

# CRIMINAL POLICY IN THE IMPLEMENTATION OF CONSTRUCTION SERVICES IN INDONESIA: AN ANALYSIS OF LAW NUMBER 18 OF 1999

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DOI: [10.5281/zenodo.12165623](https://doi.org/10.5281/zenodo.12165623)

## Abstract

This research analyses criminal policy in implementing construction services in Indonesia, focusing on Law Number 18 of 1999 concerning Construction Services. The increase in construction companies has yet to be accompanied by an improvement in qualifications and performance, leading to a mismatch between expectations and the results of construction work. This study employs a normative juridical approach with a descriptive-analytical method. The research findings indicate that the criminal policy of the Construction Services Law involves sanctions for planning, execution, and supervision of construction work that does not comply with the provisions. These criminal provisions are considered adequate in preventing violations of legal norms, providing a preventive effect against criminal actions. Research suggestions include the need for effective coordination between law enforcement and parties involved in construction services to prevent technical violations that may lead to construction failures. Therefore, this research contributes to a better understanding of the role of criminal policy in enhancing the implementation of construction services in Indonesia.

**Keywords:** Criminal Law Policy, Construction Services, Criminal Law Prevention, Law Enforcement Coordination.

## INTRODUCTION

The construction services sector is currently in high demand among individuals at different levels of society, as indicated by the growing number of enterprises involved (Pheng & Hou, 2019). Nevertheless, the proliferation of these organisations has yet to be paralleled by an enhancement in their qualifications and performance. This is seen in the failure to meet expectations on the quality of goods, timely implementation, and efficient utilisation of human resources, capital, and technology in the supply of construction services (Aziz & Hafez, 2013).

This circumstance emerges due to a need for more alignment between the business requirements and the necessary experience and abilities required to achieve professional reliability. Nationally, construction service organisations face challenges in effectively penetrating the market for high-tech construction tasks due to their existing level of credentials and performance. There is a need to improve legal knowledge in the execution of construction work, which includes ensuring that service consumers and service providers comply with their obligations and adhere to legislation regarding safety, health, and environmental concerns. Understanding the construction of high-quality structures that perform as intended is crucial (Osei-Asibey et al., 2021).

However, there is a crucial need to enhance public awareness regarding the advantages and importance of construction services to facilitate the efficient execution of building projects. In order to fully utilise the national capacity in providing construction services, Law Number 18 of 1999 on Construction Services has

established criminal regulations. The criminal legal policy described in this statute is a logical attempt by the state to address crimes related to building services through criminal law measures.

According to Barda Nawawi Arief (1996), the endeavour and strategy to establish effective criminal legislation are fundamentally intertwined to prevent crime. Hence, criminal law policy constitutes an integral component of criminal policy. Addressing crime through criminal law is a crucial aspect of law enforcement, specifically focused on enforcing criminal laws.

After considering the background information on construction services, the author desires to investigate criminal law policy within the industry. The research aims to determine the criminal law policy specified in the Construction Services Law and assess the extent to which the criminal provisions established in this statute are successfully enforced.

## RESEARCH METHODS

This research adopts the normative juridical approach, known as a legal research method. In conducting the research, the applied research type is descriptive analysis, providing a profound understanding of the core issues under examination. The main data sources come from various primary, secondary, and tertiary legal materials, including Law Number 18 of 1999 concerning Construction Services.

Additionally, relevant literature related to the research object is integral to the secondary data sources. The Library Research approach serves as the foundation for the study, where data collection is obtained through a literature review, encompassing literary books, documents, and previous research results related to the researched topic.

The literature study method is employed to detail the required information during the data collection process. The presentation of data is done in the form of descriptive-systematic explanations, providing a comprehensive overview of the research findings. Furthermore, data analysis is carried out in a normative-qualitative manner, making this research not solely reliant on numbers and statistics but also exploring qualitative aspects within a normative framework. This approach enriches the understanding of the issues examined in the legal context, enhancing insights into the problems addressed in this research.

