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LAW AT THE BOUNDARY: ADMINISTRATIVE GOVERNANCE, CONTRACTUAL RELATIONS, AND CRIMINALIZATION IN PUBLIC CONSTRUCTION PROCUREMENT

Risma Marleno[1*], Bambang Arwanto[1]
[1]Universitas Narotama, Jalan Arief Rahman Hakim 51, Surabaya 60117, Indonesia

[*]Correspondence E-Mail: marleno.ts@gmail.com
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ABSTRACT

Public construction procurement operates at the intersection of administrative governance, contractual relations, and criminal law, creating a persistent legal boundary problem when project irregularities are potentially criminalized as corruption. This study examines how judicial reasoning distinguishes administrative and contractual violations from conduct warranting criminal liability, focusing on the legal consequences of this boundary for accountability and legal certainty. Employing normative legal research with a socio-legal orientation, the study uses statutory, conceptual, case, and comparative approaches. Legal materials are analyzed through doctrinal thematic analysis focusing on administrative governance, contractual relations, criminal elements, causation, and judicial reasoning. The findings demonstrate that project delays, incomplete construction, procedural irregularities, and state financial losses do not, in themselves, establish criminal liability. Such failures may initially fall within administrative or contractual accountability, including sanctions, contract termination, delay penalties, performance guarantees, and blacklisting. Criminal liability requires proof of the statutory elements of corruption and a demonstrable causal connection between the defendant's conduct and actual state financial loss. The study develops a boundary-based framework of graduated legal accountability, distinguishing administrative sanctions, contractual remedies, and criminal prosecution according to the legal character of the violation. This framework contributes to socio-legal scholarship by explaining how institutional interactions among government, market actors, contractual governance, and criminal justice shape the boundaries of criminalization.

***Keywords**: Administrative Governance, Contractual Relations, Criminal Liability, Criminalization, Judicial Reasoning*

INTRODUCTION

Public construction procurement occupies a particularly complex legal and institutional space. It is not merely a technical process through which governments acquire infrastructure, goods, or services. It is also a site where public authority, market relations, contractual obligations, bureaucratic discretion, financial accountability, and criminal law intersect. Roads, hospitals, schools, public buildings, and other infrastructure projects are typically produced through contractual relationships between government agencies and private providers, yet these relationships remain embedded within a broader regime of public administration and state financial responsibility. This institutional complexity becomes especially significant when a construction project experiences delay, incomplete performance, deviations from technical specifications, procedural irregularities, or financial loss. At that point, a fundamental legal question emerges: when does a failure in public construction procurement remain an administrative or contractual matter, and when does it cross the threshold into criminal corruption?

This question is increasingly important because public procurement has long been recognized as one of the areas most vulnerable to corruption and governance failures. The substantial financial value of public contracts, the discretionary authority exercised by public officials, the technical complexity of procurement procedures, and the involvement of private contractors create opportunities for collusion, manipulation, conflicts of interest, and abuse of authority (Ahmad et al., 2022; Al-Billeh et al., 2023). International scholarship has repeatedly shown that corruption in procurement may occur at multiple stages, from project planning and tender design to contract award, implementation, payment, and post-completion auditing (Kusumawati et al., 2023; Sugiartha et al., 2022a). In this context, criminal law plays an indispensable role in protecting public resources and ensuring that public power is not converted into private gain. At the same time, the expansion of anti-corruption enforcement raises a different concern: not every procurement failure, contractual dispute, or administrative irregularity necessarily possesses the legal and moral character of a criminal offense.

The distinction is particularly relevant in public construction projects, where performance is inherently exposed to uncertainty. Construction contracts involve technical designs, changing site conditions, material availability, labor capacity, payment schedules, supervision, certification of work progress, and coordination among multiple actors. Delays and non-performance may therefore arise from poor planning, weak supervision, financial constraints, contractor incapacity, administrative decisions, or disputes concerning contractual interpretation. Construction law has historically developed a range of mechanisms to respond to these problems, including contract termination, liquidated damages, performance guarantees, claims, compensation, suspension of work, and dispute resolution procedures (DeAngelo et al., 2023; Safin, 2022). Public procurement systems likewise provide administrative sanctions for violations by suppliers or officials. The existence of these legal mechanisms demonstrates that public project failure is not governed by criminal law alone. Rather, it is situated within a plural architecture of accountability.

The problem becomes more difficult when the consequences of a contractual or administrative failure are translated into the language of criminal corruption. A delayed project may produce financial inefficiency. An incomplete building may result in wasted public expenditure. A deviation from procurement procedures may create administrative liability. Yet the presence of public loss or project failure does not, by itself, answer the question of individual criminal responsibility. Criminal liability requires more than an undesirable outcome. It depends on legally established conduct, statutory elements, culpability, evidence, and a sufficiently demonstrated relationship between the conduct of a particular defendant and the prohibited consequence. This distinction is essential to the basic structure of criminal justice because criminal punishment represents the most coercive intervention available to the state(Mossa, 2022; Rezky & Ibrahim, 2022; Rossinskiy, 2023).

