

Problems of the elimination of criminal sanctions in law number 2 of 2017 concerning construction services: A study of policies and legal protection of construction accident victims

Ismaidar^{id}, Bambang Fitrianto, Haris Habibi, Sagita Purnomo^{id}*, Enda Leginta Barus, Bima Lumbanbatu

Magister Ilmu Hukum, Universitas Pembangunan Panca Budi Medan, Jl. Jend. Gatot Subroto KM 4.5
Sei Sikambing, Kota Medan, Sumatera Utara 20128 Indonesia

e-mail: ismaidar@dosen.pancabudi.ac.id, bambangfitrianto@dosen.pancabudi.ac.id,
harishabibi19@gmail.com, sagitapurnomo@gmail.com, endabarusdokter@gmail.com,
bimamarbun64@gmail.com

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ABSTRACT

The abolition of criminal sanctions in Law Number 2 of 2017 concerning Construction Services creates a vacuum and uncertainty in law enforcement. Previously, in cases of construction failures and accidents that caused injuries and deaths, the perpetrators could be charged with Article 43 of Law Number 18 of 1999 concerning Construction Services, but with the removal of this criminal provision, law enforcement was carried out using the Criminal Code and/or building law. This condition results in disparities in the law enforcement. This research aims to discuss the void of criminal law in Law Number 2 of 2017 concerning Construction Services and comprehensively examine policies and legal protection for construction accident victims. The type of research used is normative juridical with a descriptive-analytical approach, discussing existing legal symptoms and problems and testing them based on applicable laws and regulations. The results of this study show that the void in criminal law in construction services law occurs due to the elimination of criminal sanctions based on legal political factors; thus, law enforcement for construction accidents cannot be carried out using special laws on construction services. Legal protection for victims of construction accidents is emphasized in law enforcement to provide a deterrent effect against perpetrators, consisting of the application of strict sanctions, compensation for victims, and the implementation of occupational health and safety management standards.

Keywords: Legal Certainty, Criminal Disparity, Construction Services, Justice

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1. INTRODUCTION

National development aims to create a just and prosperous society, based on Pancasila and the 19945 Constitution of the Republic of Indonesia. Therefore, every construction task must be carried out by prioritizing security and safety (Badaruddin, 2023). In Indonesia, there are many developments and construction works that do not meet the feasibility and safety standards. Ignoring occupational safety and health, not using experts in their fields, and immature work planning are common sights that are often found in building construction or when buildings are constructed independently (Agustina, 2024a).

Data from the Ministry of Manpower of the Republic of Indonesia state that by 2024, work accident cases in Indonesia will reach 462,241 cases, of which 4,233 cases will occur in the construction services sector. Meanwhile, the number of claims due to work accidents in 2024 will reach IDR 3.49 trillion. The low public understanding and awareness of occupational safety and quality standards of construction services make the risk of accidents in construction work very high (Indonesia, 2021).

A lack of public awareness of construction safety can be found in the case of the collapse of the three-story building of the Al-Khoziny Islamic Boarding School in Sidoarjo in September, which claimed hundreds of victims (dead and injured). The results of the investigation by the National Disaster Management Agency and Civil Engineering Experts from ITS showed that the collapse of the building was caused by structural construction failure, where the foundation pillars were unable to withstand the load of the upper-floor casting, causing the building to collapse suddenly when the fourth-floor casting was carried out (CNN Indonesia, 2025).

The Al-Khoziny Sidoarjo Islamic Boarding School building collapsed due to construction failures and the lack of implementation of technical standards and expert supervision. The building was originally planned for only one floor, but later it was built for up to three floors without adequate structural reinforcement, so that it became unstable. In addition, the involvement of students who have no understanding of construction (not experts in their fields) in building construction is questionable (Rinanda, 2025). This indicates a failure of the construction management and safety standards that are not selectively applied.

The investigation is ongoing to uncover the facts of this incident. If there is intentionality and/or negligence in the construction of this building, then the perpetrator can be charged with the provisions of articles 359-360 of the Criminal Code concerning negligence that results in injury and/or death, with a maximum threat of 5 (five) years in prison, or Article 46 of Law Number 28 of 2002 concerning buildings (Agustina & Purnomo, 2023).