### **Criminal Law Policy in the Construction Services Law**

According to Barda Nawawi Arief (2021), there is ongoing discourse at national and international levels regarding construction and law enforcement matters. These disputes continue as long as we recognise the presence of the legal system and view law as a method for governing and resolving societal problems. In the present era of reform, challenges and intense examination are being directed towards “legal authority” and “clean and authoritative governance”.

The core of criminal law policy is around the regulation, allocation, and restriction of power, encompassing the authority of ordinary individuals to act or conduct themselves within society and the power of authorities or law enforcement agents. From a criminal law standpoint, the core issue extends beyond the realm of criminal law itself and resides primarily within the domain of constitutional law.

The criminal law policy outlined in the Construction Services Law (Law Number: 18 of 1999 concerning Construction Services) is defined and regulated in Article 1 of the Construction Services Law. This article covers various aspects, including Construction Services, Construction Work, Service Users, Construction Work Contracts, Building Failures, Service Providers, Construction Services Forums, Registration, Construction Planning, Construction Implementation, and Construction Supervision.

Regarding Article 1 of Law Number 18 on Construction Services, construction services encompass planning, execution, and advisory services for construction projects. Construction work involves a range of operations in architecture, civil engineering, mechanical engineering, electrical engineering, and environmental engineering, as well as its associated components, to create a building or other physical structure. Building failure refers to when, following its delivery to the service user, the building experiences partial or complete failure, failing to match the contract specifications or deviating due to faults made by either the service provider or the service user.

Construction planning requires the expertise of individuals or organisations skilled in creating detailed building plans and other physical representations of construction projects. Construction implementation pertains to individuals or entities recognised as professionals in construction services who can transform planning into tangible constructions. Construction supervision involves individuals or institutions with expertise in overseeing construction projects, ensuring effective management and execution from start to finish.

The fundamental principles and regulations embraced by the government in its duty to uphold the law primarily focus on forbidding illegal actions and inflicting punishment against those who transgress such prohibitions (Alfitri, 2021). The endeavour and strategies to establish efficient criminal legislation are intrinsically connected to combating criminal activity. Put, criminal law policy refers to preventing crime by using criminal law, as seen from the standpoint of criminal policy.

Barda Nawawi Arief states that the key aspects of criminal law policy are identifying which actions should be classified as illegal and the appropriate penalties to be imposed on the offender.

Examining these core matters is inseparable from the comprehensive understanding of national development policy. The resolution of these problems should be focused on attaining the particular objectives of the established social-political agenda. Therefore, it is imperative to implement a policy-oriented approach in criminal law policy, which encompasses addressing the core above challenges and fostering the overall development of law.

The provisions of criminal law in the Construction Services Law (Law Number 18 of 1999 concerning Construction Services) can be summarised as follows about the two major issues of criminal law policy identified by Barda Nawawi Arief (Arief): Engaging in construction work that fails to fulfil technical specifications and leads to construction failures or building defects is subject to penalties of up to 5 years of imprisonment or a fine of 10% of the contract value (as stated in Article 43, paragraph 1). Engaging in construction work that deviates from technical specifications and leads to construction failures is subject to penalties of up to 5 years of imprisonment or a fine of 5% of the contract value (Article 43, paragraph 2).

Intentionally overseeing construction work while permitting others to stray from technical specifications and resulting in construction failures or building defects is subject to a maximum penalty of 5 years of imprisonment or an acceptable equivalent to 10% of the contract value (as stated in Article 43, paragraph 3).

Article 41 highlights that those responsible for coordinating construction activities may be subject to administrative sanctions and criminal repercussions for any breaches of this legislation.

In order to establish a shared comprehension of construction failures, it is essential to acknowledge that the terminology may vary across different professions. As per Article 1 point 6 of Law No. 18 of 1999 on Construction Services, building failure refers to the state of a building that, after being delivered by the service provider to the service user, becomes wholly or partially non-functional and fails to meet the requirements specified in the work contract or its intended use, due to mistakes made by either the service provider or the service user. According to Article 6, the category of construction services encompasses architectural, civil, mechanical, and environmental work, each with distinctiveness.

