

STRENGTHENING THE LAW ON THE CONSTRUCTION OF HIGH-RISE BUILDING THAT IS BENEFICIAL TO SUPPORT NATIONAL DEVELOPMENT

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Abstract

The number of high-rise buildings in the big cities of Indonesia is increasing along with land being more limited and its prices being very high. Most of these high-rise buildings are in Jakarta and some of them are facing the risk of building failure that may cause business and operation interruption. These buildings that have been erected and operating need to receive regular maintenance and supervision to ensure the building's condition and safety. Many building owners and managers do not conduct and plan maintenance and supervision properly causing these buildings of being at risk of fire and building structure – mechanical failure / damage. For this reason, rigorous regulations, and its enforcement in building construction and maintenance are needed to ensure that these buildings operate reliably and encourage building owners and facility manager to comply with them properly. Cultivated Penalty and strict sanctions need to be renewed and must be implemented properly by Government bodies and local authority. Building Audit Institute can be formed to assist the central government and local governments (Governor) in carrying out their functions to ensure the safety and security of buildings, including their users. Strengthening existing laws and regulations will greatly assist in law enforcement and certainty for owners, building managers and building users, which in turn will support national development.

Keywords: *Indonesian Law on Construction of High-rise Buildings, building maintenance*

1. INTRODUCTION

Strengthening building construction laws is clearly needed to support national development which is being actively advanced. Owners, building managers and building users will benefit greatly from the strengthening of building laws, especially in the operation of buildings that can meet the standards that have laid out. Juridically, the legal basis for construction law has been stipulated in Law No. 28 of 2002 concerning Buildings (hereinafter Law No. 28 of 2002), which was enacted on December 16, 2002. The elucidation of Law No. 28 of 2002 chapter 1 states that a building is a place for humans to perform their activities and plays a very strategic role in the formation of the realization and the identity of the builder. Building arrangement still refers to the respective regional spatial arrangement in accordance with the applicable local government legislation.

Amendments to Law No. 2 of 2017 concerning Consultant Services, the sanction and penalty do not generate awareness to consultant to perform in the satisfactory level¹. The sanction and penalty must lead consultant to work properly and avoid of mistake during service terms. Consultants can be more responsible for the services or construction of the buildings they make. Legal sanctions need to be included in this law to ensure the safety of the buildings it builds and operates within guided schedule and technical standards.

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¹ Indonesia, *Law Number 2 Year 2017 Concerning Consultant Services*, 2017.

In accordance with current provisions, each building must meet two requirements: administrative and technical requirements related to the function of the building, these two requirements must be met in every building. Administrative requirements include status of land rights which includes proof of land tenure/ownership such as: property rights, building use rights, cultivation rights, management rights and rights to use. While the technical requirements include building layout requirements covering designation, intensity, architecture, and environmental impact control and building reliability requirements covering safety, health, comfort, and convenience².

Even though there is a clear and comprehensive regulation, standard, and guideline to build and maintain the building, the problem of building fires and damage to buildings due to misuse of their functions every year continues to occur in Indonesia. The case of a building fire that occurred in the main building of the Attorney General's Office on August 22, 2020, is also a clear example, where early fire protection and prevention of fire propagation in the building do not function properly. The fire that spread and burned the building for 11 hours proved that the main prosecutor's office building was not equipped with good fire protection facilities³. This is a reminder that all buildings in Jakarta need to be audited to check their security and safety systems so that they all meet qualified safety and security standards.

The number of fatalities and physical as well as material losses should be avoided or at least minimized if the legal rules regarding buildings are complied with. The parties involved in the planning, construction, operation of the building and supervision must carry out their respective functions with full discipline and a sense of responsibility. In this regard, law enforcement for each violation must be carried out seriously, carefully, and strictly. Among them, law enforcement officers must be able to find out who is responsible for cases that occur and can use them as a reference to prevent similar cases that have the potential to arise in the future.

In addition to the problem of compliance with laws and regulations, the problem of buildings functions being transferred is also an issue for enforcement. In this case the function of the building changes from its original function. For example, the change in utilization from an office function to a warehouse and trade. This change in function makes the building load increase and the existing building structure is unable to support this additional load. The failure of the building structure to carry the load usually will not be obvious to the layman. Therefore, it takes someone who understands the structure of the building to check the condition of its strength. The case of the collapse of the hallway of the Jakarta Stock Exchange building, one of the most famous buildings and the center of the stock exchange in Indonesia, is an example of a shift in function of a building⁴. University of Indonesia construction expert Yuskar Lase said that the case of the JSE building hallway that collapsed on Monday afternoon, January 15, 2018, contained several possible causes.

² Article 7 paragraph (1) Law No. 28 of 2002 and Elucidation of Article 8 paragraph (1) letter a Law No. 28 of 2002

³ Ryana Aryadita Umasugi, "Kebakaran Besar Di Gedung Kejaksaan Agung RI, Mahfud MD: Ini Luar Biasa," *Kompas* (Jakarta, August 22, 2020), accessed July 21, 2021, <https://megapolitan.kompas.com/read/2020/08/22/21370551/kebakaran-besar-di-gedung-kejaksaan-agung-ri-mahfud-md-ini-luar-biasa>.

⁴ "Kemenaker Bergerak Sigap Dalam Peristiwa Runtuhnya Selasar Gedung BEI," *Kompas* (Jakarta, January 16, 2018), <https://biz.kompas.com/read/2018/01/16/144157828/kemenaker-bergerak-sigap-dalam-peristiwa-runtuhnya-selasar-gedung-bei>.

