



TECHNICAL NEGLIGENCE AS A FORM OF CRIMINAL OFFENSE IN PUBLIC FACILITY CONSTRUCTION: A JURIDICAL ANALYSIS OF THE AL KHOZINY BUILDING COLLAPSE TRAGEDY

Tian Terina^{1*}, Yuli Purwanti², Chantikamutiara Lukel³

University of Lampung

tianterina@gmail.com^{1*}, yulipurwanti@gmail.com², chantikamutiaraelukel@gmail.com³

Abstract

Facilities as a form of criminal offense under Indonesian Criminal Law. The collapse of the Al Khoziny Islamic Boarding School building in Sidoarjo, East Java, in September 2025 serves as the main case study for analyzing the application of criminal liability principles to negligent acts resulting in fatalities. This study adopts a normative juridical approach, analyzing Articles 359–360 of the Indonesian Penal Code (KUHP), Law No. 2 of 2017 on Construction Services, and Law No. 6 of 2023 on Job Creation (Omnibus Law). The findings indicate that technical negligence causing death satisfies the elements of gross negligence (*culpa lata*) and constitutes a criminal act rather than merely an administrative violation. However, both the Construction Services Law and the Job Creation Law contain normative gaps, as they only prescribe administrative sanctions without any penal provisions. Consequently, the Penal Code functions as a *lex generalis* that enforces criminal liability on individuals and corporations engaged in construction activities. This study recommends legislative reforms to incorporate explicit criminal sanctions for fatal technical negligence and the establishment of integrated inter-agency supervision mechanisms to enhance legal protection for public safety in construction projects.

Keywords: *Technical Negligence; Criminal Offense; Public Facility Construction; Criminal Liability; Construction Law; Structural Crime.*

1. Introduction

The tragic collapse of the Al Khoziny Islamic Boarding School building in Sidoarjo, East Java, on September 29, 2025, which claimed 67 lives and injured more than 100 others, sparked national concern over the fragility of construction safety standards in Indonesia (CNN Indonesia, 2025). The two-story prayer hall that collapsed during congregational prayer serves as a striking example of how technical negligence in the design, implementation, and supervision stages of construction projects can result in catastrophic loss of life. This incident highlights the urgent need for stronger criminal law enforcement in the public construction sector, particularly when professional negligence leads to fatal consequences. Under Indonesia's positive law, offenses caused by negligence are generally regulated under Articles 359 and 360 of the Indonesian Penal Code (KUHP), which stipulates criminal penalties for anyone whose negligence results in death or serious injury.

However, such general provisions are inadequate to address the complex nature of technical negligence in construction, which often involves professional actors, corporate entities and public institutions. Therefore, a juridical analysis is needed to determine the extent to which technical negligence constitutes a criminal act and how criminal liability may be imposed within Indonesia's legal framework. As Indonesia experiences rapid infrastructural growth, the construction of public facilities such as schools, mosques, and Islamic boarding schools without sufficient technical supervision poses an increasing threat to the public safety. Numerous construction projects are conducted without certified professionals, structural feasibility assessments, or proper use of materials (Budi, 2025) (UMS, 2025). The disregard of fundamental civil engineering principles, such as soil testing, concrete strength evaluation, and structural column design, reflects not only a lack of technical discipline but also a failure of legal and moral responsibility. Consequently, the public becomes the ultimate victim of unethical and unlawful construction practices.

The Al Khoziny tragedy was not an isolated case. Similar incidents have occurred across Indonesia, including the collapse of an elementary school roof in Blitar (Detik, 2022) and the near-collapse of a school building in Jombang (Detik, 2024), both caused by structural negligence and weak technical supervision. These recurring patterns indicate a systemic deficit in construction law enforcement,



particularly in corporate and professional criminal liability. Negligence that causes death or serious injury constitutes *culpa lata*, a form of gross negligence that is morally and legally close to *dolus eventualis* or indirect intent (Chandra, 2022). Thus, a firm legal mechanism is required to determine responsibility, both for individual actors (architects, site supervisors, project managers) and corporate entities (contractors, foundations).

