

# Community Rights in Taking The Legal Effort of The Accidents of Government Infrastructure

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**Abstract-** *This paper aims to describe and analysis on community rights in taking the legal effort of the accidents of government infrastructure. There are two points from that topic that will be describe and analysis, firts on The Importance of Monitoring the Implementation of Infrastructure Projects and second on Community Legal Efforts on Losses due to Infrastructure Construction Infrastructure. The method of this paper is normative, normative with the approach of law and conceptual approach. Some laws and regulations are used as primary legal materials such as Law Number 1 of 1970 on Occupational Safety, Law Number 2 of 2017 on Construction Services and Law Number 13 of 2003 on Manpower. Based from the research shows that Supervision of Infrastructure Project Implementation is important, considering it is a mandate of the law, especially Law No. 2 of 2017 on Construction Service and Community Legal Efforts on losses due to the Infrastructure Construction Infrastructure are in the form of civil, administrative and criminal rights.*

**Keywords :** *Infrastructure, Community Rights, Legal Efforts*

## I. INTRODUCTION

Infrastructure has an important role in strengthening national unity and unity. The transport and telecommunication network from Sabang to Merauke, from Miangas to Rote Island is one of the main glues of the Unitary State of the Republic. Infrastructure has a very important role in the economic system. The better the state of infrastructure, the better the impact on the economy. Infrastructure is the lifeblood of the economy, which determines whether or not economic activity is smooth. Infrastructure development is an integral part of national development and the driving wheel of economic growth. Therefore, infrastructure development is believed to be the motor of development of a region. The government is trying to build national competitiveness through the development of infrastructure in various regions in Indonesia.

Infrastructure development during the reign of Joko Widodo and Jusuf Kalla during a significant increase and need to get appreciation.

The government's great ambition in catching up with infrastructure from other countries should be appreciated. However, building without good risk management is also dangerous. Governance and management of infrastructure development risks should be evaluated continuously. Although the direction is correct, and the goal is believed to be positive in the long term, in the short term it is necessary to ensure no more dangerous issues. Moreover, most government infrastructure projects are done by state-owned enterprises.

Concentration on physical infrastructure resulted in an out-of-sync development, between physical and non-physical aspects, including the institutional aspect in it. Do not let the good intentions that are less managed, it will cause negative effects, raising the risk profile both at the level of corporate executors and macroeconomic projects related to the budget, even to cause technical problems that impact on corruption until tercerabutnya local people's economy or even cause casualties.

Proyek-proyek pembangunan konstruksi yang harus disoroti yakni, bagaimana keberhasilan dalam membangun infrastruktur jalan layang (*elevated*). Kecelakaan konstruksi berulang kali terjadi di proyek-proyek yang masih dalam tahap proses dikerjakan. Anehnya, kecelakaan konstruksi yang terjadi kejadian dalam, rentang waktu yang tidak lama alias singkat. Insiden ini menambah panjang deretan kecelakaan konstruksi pada proyek infrastruktur di Tanah Air. Berikut 11 kecelakaan konstruksi yang terjadi diberbagai proyek infrastruktur di Indonesia sejak 2017 hingga Februari :<sup>1</sup>

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<http://wartakota.tribunnews.com/2018/02/20/tiang-pancang-proyek-tol-becakayu-ambruk-jadi-kecelakaan-ke-12-proyek-infrastruktur-di-indonesia>  
Diakses pada tanggal 9 Maret 2018 Pukul 19.15 WIB.