The first possibility is planning that was not careful enough, the second possibility is the construction of buildings that can also collapse due to the lack of careful execution or construction. Meanwhile, the third possibility relates to changes in the function of the building, which could also trigger the building to collapse⁵.

Furthermore, building maintenance must also be carried out to ensure the proper functioning of equipment. Good and routine maintenance can minimize the risks that can be caused by fire and water and gas leaks. Fire, gas, and water leak detectors must be able to function properly to ensure a building can be operated safely according to its designation. Moreover, the risk of accidents and disasters can be reduced to a minimum. It must be admitted, that so far, the supervision of building maintenance has not been well coordinated, for this reason, related agencies that are directly related to maintenance problems need to be formed to ensure that each building is properly maintained and is in a functional condition.

Consummation of such normative rules and technical standards is needed to meet the standard and government regulations. Currently with limited land availability, several construction projects have been built underground and Government does not have a detail regulation and its sanctions. Underground construction, such as MRT, tunnels, basements, have been built and will continue to be built in the future. This fact requires us to have building safety standards that are more reliable and better to prevent unexpected accidents. Safety standards for buildings below and above ground level will be different and need a more capable hazard detection and prevention system.

On technical administrative, a Building Permit (*Izin Mendirikan Bangunan* or IMB) is one of the main requirements in building construction. This IMB will be issued by the local government after considering input from the technical aspects of the relevant agencies. Regulation of the Minister of Public Works and Public Housing No. 5 of 2016 concerning Building Permits, which was enacted on February 22, 2016, provides guidelines on procedures for administering IMBs as well as legal sanctions for violators of this regulation⁶. Legal sanctions for violators of this regulation are thought to be rather light and only focus on administrative sanctions. Penalties for violations during the construction period are only in the form of a warning letter up to the maximum revocation of the IMB and suspension of construction development. The development process sometimes continues even though there are sanctions in the form of warnings and forced terminations in the field.

Although it had caused controversy, the Job Creation Act or *Ciptaker* was finally successfully enacted with the birth of Law Number No. 11 of 2020. The law was designed with the aim of reducing the time and cost of the land use permit process which often makes investors difficult, especially for Micro, Small and Medium Enterprises. To overcome this problem, the *Ciptaker* Law is expected to be a solution that benefits various parties because this Law can provide facilities to people who are really trying to create economic progress and added value in the land and property sector. On the other hand, this law is also expected to overcome and stop the bad practices of speculators and licensing brokers. This is answered

⁵ Yusar is a Lecturer University of Indonesia, Statement on Tempo Magazine. Edition 21 January 2018. p. 30

⁶ Minister for Public Works and Public Housing of the Republic of Indonesia, *Regulation of the Minister for Public Works and Public Housing Number 5 Year 2016 Concerning Building Permits*, 2016; Indonesia, *Government Regulation Number 36 Year 2005 Concerning Implementation of Law Number 28 Year 2002 Concerning Buildings*, 2005.

through a licensing mechanism that is transparent, accountable and guarantees legal certainty.

In terms of regulatory material, the *Ciptaker* Law also removes several articles within Law No. 28 of 2002 concerning Buildings. Article relates to License to Build a Building (IMB) has been deleted and replace with Building Approval (PGB). The purpose and objective of the abolition of these articles is to simplify permits that are felt to hinder development and investment in the construction and property sectors in Indonesia. Replacement of Building Permit (IMB) with Building Approval (PBG), is not intended to remove permits and technical aspects in construction development. The PBG will ease the licensing process, which is usually a lengthy process, and the central government will play more of a role in issuing this PBG, especially for construction projects that require large investments. The local government will act as a partner to the central government in making the Detailed Regional Spatial Plan which is the basis for the issuance of a Building Approval permit. The PBG permit application process is designed to be made online, so that the application process can be completed quickly. All technical and administrative aspects of PBG submissions can be submitted online so that intervention from various parties who are not interested can be avoided. Moreover, the time for issuing permits is also expected to be shorter.

The local government will play a role in the preparation of the Regional Spatial Detail Plan (RDTR – made in collaboration with the central government), the issuance of the Functional Eligibility Certificate (SLF) for buildings⁷ and the supervision of the operation of existing buildings in their area. For new buildings, after building construction is completed and ready for operation, the building owner can apply for this SLF permit to the local government. This SLF is valid for 5 years and can be extended for another 5 years. Furthermore, the extension can be carried out again with due regard to the requirement to fulfill the requirements for the feasibility of the building's function.

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Maintenance, consistent and periodic certification, and reliability tests are priorities in the awarding of a Building Functions Eligibility Certificate (SLF). To be certain, without this certificate the building basically cannot be operated and fully functional. The local government in this case has the authority to seal off the building and prosecute violators. In the issuance of this SLF, several related agencies were involved in the building design process (including the granting of initial permits and building permits), the building process (implementation of the project) and control at the utilization stage. The relevant agency apparatus must test whether this building and its machinery can still be categorized as

⁷ Indonesia, *Government Regulation Number 16 Year 2021 Concerning Implementation of Law Number 28 Year 2002 Concerning Buildings*, 2021., Chapter 1 Point 18.