An effective beginning measure to reduce incidences of structural breakdown is to identify their causes. Gaining insight into these issues enables more effective anticipation for future construction projects to prevent comparable incidents. Engineers can assess the magnitude of potential hazards, and if the level of risk is deemed excessive, the construction project may be subject to reevaluation.

Several reasons might cause early damage or failure in building structures. Hazardous site selection: Regions susceptible to seismic activity, inundation, or precarious slopes, as well as areas with unstable or expanding soil characteristics. Nevertheless, if these hazards can be precisely detected through specialised investigations (resulting in extra expenses) and carefully evaluated, they may be relatively easy. Ambiguous project specifications: Inadequate communication between the owner and the project implementer might lead to a misalignment between the owner's expectations and the initial project requirements.

For instance, it may be necessary to add columns for structural reasons in cases with an open area without columns. Although architects may not have any objections, the owner, who is funding the project, may raise objections only after the project has been completed.

Planning errors may occur as a result of incomplete drawings and specifications, the choice of a structurally weak system or details that are susceptible to long-term damage (such as steel details that collect rainwater and corrode), or due to planners lacking the necessary competence (only capable of operating engineering computer programmes and accepting results without identifying errors), etc.

Implementation errors include accidents during excavation, incorrect utilisation of equipment, misalignment of implementation sequence or method with planning, or deliberate alteration of specifications to achieve unjustifiable advantages. Inferior materials: Although the tested material samples fulfil the required technical standards, unforeseen faults may still occur. These problems may only become apparent after a failure, making it difficult to determine whether they are due to planning or execution errors.

Errors caused by improper use: Improper utilisation of live loads, such as repurposing a dwelling as a storage facility, resulting in excessive live loads. Additionally, it may arise due to inadequate maintenance, such as impaired protective coatings (paint) on steel structures, which can cause corrosion.

Furthermore, alongside the variables above, it is imperative to take into account new contributing factors arising from the swift evolution of global circumstances, precisely unforeseen burdens such as natural calamities, terrorist attacks, and acts of sabotage. While it may not be cost-effective to design structures that can withstand unforeseen pressures, it is crucial to prioritise minimising the number of casualties caused by the resultant damage.

a. The criminal penalties specified in the criminal offences under Law Number: 18 Year 1999 regarding Construction Services: Parman Soeparman presented a paper at the National Seminar on Reforming the Legal System in Combating Judicial Mafia at Diponegoro University, Semarang, on March 6, 1999. The paper focused on developing and improving judicial institutions to enhance the image and authority of judicial power. Parman Soeparman asserted that the Rule of Law necessitates that all actions of state administration, including those of the government and society members, must be grounded in legal principles to safeguard the well-being of the community, nation, and state. Implementing and enforcing the Rule of Law in the legal field is vital. The law is rendered meaningless and ineffective if it does not receive adequate attention during its execution.

According to the criminal regulations outlined in Law Number: 18 Year 1999 about Construction Services, the legislature imposes specific penalties for criminal crimes committed during construction work. These penalties include imprisonment and fines, which can be further specified as follows: The commission of criminal acts during the execution of building work, as stated in Article 43 paragraph (1), has a maximum punishment of 5 (five) years of imprisonment or a fine amounting to 10% (ten per cent) of the contract value.

Article 43, paragraph (2), specifies that engaging in criminal activities during the execution of construction work can result in a maximum punishment of 5 years of imprisonment or an acceptable equivalent to 5% of the contract value.

According to Article 43, paragraph (3), engaging in criminal activities during the execution of construction work carries a potential punishment of up to 5 years of imprisonment or a fine amounting to 10% of the contract value.

The criminal provisions about construction services outlined in Article 43 of Law Number 18 Year 1999 indicate that the criminal crimes related to the execution of construction services follow a cumulative-alternative system. This information can be ascertained due to the collective imposition of sanctions under the Construction Services Law, including jail and fines. Put, incarceration can be imposed concurrently with a fine, or it can be imposed on its own, or only a fine can be imposed.