In addition to the substantive provisions of the Penal Code, the Job Creation Act (Law No. 6 of 2023) introduced significant reforms to Indonesia's construction service sector, primarily by amending Law No. 2 of 2017 on Construction Services. These reforms emphasized a risk-based licensing system and mandatory professional certification (Tamaradhina Napitupulu & Haryanto, 2023 & Napitupulu). The regulation explicitly requires that high-risk construction activities, including educational and religious facilities, comply with strict safety standards, and that violations resulting in harm to the public may give rise to criminal liability.

The failure to apply the risk-based approach mandated by the Job Creation Law demonstrates that many construction entities still perceive technical negligence as a mere administrative fault rather than a potential criminal act. This aligns with the criminal law doctrine that views any negligence causing human death as a breach of the highest social duty: to protect human life (Wahyuni, 2017). Therefore, this study aims to conduct an in-depth juridical analysis of how technical negligence in public construction can lead to criminal liability within the framework of Indonesia's post-Job Creation Law. It further seeks to assess the effectiveness of criminal norms in safeguarding the public and to identify regulatory gaps that allow similar tragedies to recur, as exemplified by the collapse of the Al Khoziny Islamic Boarding School.

Based on the foregoing discussion, this study seeks to address the following questions:

1. How can technical negligence be qualified as a criminal offense within the framework of Indonesian criminal law?
2. How can criminal liability be imposed on parties involved in the construction of public facilities that result in fatalities due to technical negligence?
3. What is the relevance of Law No. 11 of 2020 on Job Creation and Law No. 2 of 2017 on Construction Services to the enforcement of criminal law in cases of technical negligence?

2. Literature review and hypothesis/es development

2.1. The Concept of Negligence in Criminal Law

In Indonesian criminal law, *negligence (culpa)* occupies a complex position, situated between *intent (dolus)* and *accidents*. It represents a form of fault arising when a person fails to exercise the necessary level of care (*lack of due care*), resulting in consequences that are prohibited by law. According to Lamintang (2019), *culpa* denotes a situation in which the perpetrator could have foreseen the outcome of their conduct but still acted carelessly or without caution. This distinguishes negligence from *dolus*, in which the actor acts with a deliberate intention and awareness of the prohibited result. Chandra (2022) asserts that negligence is not merely a breach of ethics or professional duty but a legal transgression that may incur criminal liability when the elements of fault and consequence are satisfied. In Indonesian positive law, the normative foundation for negligence as a criminal act is found in Articles 359 and 360 of the Criminal Code (KUHP), both of which stipulate that anyone whose negligence results in another's death or serious injury may be imprisoned.

These provisions confirm that Indonesian criminal law recognizes liability in the absence of malicious intent, as long as there is proof of a breach of legal duty or standard of care (*i.e., legal duty of care*). In the context of public construction, *technical negligence* often constitutes *culpa lata* (gross negligence). According to Moeljatno (2018), *culpa lata* refers to the disregard of legal or professional duties that a person should have known and observed. For instance, the failure to conduct a soil strength test, the use of substandard materials, or the absence of certified engineers in public building projects represent *culpa lata*. Such omissions no longer fall within the realm of mere administrative breaches but instead fulfill the elements of a criminal offense, given their potential to endanger human lives.



Muladi and Priyatno (2013) describe *technical negligence* leading to death or injury as *culpa professionalis*, a professional failure to comply with established technical and ethical standards. This notion is critical because actors in the construction industry are bound by legal and technical obligations to ensure structural safety and sustainability. Likewise, Hamzah (2020) notes that proving *culpa* in criminal cases is often more challenging than proving *dolus*, as it requires evidence of a causal link between the negligent act and the resulting harm. However, in cases involving mass casualties or large-scale losses, such as building collapses, *culpa lata* can be established objectively through evidence of regulatory violations or failure to meet construction standards. Therefore, negligence under Indonesian criminal law is not merely an unintentional mistake but a serious breach of legal and professional obligation. This principle is of significant importance in modern construction law, which emphasizes technical accountability and professional responsibility in safeguarding public safety.