“functionable” or “Not functionable”. Relevant agency officials, who are experts in the fields of Structural, Electrical Mechanics, Fire hazard prevention and safety (K3 – Occupational Safety and Health) must be formed to validate the Certificate of Eligibility for Functions

So far, the data held by the Fire and Rescue Service provides a very clear record of the condition of high-rise buildings in Jakarta. Of the total 897 high-rise buildings, only 617 units, or around 69%, meet the requirements of strong safety and fire protection⁸. This means that 31% of high-rise buildings in Jakarta are in danger of fire which can cause material and loss of life for people who work in these buildings. Building owners are faced with legal sanctions as stipulated under Article 46 of Law No. 28/2002. This article obliges the building owner to be responsible for the use of his own building and any violation that results in material (property) loss, an accident resulting in lifelong disability, or the loss of another person's life can be prosecuted with imprisonment of between three and five years and a fine of Rp. 10% - 20% of the value of the building.

The main critical issues relate to lack of control and building maintenance monitoring from local government. Some buildings operate and function without proper regular maintenance and scheduled repair program. Sanctions stated in the regulation do not make stakeholders obey the law, the local government fail to implement sanction and penalty to owner of the buildings.

Furthermore, Jakarta Regional Regulation No. 8 of 2008 concerning Prevention and Management of Fire Hazards, also stipulates sanctions for building owners who cannot meet the building safety standards that have been set. The provisions of Article 59 emphasize administrative sanctions which can be in the form of warnings to closing / prohibiting the use of the building entirely. Meanwhile, the provisions of Article 51 apply criminal sanctions for violators of the regulations with a maximum term of imprisonment of 3 months or a maximum fine of fifty million rupiah⁹.

In this paper, there are 2 issues relate to Indonesia building Laws will be highlighted and discussed. The first is why the implementation of current building law has not been well executed by local government, consultants, and building owners. And secondly is what the ideal legal system to develop compliance, awareness, and public participation in supporting the effective and adequate implementation of the law on high-rise building constructions.

2. RESEARCH METHODS

This research is normative legal research with a qualitative analysis that examines legal rules or regulations as a system related to a legal event¹⁰. This research was conducted with the aim of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be interpreted according to the law and focused on examining the legal concept of a criminal act which violates the comprehensive regulations or laws concerning buildings that are currently in effect. Normatively, this legal concept has

⁸ Subejo, “Data Report,” in *Fire Risk Management Seminar by Universitas Pelita Harapan Faculty of Science and Technology* (Jakarta, 2018).

⁹ Provincial Government of the Special Capital Region of Jakarta, *Regional Regulation of DKI Jakarta Number 8 Year 2008 Concerning Prevention and Management of Fire Hazard*, 2008.

¹⁰ Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris*, IV. (Yogyakarta: Pustaka Pelajar, 2017).

been regulated under the applicable law. However, the regulation still has many weaknesses, both in terms of its substance and in its application.

The legal issue encountered in this study is how to find the concept of an integral criminal policy in handling cases of violations of the law on high-rise buildings. In Law Number 8 of 2002 concerning high-rise Buildings, the handling and application of criminal sanctions for violators of this law is already regulated. However, in practice there have been disparities and discretion in judge decisions. There have also been conflicting prepositions in the law so that the aspects of certainty, justice, and the utility of the law in the case are disturbed.

The type of research used is normative law or literature, namely legal research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are arranged systematically, studied, then a conclusion is drawn in relation to the problem under the study¹¹.

3. ANALYSIS AND DISCUSSION

3.1. Theory of Law Enforcement – Lawrence M. Friedman

Lawrence M. Friedman said that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure, legal substance, and legal culture. The legal structure concerns the existing law enforcement officers, the legal substance includes statutory instruments and legal culture is a living law adopted in a society¹². The relationship between the three elements of the legal system is like a mechanical work. Legal structure can be likened to a machine, legal substance is what machines do and produce, while legal culture is anything or anyone who decides to turn on and turn off the machine and decides how the machine is used. When associated with the legal system in Indonesia, Friedman's theory can be used as a benchmark in measuring the law enforcement process in Indonesia. The police are part of the structure along with the organs of prosecutors, judges, advocates, and correctional institutions. The interaction between these legal servants determines the strength of the legal structure. However, the enforcement of the law is not only determined by the strength of the structure but is also related to the legal culture that exists in society. However, until now the three elements as stated by Friedman have not been implemented properly, especially in the legal structure and legal culture. For example, in the legal structure, the Regional Government which is expected to be the supervisor of the construction and operation of high-rise buildings, its own members are involved in providing documents that are not in accordance with the regulations and policies of their own Regional Government. Likewise, the prosecutors, until now there are still prosecutors who are not honest in solving cases.

The legal structure relates to institutions or law enforcement including their performance (implementation of the law) and a structural system that determines

¹¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Rajagrafindo Persada, 1995).

¹² Lawrence M. Friedman, *Introduction to American Law* (Jakarta: PT. Tatanusa, 2001)., page 7.

whether the law can be implemented properly. The legal structure based on Law No. 8 of 1981 includes starting from the Police, the Prosecutor's Office, the Court, and the Criminal Correction Body (*Lapas*). Weak mentality of law enforcement officer results in law enforcement not running properly. Many factors affect the weak mentality of law enforcement officers including weak understanding of religion, economics, recruitment processes that are not transparent and so on. In the application of the legal structure of Law No. 28 of 2002, there are several parties outside the police who are involved in enforcing the law. In the event of a building failure or a fire in a building, the regional urban planning service and the fire department will be involved in law enforcement efforts by providing the results of their investigation to the police. Based on the data provided by this agency, the Police can take further legal action, including prosecuting the parties involved in the failure or fire of this building.