The elimination of criminal sanctions in Law Number 2 of 2017 concerning Construction Services has caused new problems and uncertainty in law enforcement in construction accident cases because: (1) The loss of deterrent effect. The elimination of criminal sanctions caused the loss of criminal sanctions that were previously regulated in Law Number 18 of 1999, namely, the threat of imprisonment for five years for perpetrators who are negligent or commit technical violations resulting in construction accidents that take victims; and (2) Transfer of Responsibility. Law Number 2 Tahun 2017 emphasizes dispute resolution and responsibility through the channel of civil contracts so that there are no more criminal threats. This is a dilemma in the protection of the law and the enforcement of justice because the element of intentionality or negligence in construction projects is difficult to investigate criminally; and (3) inconsistencies in law enforcement. The removal of special criminal provisions in the 2017 Construction Services Law made the process of resolving construction accident cases inconsistent. Law enforcement officials tend to investigate corruption and corporate crime in the case of construction accidents and building failures in government projects. This leads to inconsistencies in law enforcement, as the main problem (construction) has not yet been investigated (Triono Eddy, 2023).

To reduce the number of construction accidents and victims, as well as provide legal certainty in the implementation of Indonesian construction services, sustainable legal protection and policies are needed. The need for strict supervision of the implementation of K3 standards, the use of technology to support construction work, increasing public understanding and awareness of the work safety culture, and regulatory reforms, especially the regulation of criminal sanctions, as a deterrent effect (Rustini, 2020).

2. RESEARCH METHOD

The type of legal research conducted in accordance with the subject matter is normative juridical or research that analyzes written law, jurisprudence, and social norms living in society (Fitrianto et al., 2024). The data collection technique is based on library *research*, which involves obtaining data by reviewing literature materials, including primary (Law Number: 18 of 199 concerning Construction Services, Law Number 2 of 2017 concerning Construction Services, and Law Number: 28 of 2002 concerning Buildings and the Criminal Code) and secondary legal materials such as laws and regulations, books, journals, and other scientific works, as well as tertiary legal materials in the form of dictionaries, magazines, newspapers, and articles (Ismaidar, 2018).

3. RESULT AND DISCUSSION

3.1 Criminal Law Gaps in the Construction Services Act

The abolition of criminal sanctions in Law Number 2 of 2017 concerning Construction Services was motivated by political and legal changes that shifted the focus of criminal enforcement to administrative and civil, as regulated in employment contracts. Law Number 18 of 1999 concerning Construction Services regulates criminal sanctions in the form of imprisonment and fines for those who carry out planning or work that is not in accordance with technical provisions, causing construction failures or accidents (Agustina, Eddy, et al., 2023).

The political interest in the elimination of criminal sanctions is aimed at protection and certainty for construction service business actors in facing the risk of building failure, so as not to face criminal sanctions under construction services law. Thus, it is hoped that it can contribute to the investment climate because at that time, the government was intensively implementing massive development (Ambo, 2018), where investors and other stakeholders wanted certainty and stability in the world of construction services (Utama, 2022).

The elimination of criminal sanctions also reduces the essence of fair law enforcement because without strict sanctions, it will not have a deterrent effect on violators. The elimination of criminal sanctions in construction services law is a legal policy that adjusts the practical needs of the construction industry through the concept of administrative and civil justice approaches (problem-solving) (Napitupulu, 2023). The regulation of criminal sanctions in Article 43 of the Construction Services Law Number 18 of 1999 reads: (1) anyone who plans construction work that does not comply with the technical requirements and results in the failure of construction work or building failure is subject to a maximum penalty of five years in prison or a fine of up to 10 percent of the contract value; (2) Whoever carries out construction work that is contrary to or not in accordance with the technical provisions that have been set and result in the failure of construction work or building failure is subject to a maximum penalty of five years in prison or a maximum fine of 5 percent of the contract value; (3) Whoever supervises the implementation of construction work deliberately gives an opportunity to the person who performs construction work to commit deviations from the technical provisions that cause the occurrence of construction work failures or building failures is subject to a maximum penalty of five years in prison or a maximum fine of 10 percent of the contract See Table 1.