2.2. Historical Development of Criminal Liability in Construction Negligence

Criminal liability in Indonesia's construction sector emerged in response to the growing number of structural failures and public infrastructure accidents during the late 1990s. Agustina (2024) highlights that such accidents are primarily caused by weak governmental supervision and low public awareness of building permits (*IMB*), coupled with construction practices lacking certified planners. This situation reveals systemic deficiencies in Indonesia's construction law enforcement. The enactment of Law No. 18 of 1999 on Construction Services marked the initial framework for regulating legal accountability in this sector. However, the law was limited in addressing criminal sanctions for technical violations that resulted in fatalities. Subsequent reforms through Law No. 2 of 2017 on Construction Services, later amended by Law No. 6 of 2023 (Omnibus Law/Cipta Kerja), introduced a *risk-based licensing* approach and mandated professional certification for construction professionals. These reforms theoretically expanded the scope of liability, including the potential for corporate criminal responsibility (*corporate criminal liability*).

Hadziq (2024) argues that the principle of *vicarious liability* should be applied to hold corporations accountable for the negligence of their employees or managers, particularly when such negligence occurs within the scope of corporate activities. This aligns with Utrecht's (1983) *corporate fault theory*, which posits that a corporation can be deemed culpable if it fails to implement adequate internal controls to prevent unlawful acts by its employees. In public construction contexts, such failures constitute *organizational negligence*, rather than individual misconduct. Globally, notable precedents such as the Rana Plaza collapse in Bangladesh (2013) and the Hyatt Regency walkway disaster in the United States (1981) illustrate that gross technical negligence can lead to the criminal prosecution of both engineers and corporations. Comparative insights from these cases indicate that Indonesia must strengthen its criminal law mechanisms in the construction sector to ensure accountability, safety, and justice for the affected communities.

2.3. Philosophical and Theoretical Foundations

Philosophically, the cornerstone of Indonesian criminal law is the principle of *nulla poena sine culpa* or *geen straf zonder schuld* meaning "no punishment without fault." This principle reflects the moral foundation of criminal justice, ensuring that penalties are imposed only when culpability can be established. Chandra (2022) emphasizes that this axiom is universal and fundamental to achieving substantive justice in the criminal law. However, in the realm of public construction, technical negligence often arises not only from individual faults but also from systemic or collective failures. Consequently, modern criminal law theory requires a reinterpretation of the concept of fault to encompass corporate and institutional wrongdoings. Arief (2018) underscores that criminal law serves not merely as an instrument of punishment but as a mechanism of *social defense*, intended to protect society from structural harms caused by negligence. This notion is encapsulated in the theory of *penal policy as social defense*, which views criminal law as a safeguard for public welfare.

From the perspective of progressive legal theory, Satjipto Rahardjo (Aulia, 2018) contends that law must not be confined to rigid formalism but should evolve as a living institution that responds to human and social needs. When applied to technical negligence, criminal law should function as a means of protecting human life and upholding social justice. Thus, acts of professional negligence resulting in



loss of life must be treated as violations of fundamental human values and not merely administrative breaches. Furthermore, Sudarto (1981) conceptualizes criminal law as a tool of *social engineering*, a means to guide and reform social behavior toward justice and safety. Hence, the criminalization of technical negligence serves not only a punitive purpose but also an educative and preventive function, fostering professionalism and ethical compliance in the construction industry. Drawing on these philosophical and theoretical foundations, technical negligence in public construction should be understood as both a moral and a legal failure, requiring a comprehensive and humanistic response. Therefore, criminal law reform in this area must aim to integrate ethical, professional, and regulatory dimensions to create a just and preventive legal framework.

3. Methodology

3.1. Type and Approach of Research

This study adopts a normative juridical approach (doctrinal legal research) combined with conceptual and case approaches. The normative approach is appropriate because this research focuses on the criminal law norms governing technical negligence in public facility construction and the application of criminal liability in the concrete case of the collapse of the Al Khoziny Islamic Boarding School building in Sidoarjo, East Java. According to Soerjono Soekanto and Sri Mamudji (Muhaimin, 2020), the normative legal method examines positive law by emphasizing legal norms, principles, and doctrines developed in legal scholarship.