In several cases of building failures in Jakarta, most of the cases do not fall under a continuous legal domain in court, although many of the causes are the negligence of the building owner or manager. There are no clear legal sanctions performed for building owners and managers in the case of the building collapse in Slipi - Jakarta and several high-rise building fires that occurred in Jakarta¹³. The local authority / government must perform a thorough study and research when these cases occur to determine the root cause of building failures. The Office of Supervision and Control of Buildings (P2B) should be able to give warnings and reprimands if discrepancies and irregularities are found in one building and at the same time can close all activities in that building.

If there is no detailed and clear written evidence, it is very difficult to hold the violators responsible for the building failure. It can be emphasized that law enforcement factors play an important role in the functioning of the law. If the regulations are sound, but the quality of law enforcement is low, then there will be problems. Likewise, if the regulations are poor while the quality of law enforcement is good, the possibility of problems arising is still open. Judging from the government regulations and regional regulations which are derived from Law No. 28 of 2002, it is clear enough to provide legal direction and certainty for the parties involved in the implementation of high-rise buildings. Indeed, there are several articles that need to be revised to clarify the obligations and rights of the parties involved, but the implementation of the law has not been implemented properly. The difference between accidents and negligence in building management must be clarified, if there is an accident it does not mean that the entire building will be damaged and not functioning. The fire at the Attorney General's Office proves that there is no good building safety factor in preventing the spread of fire throughout the building.

The legal structure is a pattern that shows how the law is carried out according to its formal provisions. This structure shows how the courts, lawmakers and legal entities and processes operate and are carried out. In relation to the law concerning buildings, law enforcers (investigators/police) need to understand building management techniques and the latest technologies that are currently developing rapidly because they

¹³ Emral Firdiansyah, "Runtuhnya Bangunan Gedung Mid-Rise Di Slipi Sebuah Kegagalan Fata," *Investor Daily* (Jakarta, January 7, 2020), accessed July 10, 2020, <https://investor.id/national/runtuhnya-bangunan-gedung-midrise-di-slipi-sebuah-kegagalan-fatal>.

are related to applicable standards and regulations. The P2B and fire services are authorized to examine the veracity of complaints or statements relating to criminal acts in buildings and to conduct examinations of parties who commit criminal acts. They can also ask for information and evidence from the parties in connection with a criminal act and conduct an examination of the bookkeeping, records and other documents relating to the crime committed. In their duties, they can report the results of their investigations to the Investigators of the State Police of the Republic of Indonesia. Once the investigation has been completed, they submit the results of their investigation to the Public Prosecutor through the Investigator of the State Police of the Republic of Indonesia keeping in mind the provisions of Article 107 of the Criminal Procedural Code.

Building law enforcement is related to the implementation of the law, which still has many weaknesses in its practice in the field, either due to the lack of skilled law enforcement officers or the public's lack of understanding about the implementation of high-rise buildings. Law enforcement officials who are directly related to buildings still do not understand about the application of legal sanctions so that the quality of law enforcement is not satisfactory even though there have been many building failures in the field.

Basically, the function of law as a "means of renewal of the community" is relatively still in accordance with the current development of national law, but it also needs to be equipped with bureaucratic empowerment that puts forward the concept of role models or leadership in law enforcement, so that the function of law as a means of reform can create harmonization between bureaucratic elements, and society. Buildings owned by the central and local governments should meet the applicable regulatory standards. In the case of fire at the Attorney General's Office, many regulations and standards were violated so this does not set a good example for building administrators in Indonesia. Insurance companies that cover high-rise buildings also do not play much role in helping law enforcement, police reports can be directly used as the basis for paying claims submitted. Investigations into building failures were not carried out by a team of experts so many aspects of accidents became the basis for claim payments.

The substance or content of the law as a reference in law enforcement has an important role as a guide or guide for law enforcers in carrying out their authority. This means that the weakness of the content of the law will result in ineffective law enforcement so that the objectives to be achieved are not met. Provisions on the basis for providing legal protection in the operation and utilization of high-rise buildings as stated in Article 37 of Law no. 28 of 2002 reads:

- 1) Building owner or users may use the building after the building has been declared to comply with conditions of proper function.
- 2) Building is declared to have complied with proper function conditions after fulfilling technical conditions, as set forth in Chapter IV of this law.
- 3) Periodic maintenance, handling and inspection must be performed so as to comply with conditions concerning proper functions.
- 4) In utilizing the building, owner and users have rights and obligations as governed in this law.

- 5) Procedure on how to maintain, take good care and inspect the building periodically as set forth in paragraph (3) hereof shall be further governed in a Government Regulation.

Building Functions Eligibility Certificate (SLF) is the basis for the operation and use of buildings, the rules regarding the Guidelines for Function-worthy Certificates are issued by the Ministry of Public Works through Regulation No. 25/PRT/M/2007 and the procedure for obtaining SLF is clearly stated in the regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia no. 27/PRT/M/2018 concerning Certificate of Feasibility of Building Functions¹⁴. However, many buildings that have not received SLF are still operated by building owners and users. There are no strict legal sanctions applied by law enforcement, the P2B service lacks resources to supervise and control existing buildings, the number of staff tasked with supervising and controlling is very minimal so it cannot carry out inspections for buildings around Jakarta¹⁵. The fire department only requires every year the building owner / user to report the maintenance activities of fire extinguishers and fire hazard mitigation simulations in the building. The fire department lacks the resources to exercise physical control over each existing building¹⁶.