- The stake pylon of Becakayu Toll Road collapsed on Tuesday (20/2/2018) resulting in 7 (seven) workers reportedly injured.
- Soekarno-Hatta Lane Airport Train Lane on Monday (5/2/2018) caused by heavy rain that flushed Jabodetabek area resulted in underpass activity in Soekarno-Hatta Airport railway lane, tepatnya in South Parimeter Road. 1 (one) person died after being stuck in a vehicle buried in landslides for hours.
- DDT Concrete Carrying Crane in East Jakarta Matraman collapsed on Sunday (4/2/2018) resulting in 4 (four) workers killed.
- Girder Concrete The Pulogadung LRT project collapsed on Monday (22/1/2018), resulting in 5 (five) mass transportation project workers working since mid-2016 was injured.
- Girder Concrete The Jalna Tol Toll Road project of Depok-Antasari in South Jakarta falls on Tuesday (2/1/2018) allegedly due to heavy equipment. There were no casualties in this incident.
- Crane collapsed at KM 15 Jakarta-Cikampek Toll Road, on Thursday (16/1/2017) resulted in congestion on the Jakarta-Cikampek toll road.
- Concrete Light Rail Transit (LRT) Project falls on Jalan MT. Haryono, East Jakarta, Wednesday (15/11/2017) fell and hit the car. There were no casualties in this incident.
- The concrete barrier of the Mass Rapid Transit (MRT) project falls on Jalan Wijaya II, South Jakarta, Friday (3/11/2017) Overhead Catenary System (OCS) Parapet weighing 3 tons fell and hit the impoverished motorist until it was slightly injured.
- Pasuruan-Probolinggo Toll Construction in Curukgondang Village collapsed on Sunday (29/10/2017) resulting in 1 (one) worker killed by bridge construction at station 4 of Cukurgondang Village.
- The LRT Construction Project Pole (17/10/2017) resulted in 3 (three) wounded residents in Jalan Kelapa Nias Raya, Block PA 3, No. 02, Kelapa Gading.
- Jemabatin Bocimi Toll Overpass at Deas Cimande Hilir, Caringan District, Bogor Regency, collapsed on Friday (22/09/2017). A project worker was killed by a ruin of concrete casting of a bridge body.
- LRT construction project in Palembang on Friday (4/8/2017) resulted in 2 (two) workers died after falling from the pole of LRT which became his footing in the work, in the zone of Jalan Demang Lebar Daun IT I sub district, Palembang.

The number of work accidents on the infrastructure projects that occurred above add to the blacklist of accidents that have occurred. Such accidents should be a serious concern for the Government, especially when the Government is still ambitious about completing the current infrastructure project. In APBN 2018, infrastructure is still a priority focus of development. The theme of the Government Work Plan (RKP) of 2018 is Encouraging Investment and Infrastuktur for Growth and Equity.

Various incidents of accidents in the construction of infrastructure proved that the project implementers paid little attention to the application of Occupational Safety and Health (K3) which became the mandate of Law No. 1/1970 on Occupational Safety, including Law 13/2003 on Manpower. Occupational Safety and Health Expert of the Ministry of PUPR, Arie Setiadi, mentioned several causes of accidents of infrastructure projects in recent years, including the factors of workers (human error) and the mistakes of contractors. According to ITB construction expert, Iswandi Imran, the project work using materials not in accordance with safety standards is suspected also has the potential to cause work accidents. Frequent occupational accidents in construction projects have an impact on the halt of all kite construction works in Indonesia. The Indonesian Consumers Foundation (YLKI) considers that the work on infrastructure projects in Indonesia is done like a rushed public transportation driver and the origin is immediately completed, without prioritizing the safety, security, and comfort of the passengers.<sup>2</sup>

Construction accidents occur as a result of construction failures. This proves the construction project is not planned with mature and or strict and consistent supervision. And accidents in infrastructure projects can not be considered casual occurrences because they have taken casualties. To the victim who is harmed by the existence of the infrastructure work accident, so far only a settlement of kinship, the end is the provision of material compensation. Consequently, in addition to the unlawful value of justice under law, subsequent accidents reoccurred as a consequence of a dispute resolution resulting from an infrastructure accident. Responding to the above issues it is interesting to discuss about the legal efforts that can be done by the disadvantaged communities resulting from the failure of the building from the implementation of construction works or infrastructure accidents.

## II. METHOD

This type of research is normative with the approach of law and conceptual approach. Some laws and regulations are used as primary legal materials such as Law Number 1 of 1970 on Occupational Safety, Law Number 2 of 2017 on Construction Services and Law Number 13 of 2003 on Manpower. Secondary legal materials are taken from reliable books and journals related to construction, employment and occupational safety. The concept used as an analytical knife is about the rights and justice of citizens both publicly and privately.