This is relevant because technical negligence in construction involves technical failure and reflects a breach of legal duties incumbent upon professionals and institutions responsible for construction safety. The conceptual approach explores the theoretical foundations of criminal liability for negligence, both for individuals and corporations, as regulated by the Indonesian Penal Code (KUHP), Law No. 2 of 2017 on Construction Services, and Law No. 11 of 2020 on Job Creation (Omnibus Law). The case approach, on the other hand, is employed to analyze the Al Khoziny case as an empirical reflection of how criminal law principles are applied in practice.

3.2. Sources and Types of Legal Materials

This research relies on three categories of legal materials.

1. Primary legal materials, including statutory instruments such as
 - . The Indonesian Penal Code (KUHP), particularly Articles 359–360, which address negligence;
 - a. Law No. 2 of 2017 on Construction Services
 - b. Law No. 11 of 2020 on Job Creation (Omnibus Law)
 - c. Government Regulation No. 14 of 2021 on the Implementation of Construction Services
2. Secondary legal materials, which consist of scholarly writings, books, and journal articles by leading scholars such as Muhaimin (2020), serve as the conceptual foundation for legal reasoning.
3. Tertiary legal materials, including legal dictionaries, encyclopedias, and official documents, provide technical and contextual definitions.

3.3. Techniques of Legal Material Collection Data Collection and Analysis Techniques

Data were collected through library research, focusing on gathering relevant legal materials, followed by qualitative descriptive analysis to understand the relationship between legal norms and empirical realities (Muhaimin, 2020).

Qualitative analysis involved three stages.

1. Data reduction, selecting legal materials directly relevant to technical negligence.
2. Thematic classification involved grouping data into legal issues such as criminal responsibility, technical negligence, and public safety.
3. Conclusion drawing was conducted through deductive reasoning, from general criminal law principles to the specific case of the collapsed public building.



This approach allows researchers to assess whether a technical act or omission can be legally classified as a criminal offense based on causality and the degree of professional fault.

4. Results and discussion

4.1. *Qualification of Technical Negligence as a Criminal Offense in the Perspective of Indonesian Criminal Law*

The phenomenon of technical negligence in public construction activities, as exemplified by the collapse of the Al Khoziny Islamic Boarding School building in Sidoarjo on September 29, 2025, reveals a serious problem in the implementation of building safety standards and enforcement of legal responsibility. The two-story prayer hall collapsed during congregational prayer, killing dozens of students and injuring more than a hundred others. Based on preliminary investigation reports, the tragedy was caused by errors in structural planning, substandard material quality, and the absence of certified technical experts during the construction process. (UMS, 2025) This incident serves as empirical evidence to assess how technical negligence can fulfill the elements of a criminal offense under Indonesia's positive law.

In Indonesian criminal law, negligence (*culpa*) is a form of fault (*kesalahan*) that gives rise to criminal liability when the resulting harm is foreseeable and should have been avoided by the perpetrator with due care. Article 359 of the Indonesian Penal Code (KUHP) stipulates:

“Any person who, through his fault (negligence), causes the death of another person shall be punished with imprisonment for a maximum of five years or confinement for a maximum of one year.” Similarly, Article 360 KUHP provides that: “Any person who, through his fault, causes another person to suffer serious injury shall be punished with imprisonment for a maximum of five years or confinement for a maximum of one year.”

Both provisions contain the element of fault in the form of *culpa*, which doctrinally requires a breach of the legal duty of care (Lamintang, 2019).

According to Moeljatno (2018), *culpa* comprises two essential elements: (1) a violation of a legal or professional duty of care and (2) the resulting harm could have been foreseen and avoided if the actor had exercised proper caution. Thus, *culpa* is not a mere accident or unintentional error; it represents a form of negligence involving foreseeability and preventability. In the context of public construction, this element is particularly relevant because contractors, supervisors, and project owners are professionals whose competence entails specific technical and legal obligations.

