss, is obliged to compensate if he can² or liability based on fault³, the element of the construction service providers who are proven to cause a failure of the building due to its faults shall be liable to the civil liability in the form of compensation incurred both to the state and to the public, and / or is liable to criminal liability in the form of corporate criminal penalties as well as fines and damages to the public and / or state, and to which he is also given administrative sanctions during the life of the construction plan.

Based on the theory of responsibility in which the building of general facilitation is an achievement of the construction service provider under a construction work contract, the construction service provider shall be responsible for the achievement in the form of a product liability product⁴ that meets the quality and engineering requirements and the building of the public facility shall may be used within the life span of the construction plan (full service period), then in the case of a building failure, the construction service provider shall be liable for both civil and / or criminal errors and shall also be given administrative sanctions during the life of the construction plan. The legal basis for all these liabilities is propriety.

Based on the theory of government functions, especially the function of supervision (*politie*), the judicial function (*Justitie / Rechtspraak*), especially in the welfare function and the duty to realize the world peace and human welfare, the government must make efforts to judge the organizer construction services which by their fault have caused the failure of public facility buildings, in an effort to recover the losses suffered by the state and / or society and in an effort to enforce the authority of the government. Therefore, in the event of a building failure, the construction service provider shall be liable for both civil and / or criminal misconduct and shall also

¹ Darji Darmodijarjo dan Shidarta, *Pokok-pokok Filsafat Hukum*, (Jakarta : PT. Gramedia Pustaka Utama, 2006), hlm. 156-157

² Rahmat Setiawan, *Review of Elements of Action Against Law*, (Bandung: Binacipta, 1991), p. 18

³ Chairul Huda, *From No Penalty Without Mistakes To No Criminal Acts Without Mistakes*, (Jakarta: Prenada Media, 2008), p. 4

⁴ Adrian Sutedi, *Product Responsibility Under Consumer Protection Law*, (Bogor: Ghalia Indonesia, 2008), p. 32

be given administrative sanctions during the life of the construction plan.

Based on the theory of criminal punishment in which the criminal sanction imposed and what actions are criminally charged must first be contained in a criminal law or criminal provisions (legality principle), then the arrangement must be formulated in advance based on the study and the theories in above to be subsequently set forth in statute or criminal provisions. Criminalization is the most important part of the criminal law, as it is the culmination of the whole process of accounting for someone who has been guilty of a criminal offense¹. The purpose of a criminal act is as an attempt to prevent or overcome crime. Criminalization is a real result and must exist as a retaliation to the offender (The Absolute Theory or Theory of Revenge). Criminalization in addition to having certain goals, there is also the main purpose of criminal punishment in the form of maintaining public order (Relative Theory or Theory of Purpose). Besides the purpose for retaliation and maintaining public order, punishment also has an element of prevention and an element of fixing criminals attached to each criminal (Combined Theory). In a democratic state based on law, punishment (sentencing) is part of the authority of the state where the power to judge and impose the penalty is on the authority of the judiciary. Therefore, in the event of a failure of a building in a public facility building and a proven criminal element, the element of construction service providers committing a criminal offense causing a building failure during the life of the construction plan shall be subject to criminal sanctions in the form of imprisonment and fine.