## III. RESULT AND DISCUSSION

### A. *The Importance of Monitoring the Implementation of Infrastructure Projects*

Fox (2004)<sup>3</sup> defines infrastructure as, "Those Services derived from the set of public works traditionally supported by the public sector to enhance private sector production and to allow for household consumption". Moteff (2003)<sup>4</sup> defines infrastructure not only in economic terms but also in the defense and sustainability of government. Furthermore, Vaughn and Pollard (2003), stated that infrastructure in general includes roads, bridges, water and sewage systems, airports, ports, public buildings, and also includes schools, health facilities, prisons, recreation, power generation, security, fire, landfills, and telecommunications. Accelerated infrastructure policy should be appreciated, given the importance of infrastructure availability in driving the pace of the economy. Policies are guidelines for decision making Stoner James (1994: 115-116)<sup>5</sup>. Policy sets boundaries around decisions, including decisions that can be made and rejected decisions that can not be made. In this way the policies channel from members of the organization so that thinkers are in line with the goals of the organization. James Danerson (1986: 207)<sup>6</sup>, said that policy is a pattern of behavior that is directed to the goal and followed someone or some people in handling a problem.

However, the implementation of the policy with infrastructure projects is not in an empty legal

space. There are at least three parties, namely the government as service providers, service user contractors, the community as a result user. Cooperation of providers and users of services is intended to improve the good and prosperity of users of the results, namely the community. So during the process of work and the implementation of infrastructure work is not justified there are events that harm the community. Accidents of infrastructure work are the incidents to be avoided, as part of the philosophical meaning of government is to provide services for citizens. Accidents in the implementation of infrastructure works in Indonesia during 2017-2018 are a mistake, even to the point of causing casualties.

Previously, service users and service providers should pay attention to the safety factor of the worker and the use of construction work should be the main concern. Under Law No. 2 of 2017 on Construction Services it is stated that service providers and service providers in the operation of construction services must comply with contractual agreements and meet safety, health, and sustainability standards. The absence of criminal sanctions in UUJK should not be the gap of contractors and officials to play in construction projects. Construction work contract must be upheld.

For information on safety, the construction work contract must at least include, among other things, (1) the terms of the failure of the building, stating the provisions of the service provider's and / or service's liability for the failure of the building and the period of liability for the failure of the building; (2) the protection of workers, contains provisions on the obligations of the parties in the implementation of occupational safety and health as well as social security; (3) the protection of third parties other than the parties and workers, contains the obligations of the parties in the event of an event that causes loss or causes an accident and / or death; and (4) guarantees of risks arising and legal liability to others in the performance of construction works or consequences of building failures.

In the event that construction services do not meet safety, safety, health and sustainability standards, service users and / or service providers may be the party responsible for the failure of the building. The Government can not relinquish its responsibility to the contractor only because the Government has the obligation to provide Construction Services in accordance with safety, health, and sustainability standards. Efforts that can be done by the Government among others by checking the feasibility of construction workers.

The establishment of the Construction Safety Committee last January by the Minister of Public Works and Public Housing (PUPR) was not enough, because it only consisted of personnel

<sup>3</sup> Fox, W. Strategic options for urban infrastructure management. Urban Management Programme Policy Paper. 2005.

<sup>4</sup> Moteff, John, Claudia Copeland dan John Fischer. Critical Infrastructure: What Makes An Infrastructure Critical? Congressional Research Service. 2003.

<sup>5</sup> Stoner James. Pengantar Kebijakan Public, Editor Nashir Budiman, CV Rajawali. 1994.

<sup>6</sup> James Danerson. Analisis Kebijakan Public, Terjemahan Nuhadjir, Yogyakarta. 1986.

from the Ministry of PUPR which was sectoral in terms of engineering. While Law Number 2 Year 2017 provides that the safety, health, and sustainability standards for each construction service product are regulated by the relevant technical ministries in accordance with their respective authorities, which means that they are comprehensive, not sectoral.

The number of contractors involved in working on Government construction projects, not to make Government negligent with their feasibility in working on the project. UUJK any business entity that works on construction services to own a business entity certificate and hire a construction worker who has a work competency certificate. Any service user and / or service provider employing construction workers who do not have a work competency certificate may be subject to administrative sanctions in the form of administrative fines and / or temporary suspension of construction service activities. Even if the business entity concerned does not have a certificate, it can be subject to blacklisted inclusion.