Lamintang (2019) distinguishes between *culpa levis* (ordinary negligence) and *culpa lata* (gross negligence). *Culpa levis* refers to minor negligence without serious consequences, whereas *culpa lata* denotes grave disregard for legal and professional obligations. The Al Khoziny case clearly falls within *culpa lata*, as fundamental technical procedures, such as soil strength testing, the use of standardized materials, and structural design by certified engineers, were ignored. Such disregard demonstrates a failure to exercise due care (the due care principle) and a recklessly indifferent attitude toward foreseeable risks, constituting a serious violation of professional and legal obligations. Within the criminal law system, the principle of due care has both moral and legal dimensions. Morally, every professional bears a social duty to safeguard public safety. Legally, this obligation is codified through binding technical and regulatory norms. Therefore, a violation of such a duty transcends administrative wrongdoing and may give rise to criminal liability.

This approach aligns with Arief's (2018) concept of the *social defense function* of criminal law, which posits that the primary role of criminal law is to protect society. Consequently, any form of negligence that endangers human safety should incur criminal responsibility. From a comparative perspective, similar principles are applied in other legal systems worldwide. Under Articles 307–308 of the Dutch Penal Code (*Wetboek van Strafrecht*), any person whose negligence causes death or serious injury may be punished, even in the absence of a criminal intent (*mens rea*). Likewise, in England, the landmark case of *R v. Adomako* (1994) established that gross negligence in the performance of professional duties constitutes gross negligent manslaughter when it results in death. A parallel framework exists in Japan,



where the Building Standards Act provides criminal penalties for engineers who violate safety standards, particularly when negligence leads to fatalities.

These comparative examples affirm that professional technical negligence is recognized as a criminal act in modern legal systems rather than a mere administrative infraction. In Indonesia, the Penal Code (KUHP) functions as a *lex generalis*—a general legal basis that supplements sectoral laws such as Law No. 2 of 2017 on Construction Services and Law No. 11 of 2020 on Employment Creation. This ensures that any technical violation resulting in human death remains punishable, even when specific sectoral legislation lacks explicit penal sanctions. This principle is consistent with the doctrine of equality before the law, which affirms that all persons whose negligence results in death must be held criminally accountable without exception.

4.2. Criminal Liability of Parties Involved in Construction

Criminal liability in cases of technical negligence is not limited to individuals but may also extend to corporations or legal entities as subjects of criminal law. This principle is explicitly recognized in Articles 118–120 of the National Criminal Code (Law No. 1 of 2023), which stipulates that a corporation may be held criminally liable if a criminal act is committed within the scope of its activities for its benefit. This approach represents a paradigm shift from the classical doctrine of criminal law, which traditionally recognizes only natural persons as offenders. In the case of the Al Khoziny Islamic Boarding School, the construction of the two-story prayer building was undertaken by an educational institution functioning as the project owner in cooperation with a construction service provider, PT. If it can be proven that the construction was carried out without proper permits, legally validated technical design, and in disregard of safety standards, then criminal liability may attach to the parties involved institutionally. This corresponds with the principle of vicarious liability, whereby a corporation bears responsibility for acts or omissions of its employees or executives committed in the course of pursuing the corporation's interests (Simons, cited in Hadziq, 2024)

Two classical doctrines relevant to this type of liability are *culpa in eligendo* and *culpa in vigilando*. *Culpa in eligendo* refers to negligence in selecting unqualified personnel, whereas *culpa in vigilando* denotes negligence in supervising the execution of duties (Muladi & Diah Sulistyani, 2013). In the Al Khoziny case, the management of the foundation may be deemed to have violated both principles by appointing an uncertified contractor and failing to provide adequate supervision during the construction process. Article 59(1) of the Construction Services Law mandates that service providers comply with standards of safety, security, health, and sustainability (K3L). However, this article does not stipulate criminal sanctions for violations resulting in fatalities, meaning that such breaches are typically addressed only through administrative or civil remedies. According to Maroni (Maroni, 2015), when sectoral legislation does not contain explicit criminal sanctions, the Penal Code (KUHP) as *lex generalis* should be applied to prosecute offenders, especially when the violation causes loss of human life.