Table 1. Comparison of Sanctions of the Construction Services Law in 2017 and 1999

No	Types of Sanctions	Law Number 2 of 2017	Law Number 18 of 1999
1	Civil/Indemnity	Article 67 1) Service Providers and Service Users are obliged to provide compensation in the event of a Building Failure.	Article 26, paragraphs 1 and 2 Regulating the obligation of compensation by planners, supervisors, and construction implementers in the event of building failures caused by planning and implementation errors that are proven to cause losses to other parties.

2	Criminal Sanctions	None	Article 43 Paragraphs 1, 2, and 3 Regulating criminal provisions for the planning, supervision, and implementation of construction work that neglects safety aspects and results in building failures, with a maximum penalty of five years in prison and a maximum fine of 10 percent of the contract value
3	Administrative Sanctions	Articles 96 and 98 include: Written warning, administrative fines, temporary suspension of activities, blacklisting, freezing, and/or revocation of permits.	Administrative sanctions are listed in the Construction Services Act 1999, but do not explicitly state the type of administrative sanctions for construction failures.

That Law Number: 2 of 2017 concerning Construction Services cannot be used to enforce criminal law for construction accidents (Rawung, 2023). To provide legal protection and certainty for construction accidents that result in both fatalities and material losses, criminal law enforcement uses other related legal instruments, including:

- a. Article 46 of Law Number 28 of 2002 Concerning Buildings: (1) Any owner and/or user of a building that does not comply with the provisions of this law is threatened with imprisonment for a maximum of 3 (three) years and/or a fine of up to 10% (ten hundredths) of the value of the building, if it therefore results in the loss of other people's property; (2) Any owner and/or user of a building that is not sentenced to imprisonment for a maximum of 4 (four) years and/or a fine of not more than 15% (fifteen hundredths) of the value of the building, if it therefore results in an accident to another person resulting in a lifetime disability; (3) Any owner and/or user of a building that does not comply with the provisions of this law is threatened with imprisonment for a maximum of 5 (five) years and/or a fine of up to 20% (twenty hundredths) of the value of the building, if it results in the loss of life of another person.
- b. Article 359 of the Criminal Code. Whoever, because of his negligence, causes the death of another person to be threatened by imprisonment for a maximum of five years or imprisonment for a maximum of one year.
- c. Article 360 of the Criminal Code. If negligence causes serious injury to others, the threat is imprisonment for a maximum of 5 years or imprisonment for a maximum of 1 year.

This disparity in the enforcement of construction criminal law occurs because there is no threat of criminal sanctions for construction accidents and/or building failures, especially those that cause injuries and deaths; thus, to enforce the law for criminal acts, the rules in the Criminal Code must be used. In addition, it is due to the limited insight and understanding of law enforcement officials in the construction sector (building laws, housing and residential areas, and construction services) (Lukito, 2022).

To prevent disparities in criminal law enforcement, Service Law must re-regulate criminal sanctions for construction accidents, especially those that cause fatalities. In the concept of criminal sanctions, this is used as the last resort of ultimum remedium, namely if an administrative and civil approach (compensation) has been carried out, but it has not been able to provide certainty (Saraswati, 2020). Criminal sanctions can be applied on the basis of the opinions of experts in the field of construction (finding the presence of an element of intentionality) and court decisions. Thus, criminal punishment can be applied fairly after a selective process to provide legal certainty (Dayana et al. 2023).

3.2 Legal Policies and Protection for Construction Accident Victims

Criminal law policy is a part of national legal politics, including criminalization, criminalization, and law enforcement. The goal of criminal law policy is to control crime using a balanced approach between criminal and non-criminal regulations to realize public justice (Ismanto et al., 2024). Practically, criminal law policy guides law enforcement officials and lawmakers so that criminal law can be applied effectively in accordance with social, cultural, and justice values (Bukit et al., 2025).

The legal politics in Law Number 2 of 2017 concerning Construction Services no longer regulate criminal sanctions for construction failures and accidents that result in injuries or deaths. So that this special law in the field of construction cannot be used to enforce criminal law (Agustina, 2023). The background to the elimination of criminal sanctions from the 2017 Construction Services Law includes the following:

a. Political direction of the law

In 2015-2017, the government intensively implemented the national infrastructure development program. This condition requires certainty for the implementation of development, especially related to the threat of criminal sanctions in the 1999 Construction Services Law, which is considered to criminalize construction industry players. For this reason, this criminal provision is abolished and prioritizes an administrative and civil approach.

b. Obstacles to accountability

Criminal sanctions in the 1999 Construction Services Law are considered less effective because they have not been able to punish corporations as legal entities. Criminal sanctions are only imposed on workers or supervisors responsible for the construction work (Rurianti, 2022).

c. Emphasizing compensation

Although criminal sanctions have been removed, the 2017 law emphasizes the responsibility of construction service providers and users to provide compensation or compensation for construction failures and accidents.