Under the Indonesian Criminal Code, multiple primary punishments for a single criminal crime in a cumulative-alternative manner are prohibited. This is evident from the overarching provisions of the Criminal Code, which demonstrate that these sanctions are inconsistent with the criminal deterrence framework outlined in the Criminal Code. According to Article 10 of the Criminal Code, which pertains to various

criminal sanctions, imprisonment and fines are classified as primary forms of punishment (Hanif et al., 2021).

Therefore, the criminal provisions outlined in Law Number 18 Year 1999 regarding Construction Services incorporate a criminal provision that diverges from the Criminal Code. This is due to the inclusion of multiple primary penalties for a single criminal act that has been threatened. Under the criminal provisions outlined in the Law on Construction Services, judges have the authority to impose penalties, including imprisonment and fines, jointly.

Regarding the criminal provisions outlined in the Law on Construction Services, The Criminal Code does not acknowledge the combination of primary penalties imposed for a particular criminal offence, particularly imprisonment and fines. Indonesian criminal law recognises the accumulation of bare punishments for a given crime (Hutabarat, 2018).

Regarding imposing multiple penalties for a single criminal act, R. Soesilo explains that Article 10 of the Criminal Code classifies criminal sanctions into two categories: primary punishment and supplementary punishment. Only one primary punishment can be imposed for each crime or offence; applying multiple primary punishments cumulatively is not permissible. Furthermore, in specific circumstances outlined by legislation, a supplementary penalty may be enforced alongside the primary sentence. A supplementary punishment complements the primary penalty and cannot be inflicted in isolation.

Barda Nawawi Arief contends that endeavours to avoid crime are essential to safeguarding society and advancing social well-being. He asserts that the primary objective of criminal policy is to safeguard society to attain prosperity.

Sudarto (1977) states that criminal law establishes regulations to address misconduct, with the anticipation that criminal penalties serve as a deterrent against breaches of legal standards. This influence is present when specific infractions are punished with criminal consequences and when these sanctions are already prescribed in the legal norms.

Simply put, the criminal penalties outlined in Law Number 18 Year 1999 regarding Construction Services differ from the Indonesian Criminal Code using a cumulative-alternative approach. Allowing judges to impose both imprisonment and fines together goes against the concept stated in the Criminal Code, which forbids the imposition of several primary punishments for a single criminal act. The conversation also underscores the need for building failures' origins and the necessity for efficient steps to avert them, emphasising the legal ramifications of construction-related illegal conduct.

### **The criminal provisions stipulated in Law Number 18 of 1999 concerning Construction Services**

The General Explanation of Law Number 18 of 1999 regarding Construction Services states that the growing societal demands for expanded coverage, improved quality of outcomes, and organised construction processes have resulted in heightened complexity in construction work. Consequently, there is a need for increased efficiency, orderly execution, and enhanced quality in construction projects. Furthermore, the global economic system has enforced a growing requirement for extensive international economic collaboration, offering broader national building

services prospects. These events present difficulties for national construction services in improving their performance to compete effectively and adapt to the changing conditions of both domestic and international markets.

In order to maximise the utilisation of the country's capabilities in construction projects, both service consumers and providers need to prioritise the utilisation of local or domestic services and goods, as legislation about small enterprises requires. In order to provide construction services, as described earlier, it is necessary to have a well-organised, focused, coordinated, and all-encompassing system of regulation in the form of legislation. Crime prevention measures are essential for protecting society and promoting social well-being, that the primary objective of criminal policy is to safeguard society to attain prosperity.

Criminal law establishes regulations to address unlawful behaviour and deter transgressions of legal standards through criminal penalties. This influence is present not only when criminal penalties are imposed for specific violations but also when they are previously specified in legal laws (Weisberg, 2003).

The Law on Construction Services governs various aspects, including general provisions, construction service enterprises, obligatory construction projects, execution of construction work, building defects, community involvement, development, dispute settlement, penalties, transitional provisions, and concluding provisions.