In modern criminal jurisprudence, corporate criminal liability is no longer symbolic; it possesses concrete legal dimensions. Utrecht (1983) asserts that corporations may bear fault (*corporate fault*) when their organizational systems fail to prevent violations. In the construction context, failure to implement effective internal control mechanisms or risk management procedures constitutes sufficient grounds for corporate prosecution. Penalties that may be imposed include heavy fines, revocation of business licenses, suspension of operations, or even dissolution of the legal entity. Furthermore, Arief (2018) emphasizes that imposing criminal sanctions on corporations serves as an instrument of social justice and a mechanism for behavioral reform. Corporate punishment creates a deterrent effect, not only for the offending company but also for other business actors, encouraging greater compliance with public safety rules. In the context of public facility construction, such accountability fosters a culture of legal compliance that prioritizes human safety over economic or institutional interests.

Theoretically, the recognition of corporate criminal liability reflects the evolution of criminal law toward a more realistic and adaptive response to modern socioeconomic dynamics. In cases such as the Al Khoziny tragedy, where decision-making structures are collective and institutional, the imposition

of liability on the corporation represents a form of substantive justice. This is because negligence in such cases is not solely an individual act but also a product of the organization's failure to safeguard public safety. From the above analysis, it can be concluded that the application of criminal liability to parties involved in public construction, whether individuals or corporations, is essential for establishing a fair and effective criminal justice system. In this context, punishment is not purely retributive but serves a preventive and corrective function, aiming to avert the recurrence of tragedies caused by technical negligence and weak supervision of building safety standards.

4.3. The Relevance and Normative Gaps in the Job Creation Law and the Construction Services Law Toward Criminal Law Enforcement

Law No. 11 of 2020 on Job Creation, later amended by Law No. 6 of 2023, together with Law No. 2 of 2017 on Construction Services, constitutes the principal legal framework governing construction in Indonesia. Both laws adopt a risk-based approach to regulate business activities, including those in the construction sector. However, from the standpoint of criminal law, these laws contain normative gaps, as they do not explicitly provide criminal sanctions for technical violations that result in death. Article 86, Paragraph (2) of the Construction Services Law merely stipulates that service providers causing harm to another party are obligated to provide compensation without referring to any form of criminal accountability. This provision classifies technical violations as administrative or civil breaches rather than criminal offenses. Consequently, even when a building collapses and causes loss of life, the legal resolution is often limited to financial compensation rather than criminal responsibility for the loss of human life.

This demonstrates a regulatory disharmony between sectoral and general criminal law. According to Friedman's (1975) theory of the legal system, such normative disharmony produces an enforcement gap, a space where the law fails to function effectively in protecting public interests. In the context of the Al Khoziny case, this gap may obstruct criminal law enforcement, even when both elements of negligence and fatal consequences are clearly present. In contrast, countries such as South Korea and Japan have explicitly codified criminal sanctions for violations of construction safety standards. For instance, following the Seongsu Bridge collapse in Seoul (1994), which caused 32 deaths, South Korea enacted the *Construction Safety Management Act*, prescribing up to seven years of imprisonment for negligent conduct in public construction projects. Similarly, Japan's Building Standards Act imposes criminal liability on public officials and contractors whose negligence in fulfilling technical obligations leads to casualties. These examples illustrate that the absence of criminal provisions in the Job Creation Law and the Construction Services Law weakens legal accountability in Indonesia.

Meanwhile, the Job Creation Law focuses primarily on simplifying licensing procedures and accelerating investment through a risk-based licensing system (*risk-based licensing*), under which construction is classified as a high-risk activity. Under this principle, the greater the inherent risk, the stricter the required supervision and certification (Tamara 2023). However, in practice, numerous public projects continue without adequate oversight or certified technical experts, indicating that the *risk-based regulation* principle is not effectively coupled with sufficient enforcement mechanisms. Furthermore, the Job Creation Law's administrative orientation gives rise to juridical problems within the framework of criminal law. When a violation is punished only with administrative sanctions, the imposition of criminal penalties becomes legally problematic due to the potential *ne bis in idem* principle, which prohibits double punishment for the same act (Maroni, 2015). In contrast, under the principle of *ultimum remedium*, criminal law functions as a last resort when administrative sanctions fail to safeguard public legal interests. In cases of technical negligence resulting in death, criminal prosecution becomes the state's moral obligation to protect public safety. (Wahyuni, 2017)