The author takes Singapore's construction services law as an example for comparison. Singapore's construction services law provides for criminal penalties for occupational safety violations with a fine of up to \$100,000 or imprisonment for a maximum of 12 months (Article 24 A 1-6, Dangerous Slopes Building Control Act 1989). Singapore also specifically regulates occupational safety, health, and security supervisors as set out in section 6 of the Workplace Safety and Health Act 2006 jo Workplace Safety and Health (Construction) Regulations 2007 jo Workplace Safety and Health (Workplace Safety and Health Officers) Regulations 2007. The duties of the expert appraisal or supervisory commission are more or less the same as the Expert Appraiser in Indonesia; only in the assignment is the expert appraiser determined based on the qualifications/certification of the group with the value of construction work (large, medium, and small projects) (Agustina, 2024).

The elimination of criminal sanctions in the 2017 Construction Services Law has created a legal vacuum. For example, in a building/building construction project, a construction accident occurs because of technical factors or negligence that causes victims. This incident is a construction crime that was previously regulated in Article 43 of Law Number 18 of 1999 concerning Construction Services, but this criminal provision has been deleted in Law Number 2 of 2017. Separating data from various media sources, here are the cases of construction failures in Indonesia that claimed lives, including: (1) Al-Khoziny Boarding School Building, Sidoarjo (2025), with 63 people dead and hundreds of people injured; (2) Multipurpose Building in Bekasi (2022), the roof structure was unable to withstand the load, causing 4 deaths and 12 injuries; (3) SDN Gentong School Building, Pasuruan (2019), the roof collapsed, 1 teacher died, and 11 students were injured; (4) The Parking Building of Siloam Hospital, Jakarta (2021) collapsed due to the failure of the concrete structure, and 2 security officers died; (5) The Agam Suspension Bridge, West Sumatra (2020) collapsed, and 5 people died (Purnamasari, 2025).

Civil liability (compensation) does not decide criminal charges because construction accidents caused by negligence resulting in loss of life or death (Articles 359 and 360 of the Criminal Code) are common offenses (Syahputra, 2024). Compensation must be made through an expert appraiser, as regulated in Law Number 2 of 2017, concerning construction services or through a court decision.

The enforcement of criminal law for construction accidents mentioned above cannot be carried out using the construction services law but using the provisions of laws outside construction services, such as the building law and the Criminal Code (Rustamaji, 2021). Legal protection policies for victims of construction accidents must be emphasized in law enforcement to deter the deterrent effect on perpetrators of crimes and/or violations (Bawole, 2023). The legal protection consists of: (1) the application of strict sanctions to negligent construction project owners or contractors, ranging from fines,

revocation of business licenses, and corporate punishment in accordance with the provisions of the law) (Elfani et al., 2023); (2) victims of work accidents who are injured or disabled are also entitled to occupational health and safety protection; (3) compensation for both material and immaterial losses experienced as stipulated in Law Number 2 of 2017 concerning Construction Services; (4) Construction companies must implement standard operating procedures and K3 management systems to protect workers from the risk of work accidents. This aims not only to compensate the victims but also to prevent similar incidents in the future with the implementation of selective occupational safety (Maulidianti, 2021).

To overcome these disputes, a fair legal policy is needed as a form of support for the professional and sustainable law enforcement process, which is divided into technical and juridical policies, including:

a. Technical

1. Compliance with the construction safety management system

The implementation of a comprehensive construction work safety management system in accordance with the guidelines of government regulations and related ministries is the main factor in minimizing safety risks. This includes safety plans, standard work procedures, and readiness for emergency handling.

2. Identify occupational safety and health risks

The first step is to identify all potential occupational safety and health risks at the construction site. This risk analysis is carried out thoroughly and documented to be used as a basis for handling and preventing hazards during the project. Risks such as possible building collapses and falls from heights are the main focus of surveillance.