Government actions to stop and evaluate projects need to be appreciated. The government should immediately announce the results of the evaluation to the public, because the public is entitled to know the feasibility of the project and the causes of various accidents. What is happening today, the Government announces a decent project is worth continuing, but has not announced the cause of the actual crash. The evaluation result is not a state secret that needs to be hidden, and it is hoped that the evaluation result will not be announced too long. A short time evaluation by the Government and experts in the case of the collapse of the floor of the Indonesia Stock Exchange some time ago, needs to be replicated.<sup>7</sup>

The rise of accidents also raises suspicions of budget lapses. Law enforcers should be proactive in monitoring the use of infrastructure budgets to avoid being corrupted. Do not let the hard-earned budget, including from the various taxes, the cuts of subsidies and budget tightening, just evaporate. Although the project is partly undertaken by the private sector with the Government's non-budget scheme, but because the initiator and responsibility are with the Government, it becomes the scope of state finances. For that, law enforcement should not hesitate to take action against any violation of existing law.

Regarding the massive cosmetic incidents that often occur these days, we as a community can play an active role in law enforcement construction

by conducting surveillance. This is based on Article 85 Paragraph (4) UUJK explaining the public participation in the supervision can be in the form of complaints, lawsuits and efforts to get compensation or compensation.

In addition, community efforts related to construction work abuses are also mentioned in Article 87 UUJK that community efforts in the implementation of construction works can be done by the community Construction Services through the forum Construction Services. Construction Service Forum in the Elucidation of Article UUJK in question is a media for construction service society to convey aspirations to the government and / or institutions.

Oversight of the DPR / DPRD must also be carefully undertaken for infrastructure projects that use non-budgetary Government. Unfortunately, projects derived from non-government budgets are not included in APBN / APBD, whereas like or not, DPR / DPRD is now the owner of the budgeting function. Without entering the APBN / APBD, then the non-budget project of the Government becomes nonbudgeter activity, which has actually been banned since the reform era. Nonbudgeter activities reflect the Government's disorderly administration and violate the State Finance Act. The government seems to forget that the APBN / APBD is not just about the distribution of government money or not, but the APBN / APBD has the functions of authorization, planning, supervision, allocation, distribution and stabilization. Under the Law on State Finances, all revenues entitled to rights and expenditures which are obligations of the state / region within the relevant fiscal year shall be included in the APBN / D<sup>8</sup>.

The first thing that needs to be understood in UUJK is not to explain in detail the violation of construction which in this case is an accident on construction work. UUJK only describes the failure of the building described in Article 1 Number 10 UUJK that "the failure of the building is a state of collapse of the building and / or the non-functioning of the building after the final delivery of the results of Construction Services". So in the opinion of the author, when an accident of construction work that does not meet the standards of security, safety, health and sustainability in the administration of construction services is subject to administrative sanctions in the form of: written warning, administrative fines, suspension of activities, blacklisting, permit freezing, permission.

Not a few of the construction work that harm the public from the damage caused by the

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<http://www.hukumonline.com/berita/baca/lt5a9f67fd6731d/aspek-hukum-proyek-infrastruktur-oleh-roziqin-Diakses-pada-tanggal-10-Maret-20.07-WIB>.

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<http://www.hukumonline.com/berita/baca/lt5a9f67fd6731d/aspek-hukum-proyek-infrastruktur-oleh-roziqin-Diakses-pada-tanggal-9-Maret-2018-Pukul-20.05-WIB>



collapse of buildings, injuries, to the loss of life of a victim. In response to the matters governed by the UUK, Government Regulation No. 28/2000 on Enterprises and the Role of Construction Services Society (hereinafter referred to as PP Role of Society) has arranged legal remedies which can be carried out by the disadvantaged communities in the presence of construction work accidents or building failures. Article 20 Paragraph (2) The Role of the Community explains that the general public, the construction service society, and the business world concerned with construction services may convey their aspirations to the Forum. In the explanation of the article states that the aspirations referred to are aspirations related to construction services in both written and oral form.

#### *B. Community Legal Efforts on Losses due to Infrastructure Construction*

There are two reasons why an aggrieved society can file a legal claim or compensation in case of an accident in the implementation of an infrastructure project by the state. First is the philosophical reason for the existence of the state as a welfare state and second is the relationship of administration, society as the consumer and the state as producer.

The first reason is that Indonesia is a welfare state. The nature of government existence is as public service. Through the long hands of power should be used for the greatest effort to serve and improve the welfare of society. Long-handed powers of government manifest through institutions, agencies, agencies or state-owned enterprises (SOEs). In the construction of infrastructure projects almost all the work carried out by state-owned works. So if there is an incident that harms the public, the public may file a legal action.