Another weakness of the Construction Services Law is the absence of an integrated criminal enforcement mechanism involving local governments, law enforcement authorities, and professional construction associations. Consequently, accountability often falls solely on field workers, while planners and permitting authorities escape legal scrutiny. The doctrine of command responsibility mandates that individuals in leadership or supervisory positions must be held accountable for the



negligent acts of their subordinates (Muladi & Sulistyani, 2013). Therefore, the criminal liability framework in the construction sector should encompass the entire chain of responsibility, from planners and contractors to supervisors and licensing officials. From the perspective of criminal law policy, Arief (2018) emphasizes the need for an integrated criminal policy, whereby criminal law aligns with administrative and civil law systems to achieve comprehensive social protection. Applying this principle to the construction sector means that criminal norms must be harmonized with administrative regulations to achieve a balanced deterrent and enforcement. In other words, administrative negligence leading to death should be reclassified as a criminal negligence.

Therefore, to prevent future tragedies such as the Al Khoziny boarding school collapse, the reformulation of criminal norms in construction law is urgently required. Such reformulation may include the following:

1. Insertion of specific provisions in the Construction Services Law prescribing criminal sanctions for fatal safety violations;
2. Harmonization between administrative and criminal law to close normative gaps; and
3. The explicit recognition of corporate criminal liability in the public construction sector.

These measures align with the fundamental purpose of criminal law as an instrument of social protection and for moral reform. (Sudarto, 1981)

4.4. Theoretical Synthesis: Technical Negligence as a Form of Structural Crime

An analysis of the Al Khoziny Islamic Boarding School case reveals that technical negligence is not merely an individual fault but rather a form of structural crime. The concept of *structural crime* was introduced by Galtung (2000) to explain situations in which social and institutional structures systematically cause human suffering without a single, clearly identifiable perpetrator. Within the context of public infrastructure development, structural crime arises when legal systems, technical institutions, and economic actors collectively create conditions that neglect public safety.

The collapse of the Al Khoziny building was not solely the result of mistakes by individual workers or project supervisors but rather a reflection of the failure of the state's oversight system. The state has a constitutional obligation to protect the right to life and safety of its citizens, as stipulated in Articles 28A and 28H(1) of the 1945 Constitution, which guarantee every person's right to life and a safe and healthy environment. Therefore, government negligence in supervising public buildings can be interpreted as a violation of citizens' constitutional rights. Within this framework, the doctrine of state responsibility is particularly relevant. The state is not only accountable at the administrative level but may also incur legal liability if it fails to perform its supervisory duties. For example, in environmental law, negligence by public officials in issuing construction permits that threaten public safety may constitute official misconduct. This concept can be extended to the construction sector to strengthen *vertical accountability* between government institutions and society.

Furthermore, technical negligence in public construction can be viewed as a violation of human rights (HR) principles. International law—through Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR)—affirms every individual's right to life and protection from actions that endanger it. When a public building collapses due to negligent supervision, the state is deemed to have failed to fulfill its positive obligation to protect its citizens' right to life.

Thus, technical negligence constitutes not only a violation of criminal law but also an infringement of fundamental human rights principles. At the practical level, this phenomenon reflects the reactive nature of Indonesia's criminal law system, which tends to respond only after a fatality occurs. Punishment is typically imposed post-incident, whereas preventive mechanisms such as technical inspections, oversight, and audits remain weak. From a criminal law policy perspective, this situation necessitates a paradigm shift from repressive to preventive penal policies. According to Marc Ancel (Ancel, 1981), the primary function of modern criminal law is not merely to punish but to protect society by preventing social harm, a principle encapsulated in his concept of *social defense through law*.