The provisions of paragraph (3) clearly require building owners and managers to carry out maintenance, handling, and inspections on a regular basis to keep meeting the requirements for proper function. However, legal sanctions for violators are not clearly stated in this law and its derivative regulations. Sanctions only focus on issuing warning letters and sealing off buildings and which are often not strictly enforced. Rarely seen in the field of buildings that are permanently sealed and violators are prosecuted for not meeting the technical requirements that have been set.

There are obligations that must be fulfilled by building owners or users, Law No. 11 of 2020 which is a revision of Article 44 of Law No. 28 of 2002, explains that there are administrative sanctions that must be faced if they fail to fulfill their obligations which result in losses for other parties. Article 41 also expressly stipulates the rights and obligations of building owners and users, and for this reason, the Building Functions Eligibility Certificate must ensure that the data is correct during its validity period. Functional tests of mechanical-electrical equipment and building structures must be carried out regularly and this is the responsibility of building owners and users. Articles 46 and 47 explain in detail about criminal sanctions for violators who do not meet the provisions or due to negligence causing the building to be unfit for function¹⁷.

The provisions in Articles 46 and 47 are further regulated in Government Regulation No. 16 of 2021 concerning Implementation of Regulation of Law No. 28 of 2002 concerning Buildings. However, in this PP Building, it does not mention further

¹⁴ Minister for Public Works and Public Housing of the Republic of Indonesia, *Regulation of the Minister for Public Works and Public Housing Number 27/PRT/M/2018 Concerning Functional Eligibility Certificate for Buildings*, 2018.

¹⁵ Wahyu Kusumosusanto, "Kebijakan Dan Strategi Penyelenggaraan Bangunan Gedung," in *Buidling Maintenance Training Conducted by Direktorat Bina Penataan Bangunan*, 2017.

¹⁶ Deny Andrias, "MKKK: Lima Tahap Bangunan Gedung Untuk Mendapatkan SLF," *Dinas Pemadam Kebakaran & Penyelamatan Kota Baubau*, accessed July 19, 2021,

<https://damkar.baubaukota.go.id/index.php/652125/pengetahuan/pengetahuan-umum.html>.

¹⁷ Articles 41, 44, 46, and 47. Indonesia, *Law Number 28 Year 2002 Concerning Buildings*, 2002.

provisions regarding the procedure for imposing sanctions. Fitriani A. Sjarif, a member of the Governor's Team for the Acceleration of Development (TGUPP) for the Harmonization of Regulations, explained that basically the article remains binding and can be implemented, the order to impose sanctions already exists, the procedure becomes free authority for the authorized apparatus according to its interpretation¹⁸.

The procedure for maintenance and care has been stated in the Regulation of the Minister of Public Works No. 16/PRT/M/2010 concerning Technical Guidelines for Periodic Inspection of Buildings¹⁹, however, the sanctions for building owners and users who do not carry out building maintenance and maintenance are still not clearly stated in this regulation and regional regulations. Broadly speaking, the laws and regulations below have included articles that regulate legal sanctions for violators, indeed there are sanctions that are not explained in detail causing law enforcement to still be lacking, especially in areas negligence of building maintenance.

Legal culture is defined as its belief system, values, ideas, and assumptions. Legal culture refers, then to general cultural habits, ways of doing opinions and thinking towards the social power of law and in certain ways. In other words, whether the climate of social thought and social forces inevitably determines how the law is used, avoided, or abused. Legal culture concerns legal culture which is human attitudes (including the legal culture of law enforcement officers) towards the law and the legal system. No matter how well the legal structure has been arranged to carry out the stipulated legal rules and no matter how good the quality of the legal substance that is made, without the support of legal culture by the people involved in the system and society, law enforcement will not run effectively.

The cultural attitudes of the Indonesian people who themselves do not fully comprehend the Law on Buildings and additionally are not supported by adequate legal awareness, often misinterpret that legal protection and lawsuits for building users are not in line with local culture and customs. This kind of situation must be corrected and continue to be guided so that the culture of respecting the rights of building users can be enforced realistically. The owner and manager of the building must pay attention to the condition of the building and ensure that the operation of the building can provide a sense of security and comfort for all building users. This can be created if sanctions for violations due to negligence and carelessness can be applied properly and consistently.

Compliance and public awareness of building users to comply with existing regulations is still lacking, this can be seen from their indifference in paying attention to building maintenance problems. Many buildings have not received SLF and have not renewed their SLF, but they continue to carry out activities and transactions for buying and leasing the building. This causes building owners and users not to worry if the building has not received SLF. Existing data shows that there are still many buildings that have not received SLF but can still operate normally without any legal sanctions

¹⁸ Norman Edwin Elnizar, "Jerat Hukum Bagi Pemilik/Pengguna Bangunan Gedung Yang Sebabkan Kecelakaan," *Hukumonline.Com*, last modified 2018, accessed January 10, 2020, <https://m.hukumonline.com/berita/baca/lt5a5ebc0a6a558/jerat-hukum-bagi-pemilik-pengguna-bangunan-gedung-yang-sebabkan-kecelakaan/?page=2>.

¹⁹ Minister for Public Works and Public Housing of the Republic of Indonesia, *Regulation of the Minister for Public Works Number 16/PRT/M/2010 Concerning Technical Guidelines for Periodic Inspection of Buildings*, 2010.

that educate and encourage building owners and users to meet these main requirements. *Appersi* (Association of Indonesian Flats Residents Association) reports that there are still many apartments and flats that violate the SLF but have been traded and still function²⁰. Building users still feel comfortable and safe working, living and doing business in buildings that most likely do not meet qualified building safety standards.