3. Worker training and education

All construction workers are required to receive training and education on safe work procedures, including the use of personal protective equipment such as helmets, safety shoes, and vests. The training also includes emergency evacuation and handling of fire situations to increase preparedness for hazards in the field (Nola, 2016).

4. Law enforcement policies involve investigating accidents first, then sanctions are carried out based on the seriousness of the violation, which aims to increase awareness and compliance of construction managers for the safety of workers and the community (Hattu, 2014).

b. Legal

1. Revision of Laws and Legislation

The Executive and Legislature need to take legislative initiatives, namely, revising or drafting new laws and regulations to close the legal vacuum. The National Legislation Program (Prolegnas) is one of the optimized mechanisms to update legal regulations systematically and adaptively to the development of society and legal needs (Arsil, 2015).

2. Restorative Justice and Discretion

Another policy is the use of the concept of restorative justice and the discretion of law enforcement officials in resolving criminal cases or cases that have not been strictly regulated. Discretion allows law enforcement officials to assess proportionately and mediate or settle out of court (Pujiyono et al., 2019).

3. Judicial discretion and judicial discovery

Judges as law enforcement officers have an obligation to interpret and find relevant laws in construction cases, even though the law has not explicitly regulated them. The 2017 Construction Services Law does not regulate criminal sanctions. Judges must be wise and understand the law, so that the perpetrators can still be punished with the provisions of related laws, such as Article 46 of Law Number 28 of 2002 concerning Buildings and Articles 359-360 of the Criminal Code. Thus, the perpetrator of a work accident can be held accountable for his actions and provide a deterrent effect (Nasir, 2017).

4. CONCLUSION

Law Number 2 of 2017 concerning Construction Services has removed criminal sanctions for construction failures and/or accidents. This reduces the essence of fair law enforcement, because without strict sanctions, it does not have a deterrent effect on violators. The elimination of criminal sanctions under the construction services law is a legal policy that adjusts the practical needs of the construction industry through the concept of administrative and civil justice approaches (problem-solving). Because the construction services law no longer regulates criminal sanctions, construction law enforcement must be carried out using laws outside construction services (the Criminal Code and the Building and Building Law).

Legal protection for victims of construction accidents is emphasized to law enforcement by providing severe sanctions against the perpetrators of crimes or violations, consisting of: the application of strict sanctions, occupational health and safety protection, compensation for victims, and the implementation of K3 standards. Policies to overcome construction accidents include technical, namely: building construction safety compliance, identifying K3 risks, training and training of workers, and in-depth investigations of construction accident cases. Juridical includes: revision of laws and regulations, restorative justice and discretion, as well as legal wisdom and discovery by judges.

Ethical Approval

Ethical approval was not required for this study

Informed Consent Statement

Not Applicable

Authors' Contributions

I and BF guide the writers in working on the manuscript. HH was responsible for collecting and organizing supporting legal materials, reviewing relevant jurisprudence, and drafting portions of the background and literature-based legal discussion. SP contributed to the analytical discussion on legal protection for construction accident victims and assisted in structuring the argumentation related to the legal vacuum and enforcement disparities. ELB assisted in refining the methodological approach, validating the normative juridical analysis, and reviewing the manuscript for coherence and legal accuracy. BL contributed to synthesizing findings, strengthening the policy implications section, and revising the manuscript to ensure clarity, academic quality, and compliance with journal standards.

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The data presented in this study are available on request from the corresponding author due to privacy reasons

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Notes on Contributors

Ismaidar

<https://orcid.org/0009-0003-4099-8549>

Ismaidar is a lecture of the Legal Discovery and Reasoning Course

Bambang Fitrianto

Bambang Fitrianto is a lecture of the Legal Discovery and Reasoning Course

Haris Habibi

Haris Habibi is a master of Law Students of Panca Budi Development University of Medan

Sagita Purnomo

<https://orcid.org/0009-0005-9601-7839>

Sagita Purnomo is a master of Law Students of Panca Budi Development University of Medan

Enda Leginta Barus

Enda Leginta Barus is a master of Law Students of Panca Budi Development University of Medan

Bima Lumbanbatu

Bima Lumbanbatu is a master of Law Students of Panca Budi Development University of Medan

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