Second is the relationship of administration, society as consumer and state as producer. That the implementation of infrastructure procurement is financed by the State Budget, which is mostly tax collection from the people. In 2018 budget posture, state revenue target of Rp. 1,894.7 trillion whose rationalization is derived from tax revenue of Rp. 1.618, 1 trillion, non-tax state revenue of Rp. 275, 4 trillion and grant Rp. 1, 2 trillion. That means tax revenue of 85, 4%. This is increasing from previous years, in the state budget last three years, 2016-2018, it appears that tax increases from higher state revenues. In 2016 only about 68.76%, by 2017 about 71.52%. Taxes are public money entrusted to the state to be managed through various development programs, one of which is the procurement and construction of infrastructure projects. Should the consumer pay the producer to get the goods that have been agreed, then if there is a failure or wrong product, the consumer may file a legal effort. Even so if people are harmed by

accidents of infrastructure projects, people can actually file a legal effort.

The responsibility of the government as the organizer of negara as well as the producer is what makes the government as the subject that can be asked for loss. While the user of the service, the contractor is the party carrying out the mandate of the government because as the user of the service, the contractor / SOE is the executor who has the rights and obligations to the service provider / government and to the third party / community. Communities directly disadvantaged in this regard are victims of infrastructure project accidents.

According to the Great Indonesian Dictionary (KBBI) responsibility is the obligation to bear everything if anything happens to be prosecuted, blamed, and charged. In the dictionary of the law, responsibility is a necessity for a person to carry out what has been obliged to him<sup>9</sup>. According to the law of responsibility is a consequence of the consequences of a person's freedom regarding his actions which are related to ethics or morals in doing an act<sup>10</sup>. Furthermore, according to the Quarterly Point of Accountability must have a basis, that is the cause of the legal right for a person to prosecute other people as well as in the form of the birth of legal obligations of others to give accountability<sup>11</sup>. According to the basic civil law of accountability is divided into two kinds, namely mistakes and risks. It is thus known as liability without basis on fault and liability without fault known as risk liability or absolute liability (strict liability). The basic principle of liability on the basis of error implies that a person must be responsible because he made a mistake because it harms others. Instead the principle of risk responsibility is that the plaintiff's consumer is no longer required but the defendant's producer is directly responsible as a risk to his business.

Based on these responsibilities, the government and contractors may be subject to such expenses. To the aggrieved community can make legal efforts, among others:

##### *1) Civil Law Efforts*

The lawsuit is committed due to unlawful acts of contractors resulting in accidents resulting in casualties

- Both material and immaterial claims to court
- Both material and immaterial lawsuits through APS

<sup>9</sup> Andi Hamzah, Kamus Hukum, Ghalia Indonesia, 2005.

<sup>10</sup> Soekidjo Notoatmojo, Etika dan Hukum Kesehatan, Rineka Cipta, Jakarta, 2010, hlm. 23

<sup>11</sup> Titik Triwulan dan Shinta Febrian, Perlindungan Hukum bagi Pasien, Prestasi Pustaka, Jakarta, 2010, hlm 48.

## 2) *Administrative Law Efforts*

- Access to Complaint Services
- Request a guarantee of protection from the state

## 3) *Criminal Law Efforts*

Report and prosecute criminally due to negligence or errors that lead to minor injuries, weight or death of life.

## IV. CONCLUSION

Supervision of Infrastructure Project Implementation is important, considering it is a mandate of the law, especially Law No. 2 of 2017 on Construction Services. In addition, supervision means proving that the state is in control of state-funded infrastructure projects, as well as ensuring the rights of workers and communities are not disregarded and impaired in the process of implementing infrastructure projects. Community Legal Efforts on losses due to the Infrastructure Construction Infrastructure are in the form of civil, administrative and criminal remedies. Civil legal efforts are conducted by bringing the lawsuit either through court or the right of struggle through alternative dispute resolution. Administrative legal action by making a complaint to the state, whereas the criminal law is done by criminal prosecution.

## V. RECOMMENDATIONS

- There should be regulatory renewal, especially regarding civil liability for construction service providers that harm the community in the process of infrastructure development.
- The need to establish a supervisory agency for the implementation of infrastructure projects financed by the state by considering the safety aspect of workers in particular and the community at large.
- Socialization of civil, administrative and criminal rights shall be granted in order to

protect the rights of the public due to the loss of the construction service project.

- The government should provide adequate complaints channeling as a result of losses on the implementation of construction services projects.

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