In society, it is rare that SLF is required in building rental and purchase transactions (strata title), even building purchase and rental transactions are carried out while the building is still in the construction stage and without including the building SLF requirement in the purchase contract. Many buildings are operated and occupied by the community even though the SLF requirements cannot be met by the building owner (Developer), so accidents or disasters can happen at any time. The local government as the party that is expected to be able to enforce the law does not appear to be carrying out strict sanctions on the grounds that the building owner is entering and managing documents to complete his SLF.

3.2. Weakness in Regulations in the Field of Buildings and Construction

Law No. 28 of 2002 concerning Buildings has been laid out in government regulation No. 16 of 2021 and detailed by the Jakarta Regional Government through Regional Government Regulation No. 7 of 2010. Several legal issues in the regulation of building and construction services lie within the Regional Government Regulation No. 7 of 2010 of Government Regulation no. 16 of 2021 concerning the Implementation of Law No. 28 of 2002 concerning Buildings. Several issues in the form of the relationship between government and regional regulations are not in line, which are described as follows:

- 1) Article 10 of the Regional Regulation on the classification of buildings does not mention the specific classification of buildings, but the Government Regulation states that the regulation regarding this matter is regulated in a Ministerial Regulation, and there is no ministerial regulation that explains this.
- 2) Regarding the ownership status of the building under Article 13 of the Regional Regulation do not align with the contents of Article 303 of the Government Regulation, therefore the articles of the Regional Regulation must be corrected immediately.
- 3) Article 26 of the Regional Regulation on Buildings regulates the architectural requirements of a building, regarding the requirements for the appearance of the building which should not be required, however the Government Regulation does not regulate the appearance of the building.
- 4) Under Article 27 of the Regional Regulation, the Governor may require the appearance of buildings with certain architectural characteristics based on the area, but the Government Regulation does not stipulate this requirement.

²⁰ Puput Tripeni Juniman, "Appersi: Hampir Seluruh Apartemen Melanggar SLF," *CNN Indonesia*, October 11, 2016, accessed January 19, 2020, <https://www.cnnindonesia.com/nasional/20161009222937-20-164349/appersi-hampir-seluruh-apartemen-melanggar-slf>.

- 5) Under Article 57 of the Regional Regulation, all buildings must be equipped with protection against fire hazards, except for simple residential houses. This means that all buildings must be equipped with fire protection equipment.

Article 46 of Law no. 28 of 2002 mentions criminal sanctions. Government Regulation No. 16 of 2021 does not stipulate the existence of criminal sanctions, while Regional Regulation No. 7 of 2010 regulates criminal sanctions. The Criminal Sanction under Article 46 regulates the limit on the restricted fine (*ultimum remedium*), namely a maximum imprisonment of 3 years, 4 years, 5 years in accordance with the risks arising from acts of negligence in the implementation of building construction, as well as fines of a maximum 10%, 15% and 20% of the building value.

The penalty of confinement in Regional Regulation No. 7 of 2010, a maximum of 3 months and a maximum fine of Rp. 50,000,000, (fifty million rupiah) for violations related to Article 24 Paragraph (1), Article 42 Paragraph (1), Article 51, Article 64, Article 137 Paragraph (1), Article 144 Paragraph (2), Article 150, Article 151, Article 152, Article 162 Paragraph (1), Article 189 Paragraph (1), Article 198 Paragraph (1), Article 195, Article 206 Paragraph (2), Article 219, Article 220, Article 253 Paragraph (1), Article 255 Paragraph (1), and Article 259 Paragraph (1).

Meanwhile, the maximum imprisonment is 6 months and a maximum fine of Rp. 500,000,000 for violations related to Article 13 Paragraph (3), Article 15 Paragraph (1), Article 124 Paragraph (3), Article 183 Paragraph (1), Article 186 Paragraph (4), Article 188 Paragraph (1), Article 191, Article 192, Article 195, Article 231 Paragraph (1), Article 237 Paragraph (1), and Article 245 Paragraph (1).

Therefore, in the provision of criminal sanctions, it is necessary to see further why in Government Regulation No. 16 of 2021 is not regulated while the criminal provisions are regulated in Regional Regulations No. 7 Year 2010 The regulation on the use of buildings in Law No. 28 of 2002 is not regulated in sufficient detail regarding sanctions for owners and managers if they do not carry out building maintenance. Only DKI Regional Regulation No. 7 of 2010 includes sanctions for this violation, but the sanctions do not have a positive impact on building owners, managers and users in Jakarta which operates its buildings without SLF.

The application of sanctions which should be carried out by the DKI Regional Government cannot be carried out optimally because of the limited number of personnel, it is impossible with the existing staff to inspect and supervise all buildings in Jakarta. The SLF given to buildings is valid for 5 years and should be at least every year the maintenance of existing buildings is monitored and checked for reliability. The owner should be able to request building inspection services from a third party registered with a construction service agency accredited by the government to carry out routine building inspections and report the results of the inspection to the local government as evidence of the maintenance and upkeep of the building. If there is a violation, the service provider who submits the report may be subject to severe sanctions.