Accordingly, the enforcement of criminal law in cases of technical negligence must be accompanied by structural improvements in supervision and the building permit systems. Local governments should ensure that every public construction project obtains a Building Safety Certificate before use. Likewise, professional engineering associations must play an active role in conducting regular public facility audits. In this way, accountability does not rest solely with law enforcement agencies but extends to all stakeholders in the national construction system. Ultimately, the reformulation of criminal law in the construction sector should aim to strengthen the penal policy as an integral component of good governance. Within this context, technical negligence should be viewed not merely as an individual lapse but as a systemic failure demanding comprehensive reform of legal policy. The enforcement of criminal law against technical negligence would thus serve as a symbol of the state's commitment to protecting the right to life while reaffirming the fundamental principle of law as a protector of the people.

5. Conclusion

5.1. Conclusion

Based on the findings and analysis of the Al Khoziny Islamic Boarding School building collapse, this study concludes that technical negligence in the construction of public facilities constitutes a criminal act of culpable negligence (*culpa delict*) under Articles 359 and 360 of the Indonesian Penal Code (KUHP). Such acts fulfill the elements of gross negligence (*culpa lata*) because the offenders consciously disregard construction safety standards, fail to engage certified professionals, and use substandard materials.

The criminal qualification of technical negligence is crucial because violations of public safety principles should not be treated as mere administrative breaches but as criminal offenses with legal consequences. The Penal Code serves as a *lex generalis* framework that fills the absence of penal provisions in sectoral regulations, such as the Construction Services Law (Law No. 2 of 2017) and the Job Creation Law (Law No. 11 of 2020). Criminal liability extends to corporate criminal responsibility, especially when negligence occurs within institutional structures, such as construction companies or project-managing foundations. The principles of vicarious liability and *culpa in vigilando* allow prosecutors to hold not only individual actors but also supervisors and decision-makers accountable for failing to exercise due diligence.

The fundamental weakness of both the Job Creation Law and the Construction Services Law is their lack of criminal sanctions for violations that result in fatalities. This legislative gap creates a divide between normative and substantive justice, requiring law enforcement authorities to adopt an integrated legal approach that bridges criminal law and administrative regulations. Therefore, fatal technical negligence should be viewed as a form of structural crime involving systemic failures, such as weak state oversight, professional noncompliance, and low public legal awareness. Reforming criminal policy in this domain is essential to ensure legal protection for public safety and enhance deterrence against negligent behavior in public construction.

5.2. Limitation

This study had several limitations. First, the analysis primarily employs a normative legal approach, emphasizing doctrinal and statutory interpretation without an extensive empirical judicial dimension, such as examining comparable court decisions. Second, comprehensive field data or technical audit reports from the Al Khoziny construction site were unavailable, limiting the evidence of a causal relationship between negligence and criminal consequences. Furthermore, this study does not fully explore comparative international frameworks, such as the United States' *Occupational Safety and Health Act (OSHA)* or the United Kingdom's *Health and Safety at Work Act*, which could provide valuable insights into reforming Indonesia's construction safety laws.

5.3. Suggestion



First, the Indonesian government should amend the Construction Services Law and Job Creation Law to explicitly include criminal sanctions for technical violations resulting in death or serious injury. These provisions should incorporate the concept of gross negligence (*culpa lata*) as a form of professional misconduct within the criminal justice framework. Second, an integrated construction monitoring system should be established among technical agencies, local governments, and law enforcement through an *early warning mechanism* to prevent the premature use of unsafe structures. Third, law enforcement authorities should actively apply Articles 359–360 of the Penal Code in prosecuting fatal technical negligence cases while promoting the development of inter-ministerial interpretive guidelines on criminal liability in the construction sector. Finally, public legal education and awareness programs should be strengthened, particularly in educational and religious institutions that frequently build public facilities without professional consultation, to cultivate a culture of safety and legal compliance.

Acknowledgment

The author expresses the deepest gratitude and sincere appreciation to the Doctoral Program in Law, Faculty of Law, University of Lampung, for its academic guidance, intellectual inspiration, and invaluable moral support throughout the preparation of this research. Heartfelt thanks are also extended to the Faculty of Law, Sang Bumi Ruwa Jurai University, for providing moral encouragement, research facilities, and a conducive academic environment that has greatly supported the author's academic development. The continuous support from both institutions has been instrumental in enriching academic perspectives, strengthening legal analysis, and fostering a spirit of research integrity and commitment to advancing legal science in Indonesia.

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