These regulations are founded upon concepts such as integrity, fairness, advantage, concord, equilibrium, autonomy, transparency, collaboration, security, and protection for the welfare of society, the nation, and the state. All construction services performed in Indonesia, whether carried out by domestic or international service consumers and providers, must adhere to the regulations specified in the Construction Services Law.

Law Number 18 of 1999 concerning Construction Services outlines principles and objectives based on honesty, justice, benefit, harmony, balance, independence, openness, partnership, security and safety for society, the nation, and the state. These principles and objectives are summarised in Chapter II, specifically in Articles 2 and 3.

Article 2: The regulation of construction services is founded upon the fundamental principles of integrity, fairness, advantage, concord, equilibrium, autonomy, transparency, collaboration, security, and welfare for the betterment of society, the nation, and the state.

Article 3: The purpose of regulating construction services is to achieve the following objectives: a. Facilitate the growth and advancement of construction services to establish a robust, dependable, and highly competitive business framework and ensure the delivery of high-quality construction projects; b. Ensure the systematic execution of construction projects that guarantee equal rights and responsibilities for service users and providers while promoting adherence to relevant regulations; c. Strengthen the involvement of the community in the realm of construction services.

By the criminal provisions stated in Law Number 18 of 1999 regarding Construction Services, as previously discussed, it can be inferred that actions classified as criminal offences in the context of managing construction services can be summarised as follows: Criminal acts of planning construction work that does not meet technical requirements and results in the failure of construction work or building failure, with a maximum penalty of 5 (five) years imprisonment or a fine of up to 10% (ten per cent)

of the contract value (Article 43 paragraph (1)); Criminal acts of implementing construction work that contradicts and does not comply with the technical requirements that have been established and results in the failure of construction work or building failure, with a maximum penalty of 5 (five) years imprisonment or a fine of up to 5% (five per cent) of the contract value (Article 43 paragraph (2)); Criminal acts of supervising the implementation of construction work by intentionally giving opportunities to others who carry out construction work to deviate from technical provisions and cause the failure of construction work or building failure, with a maximum penalty of 5 (five) years imprisonment or a fine of up to 10% (ten per cent) of the contract value (Article 43 paragraph (3)).

The endeavour and strategies to establish effective criminal legislation are inherently intertwined to deter illegal activities. The criminal law policy and endeavours are integral to criminal policy. From a criminal policy standpoint, criminal law policy can be equated with "crime prevention policy through criminal law. The crime prevention can be achieved through criminal and non-penal approaches. The penal approach primarily emphasises the repressive aspect, involving enforcement and suppression after the occurrence of the crime (Marimin et al., 2022).

Sudarto posits that punishment or penalties might be construed as deliberate affliction inflicted upon those engaging in actions fulfilling specific conditions (criminal activities). The applicability of the term criminal in light of contemporary advancements in criminal law. There is a recognised need to reevaluate the nineteenth-century notion of punishment in order to bring about a revitalisation in our criminal justice system.

## CONCLUSION

Based on the research data analysis, it can be inferred that the Construction Services Law possesses well-defined criminal legal provisions. These policies cover a range of criminal offences and their respective punishments. Planning construction work that fails to meet technical criteria and leads to the failure of buildings is a criminal offence punishable by a maximum prison term of 5 years or a fine of up to 10% of the contract value. Furthermore, engaging in building work that deviates from the prescribed technical requirements is also subject to the same penalty. Furthermore, the offence of overseeing construction activities with the deliberate goal of permitting others to stray from technical regulations and resulting in the collapse or malfunction of structures is liable to receive a comparable penalty.

Moreover, the Construction Services Law includes rules that specify criminal crimes related to the administration of construction services, ensuring that they are effectively governed. This measure is a deterrent against illicit actions within the construction services sector, thereby preventing them from occurring. Evidence suggests that imposing criminal legal punishments effectively deters individuals from committing legal norm infractions.

Efficient collaboration between law enforcement and key stakeholders is vital to deter crimes associated with construction services management. Coordination is essential to ensure that construction activity adheres to technical specifications and prevents deviations that could cause failure in the construction of buildings.



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