One of the weaknesses in Law No. 2 of 2017 is concerning the sanctions in the event of a building failure. As for this Law, building failure is given the following meaning: a condition of the collapse of the building and/or the non-functioning of the

building after the final delivery of the Construction Services. Thus, the condition for building failure which is included in the scope of building failure in the Construction Services Law is the failure of the building that has been submitted to the Service User, so that it is not included in the collapse of the building before the final delivery of the results. For this reason, when the final delivery of the results of construction services is crucial, which in practice is proven by written evidence as stipulated in the construction work contract.

The next question is who bears responsibility in the event of a building failure. In the construction work contract as the legal basis for the implementation of construction services, there are 2 (two) parties who are bound, namely the Service Provider and the Service User. Under the 2017 Construction Services Law, Service Providers are responsible in the event of a building failure caused by the implementation of construction services that do not meet the security, safety, health and sustainability standards stipulated in the 2017 Construction Services Law for building failures that occur after the expiration of the service provider's coverage period for building failures. The coverage period for building failure which is the responsibility of the service provider is stated in the construction work contract which is adjusted to the construction age plan. Even though the planned construction age is more than 10 (ten) years, the service provider is only responsible for the failure of the building for a maximum of 10 (ten) years from the date of final delivery of construction services. Here the liability of the service provider is limited to the duration of the guarantee stated in the agreed employment contract. If the building failure occurs after the work contract guarantee ends, the service provider cannot be held accountable again. This becomes a problem if the building failure occurs after 10 years, the full responsibility lies with the building owner and manager. Whereas the failure of the building can occur due to the fault of the service provider in the implementation of construction or building design, and the damage occurs after the guarantee period of the building ends.

The implementation of construction services is a complex matter and involves many interests, therefore in the event of a building failure it is necessary to have a party capable of providing an objective and professional view regarding the responsibility for the failure of the building. If the failure of the building is caused by the service provider, this must be considered carefully the main cause of the failure of this building, considering that service providers in construction services can involve more than one function because the expertise of the service providers is different from one another. Therefore, to determine the cause of a building failure and the party responsible for the failure, this law appoints an expert appraiser to perform this function.

The articles in this law do not include criminal sanctions for service providers involved in building failures. Article 63 only mentions that the service provider is obliged to replace or repair the Building Failure as intended which is caused by the fault of the Service Provider. Article 67 states that service providers and/or service users are obliged to provide compensation in the event of a building failure. Article 98 explains that service providers who do not fulfill the obligation to replace or repair building failures may be subject to administrative sanctions.

With the abolition of criminal sanctions for construction service actors, the 2017 Construction Services Law places the relationship between service users and construction service providers in the realm of civil law which is in accordance with the basic legal relationship between the parties, namely the construction work contract. Actually, under the 1999 construction services law, criminal sanctions were stated for service providers who fail to provide their services which lead to building failures. The criminal sanction can be in the form of a fine of 10% of the contract value or a maximum sentence of 5 years in prison.

Even though Law No. 2 of 2017 only regulates non-criminal sanctions, the determination of who is responsible can continue to the imposition of a criminal article when it causes a third civil or fatal victim to cause material losses, is stated under Law No. 28 of 2002. The enforcement of criminal and civil law can involve elements of the police and the prosecutor's office. However, according to Article 60 of Law No. 2 of 2017 simultaneously or before the police element enters to investigate this incident, it is necessary to first determine the expert appraiser appointed by the Minister of PUPR.

The expert appraiser oversees investigating the events that occurred, to determine whether they are categorized as building failures or not, and to determine who can be held accountable. The expert appraiser involved must have a certificate of competence and expertise issued by the official institution in Indonesia, and have sufficient experience in investigating a building failure, and be registered as an expert appraiser with the government.

Within the span of 30 days, the Minister must appoint an expert appraiser since receiving the report on the event of a building failure. Expert appraisers must have done and reported their work within 90 days at the latest. In the process of assessment and investigation, the expert appraiser must be independent and objective in determining the responsible party. The results of the determination by the expert appraiser will be one of the clues or evidence when the event enters the criminal or civil realm.

Several work accidents in the implementation of construction and recent building failures should be thoroughly investigated with regulated legal. This is to build public confidence that the current infrastructure and building development process does not only meet the aspects of speed and timeliness, but also meets the aspects of building safety and sustainability.

The weakness in this investigation and assessment is in determining who is responsible in the event of a building failure. For example, in the process of building fires, it is very difficult to determine who is at fault in managing the building, whether there is an element of negligence or intent in it, even very basic questions such as: why is there not enough budget to maintain the building? Why is building maintenance not being carried out? Why are there no periodic building maintenance reports? Why are the results of the fire department audit not followed up? In the end there was no good settlement, and the case was forgotten.

Preventive actions should be given priority in the application of this building law. It is unfair for the victims to only receive compensation due to the failure of the building that occurred, if in fact this failure event could have been prevented if the owner and building manager carried out their obligations to maintain the building.

So far, there have been regulations regarding excellent standards and rules for maintaining and maintaining buildings, but the existence of these standards and rules does not seem to be able to be applied optimally if the existing sanctions are not coercive and educate building owners, managers and users to obey them. The sanctions contained in Law No. 28 of 2002, its implementing regulations and the existing regional regulations are felt to be too light, so that there are still many violations that occur. The local government as well as the party that can provide guidance and application of the law, cannot perform its function properly due to a lack of staff and poor details of sanctions.