d. Closing Conclusions

- 1) The legal reason for determining the limit of the period of responsibility for the failure of the building for a maximum of 10 (ten) years in the Service Law Construction 2017 is based on:
 - a. the historical basis and juridical foundation that is the provision of Article 1609 BW stating that if a building, which has been raised and made for a particular price, is wholly or partially destroyed due to a defect in its preparation or even because it can not afford the land, the contractors are responsible for it all for 10 (ten) years, and the Construction Services Act of 1999 which also specifies the tenure of responsibility for building failure for a maximum of 10 (ten) years, and
 - b. the sociological foundation of accommodating the interests of all construction service stakeholders, with the aim of ensuring that perpetrators of any part of the construction supply structure have the capacity, competence and high competitiveness to make the process of efficient, effective and cost-effectiveness construction services and just to be productive in producing construction service products (infrastructure & buildings, and other physical facilities) quality, useful and sustainable.
- 2) Legal implications due to the limitation of the term of liability for failure of buildings in public facilities building not later than 10 (ten) years are:
 - a. the legal implications of the state financial loss in the form of potential state financial losses due to the building of public facilities that should be used or utilized optimally in accordance with the plan of building utility until the end of the life of the construction plan (fully construction services period) so as to provide benefits and income of state finances from economic activities which the building may lose, or lose, even the state loses value from the investment of the building itself, which in turn the state must spend again on the construction of the public facility in view of its usefulness, benefits and functions essential to the economy of society, nation and state ; and
 - b. the legal implications of public safety in the form of potential threat to public safety in the form of public awareness concerning security, comfort and safety in the use of public facility buildings because the building of public facilities does not guarantee security and safety and there is no guarantee on the quality of public facility building products because it is not guaranteed to use during the life of the construction plan (fully construction service period).
- 3). the formulation or concept of responsibility for failure of buildings in public facility buildings in the future is as follows:
 - a. the term of liability for the failure of buildings in public facility buildings is during the life of the building plan, with the purpose and expectation of the building of public facilities being economically and securely utilized and ensuring minimum public safety during the life of the building plan (fully construction services period).
 - b. responsibility for the failure of buildings in public facility buildings may only be borne by the construction service provider where it can be proved that a building failure is not caused by an overmacht, force majeure,
 - c. responsibility for the failure of buildings in public facility buildings may only be borne by the construction service provider on the basis of a liability based on fault,

¹ Chairul Huda, op. cit., p. 129 (the text quotes from Andrew Ashworth's book Principles of Criminal Law, (Oxford: Clarendon Press, 1991), p.)

- d. the forms of responsibility for building failures in public facility buildings are administrative sanctions, civil liability and criminal sanctions, and
- e. the fault of the construction service provider which caused the failure of the building in the public facility building shall be determined by a National Committee or Board established by law and berwenng recommends who is the guilty party and its sanctions form (investigation authority, investigation and prosecution).

Recommendations

1. Immediate revision of the Construction Service Act in particular regarding the provisions relating to the failure of the building or the establishment of a special law on the provision of construction services in public facilities buildings because public facility buildings have special characteristics as they relate to state finances and public safety, law namely the nature of public facilities building, legal politics and the purpose of construction of public facilities, effectiveness and efficiency of state finances as well as public safety,
2. The revision or establishment of a special law on the operation of a construction service in a public facility shall contain the period of failure of the building at a public facility in accordance with the age of the construction / construction plan (fully construction service period) contained in the planning document and set forth in the construction work contract and forms of liability for the failure of buildings are administrative sanctions, civil liability and criminal sanctions in the form of criminal confinement and criminal penalties.
3. Responsibility for building failure should be based on liability based on fault. The first step is done is to ensure that the failure of the building occurs due to circumstances to force (*overmacht*, force majeure) or not. If ensured that the building is not caused by *overmacht*, force majeure, then the next step is to determine the element of error from the elements of the construction service provider that caused the failure of the building started from planning, development, supervision and operation and maintenance of public facilities building is based on construction work contract, construction quality standard and other related provisions.
4. To determine the errors of the elements of construction service providers for the failure of the buildings and their responsibilities, carried out by a national commission or similar body, such as the State Building Construction Commission (KKBN), established under the force of law (Construction Services Act). The Commission is comprised of professional experts with special competence from various disciplines including construction lawyers, criminal lawyers, corruption lawyers, Police, Justice, state finance experts, accountants and assessors as commissioners selected through national selection. strict and conducted fit and proper test by a special selection committee for it and / or by House of Representative of Republic of Indonesia (DPR RI) to be inaugurated by the President. This commission is authorized to conduct investigations, investigations and prosecutions for the failure of buildings in public facility buildings.
5. To minimize the potential loss of state finances in the revision of the Construction Service Law or the establishment of special law on the implementation of construction services in public facilities buildings, the mechanism of liability for the failure of the state in the form of civil liability and / or state loss and penalty (criminal), can be reached through an insurance or guarantee mechanism for the value of the building which must be submitted by the construction contractor and for construction planners and construction supervisors of 10% of the value of the building, delivered to the service user or the government at the time submitted to the service user or the government at the time of final delivery of the construction work. The sum insured covered by the insurance or surety bond policy, can only be disbursed if it is proved that there is an element of error from the element of the construction service provider based on the determination made by the Committee or a court decision that has had permanent legal force. This insurance mechanism does not eliminate the administrative responsibilities decided by the relevant State Administration Officer under the determination of the Committee and the criminal liability in the form of imprisonment imposed on the wrongdoer based on a court decision that has permanent legal force.