It is unexpected if the state budget and private sector investment are used for construction sector development activities, both in infrastructure or high-rise buildings, the value of benefits and sustainability are not proportional to the frequent occurrence of accidents or building failures. In other words, do not let the series of accidents in the last decade give you a conclusion or perception that the construction was carried out not in accordance with the standards or procedures that have been regulated. Law enforcement on recent building failures can be an entry point in realizing the objectives of Law No. 28 of 2002 and Law No. 2 of 2017 to improve the governance of safe, quality, and accountable construction of infrastructure and buildings.

3.3. Strengthening Policies and Sanctions

As a means of development, the law functions to provide policy guidance in the implementation of the life of the nation and state. The law also has the aim of protecting people's lives through the order of norms with dimensions of justice, utility, and legal certainty. The purpose of such a law is carried out in various ways. Among other things, actively creating conditions for people's lives that are orderly, regulated, safe and peaceful. Along with that, the law also works in preventing violations and abuse of authority. All these lead to order, and justice for the whole society.

The Law No. 28 of 2002 concerning Buildings and Law No. 2 of 2017 concerning Construction Services require reorientation and strengthening of policies in the fields of security, safety, health and construction sustainability, especially high-rise buildings that have been built or are currently being built. Policy reorientation is needed to ensure the conception of legal protection for building owners, managers, and users. The redirection is to clarify the rights, obligations, and responsibilities of the owners, managers, and users of the building. Related to that is the participation of the community in supervision which still needs to be encouraged. In this case, the role of local governments in supervision is still not fully reflected in operational technical regulations through Regional Regulations or Governor Regulations. These legal instruments have not been able to guarantee the realization of legal protection as expected. For this reason, amendments to the law are a necessity and the provision of operational technical rules is a logical consequence in the context of realizing effective legal protection for owners, managers, and users of buildings and society in general.

Specifically, the strengthening of legal sanctions is required, both in terms of normative regulation and implementation. Both are related to the aspect of legal certainty, as one of the legal objectives to be realized in the legal regulation of high-rise

construction in Indonesia. In the perspective of legal substance, what needs to be imposed are regulatory norms regarding accident prevention in the process of building high-rise buildings and negligence which must be minimized, including in building management in accordance with the standards of suitability for use. System-wise, policy strengthening also addresses the need to establish a building auditing institution to audit the construction and management of high-rise buildings in a transparent, credible, and accountable manner. The position, duties, and functions, as well as the authority of this building audit institution still need to be regulated firmly and clearly.

Furthermore, what is also important to be strengthened in the regulatory norms is the regulation of criminal sanctions. These provisions serve as guidelines for the implementation of law enforcement in the field of buildings and construction services, in accordance with the Theory of the Purpose of Sentencing and is based on the Principles of Dignified Justice. Dignified Justice provides guidelines for resolving legal problems that occur by considering the root causes, to restore a balance between the rights and obligations of owners, managers, and users of buildings as well as the wider community.

4. CONCLUSION

The implementation of current building Law in Indonesia is not well implemented, stakeholders are still looking for the loophole in avoiding their duties and obligation to maintain and control the existing buildings. It is necessary to make amendments to Law No. 28 of 2002 concerning Buildings, especially those that regulate in detail the legal sanctions for violators of the norms of the law. In the amendment, the role of local governments must be clearly stated, so that the application of sanctions and law enforcement can be carried out properly. Amendments also need to be made to Law No. 2 of 2017 concerning Consultant Services, the sanction and penalty do not generate awareness to consultant to perform in the satisfactory level, so that consultants can be more responsible for the services or construction of the buildings they make. Legal sanctions need to be included in this law to ensure the safety of the buildings it builds and operates. In this Law on Construction Services, it is necessary to regulate associations (organizations) that can provide certificates of expertise for companies or individuals, so that their expertise can be guaranteed. The government must be able to regulate the credibility of the association so that it can truly provide accountability for the certificate it provides.

Amendments to these two laws need to be made to ensure existing buildings operate according to good safety and comfort standards. The Functional Eligibility Certificate must be used as a tool to control the operation of the building. For this reason, periodic audits need to be carried out to ensure the proper functioning of this building. The legal sanctions contained in each of these laws must be developed to provide a sense of justice for the implementation and management of buildings in Indonesia. After all, Indonesian law is built based on the philosophy and noble values of a nation that is believed to be true. The concept of justice in this law must truly reflect the two precepts of Pancasila, namely just and civilized humanity, and social justice. Strict sanctions should be applied to prevent building failures. Within the framework of this law enforcement, local governments must play a greater role in conducting periodic inspections of each existing high-rise building. Local

governments can work with consultants or associations to conduct building audits to ensure that all buildings have adequate fire/building failure detection. Provisions regarding the number of fines also need to be adjusted and implemented properly so that they can provide a deterrent effect for violators.

The ideal legal system to develop compliance, awareness, and public participation in supporting the effective and adequate implementation of the law on high-rise building constructions, the Government needs to establish a Building Audit Agency to be able to review the condition of existing buildings, as well as provide technical recommendations for the maintenance and repair of the building. The technical recommendations given must be used as a basis for applying sanctions for building operators who fail to provide suitable buildings. This audit obligation can be included in a Regional Regulation to stipulate that every building in the area is monitored regularly / periodically to ensure that maintenance and repair activities are carried out properly.

The Building Audit Institute can be formed from a Professional Expert Team (TPA), a Technical Assessment Team (TPT), and a Building Expert Team (TABG) which are permanently formed by the Regional Government/Governor. This Building Audit Institute can be formed to assist the central government and local governments (Governor) in carrying out their functions to ensure the safety and security of buildings, including their users.

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