The importance of this boundary can be observed in disputes surrounding public construction projects in which administrative and contractual remedies have already been applied before criminal proceedings are initiated. Contract termination, delay penalties, forfeiture of performance guarantees, corrective measures, and supplier blacklisting may indicate that a legal system has already recognized a particular event as a failure of contractual performance or procurement compliance. Such measures do not automatically preclude criminal prosecution, particularly where fraud, bribery, collusion, abuse of authority, or intentional diversion of public resources can be established. However, they raise a critical analytical question concerning the juridical character of the underlying conduct. The fact that one event may trigger multiple legal responses does not mean that every form of liability should be presumed to coexist automatically. Administrative responsibility, contractual responsibility, and criminal responsibility operate according to different normative logics, evidentiary thresholds, institutional purposes, and sanctioning mechanisms.

This issue is also important from the perspective of legal certainty. Modern legal systems depend on the ability of individuals and institutions to anticipate the legal consequences of their conduct. Contractors entering into public construction agreements should be accountable for breach, delay, or defective performance, but they must also be able to distinguish between commercial risk, contractual default, administrative non-compliance, and criminal wrongdoing. Similarly, public officials must be protected from the transformation of every policy mistake or administrative error into a criminal allegation while remaining accountable for genuine abuses of authority. The absence of a clear boundary may generate what socio-legal scholars describe as a climate of legal uncertainty, in which actors modify their behavior not because legal norms clearly guide action, but because the possibility of retrospective criminalization becomes difficult to predict (Fuller, 1969; Luhmann, 2004). In public administration, such uncertainty may contribute to excessive risk aversion, bureaucratic paralysis, and reluctance to make decisions, particularly in areas requiring technical judgment and discretionary authority.

Existing scholarship provides an important foundation for understanding this problem. The first major body of literature concerns corruption and public procurement. Youngky (2022) and Zuraidah and Setiawan (2023) demonstrate that corruption is deeply connected to the institutional organization of public authority and the incentives that structure interactions between public officials and private actors. Similarly, Helm (2024) and Jacob and Gunadi (2023) emphasize that procurement corruption cannot be reduced to isolated acts of individual misconduct because it often emerges through institutional weaknesses, asymmetric information, weak monitoring, and distorted market competition. DeAngelo et al. (2023) and Zulyadi and Hossain (2022) further highlight procurement as a critical arena for integrity governance, emphasizing preventive mechanisms such as transparency, risk management, accountability, and institutional oversight. Owusu-Bempah (2024) and Panduwinata et al. (2022) likewise identify procurement as particularly vulnerable to corruption because of the combination of public resources, discretionary authority, and complex contractual arrangements. Taken together, these studies provide valuable insight into the structural and institutional risks of procurement corruption, particularly the conditions that enable misconduct and the mechanisms required to prevent it. However, their primary concern remains the prevention, detection, and governance of corrupt practices rather than the more specific legal question of how administrative irregularities and contractual breaches should be distinguished from conduct that warrants criminal liability.

A second body of literature examines the relationship between administrative law, public power, and accountability. Administrative governance is fundamentally concerned with the lawful exercise of public authority, procedural compliance, institutional responsibility, and the control of discretionary power (Anane, 2024; Hapsari & P, 2023). Administrative law scholars have long argued that government accountability cannot be understood solely through punitive mechanisms because public institutions are governed through multiple forms of control, including judicial review, administrative sanctions, political oversight, professional standards, and internal procedures (Hyun, 2024; Safin, 2022). Pylypenko (2023), in particular, demonstrates that accountability is a multidimensional institutional practice involving several actors and normative expectations. This perspective is important for public procurement because administrative irregularities may require administrative correction rather than criminal punishment. Nevertheless, the literature on administrative accountability often remains analytically separate from debates concerning criminalization, leaving unresolved the question of how administrative responsibility should interact with criminal enforcement when the same event produces financial consequences for the state.

A third stream of scholarship focuses on contractual relations and the legal governance of construction projects. Construction contracts are designed to allocate risk, define performance obligations, establish procedures for variations, regulate delay, and provide remedies when contractual obligations are not fulfilled (Barsky & Stein, 2023; Kusumawati et al., 2023). From this perspective, incomplete performance or delay is not automatically evidence of illegality; it may represent a legally recognized breach that triggers remedies within the contractual system. Contract law distinguishes between the existence of a breach and the reasons for that breach, while also recognizing mechanisms for termination, damages, guarantees, and dispute resolution. The influential theory of relational contracting further demonstrates that contractual relations cannot always be understood as isolated exchanges, as they are embedded in continuing relationships, institutional expectations, and broader social norms (Al-Billeh et al., 2023; Van Cleve, 2022). Public construction procurement reflects this complexity: the government is simultaneously a contracting party, a regulator, and a guardian of public resources. Yet much of the existing construction law literature concentrates on private disputes and contractual remedies, while insufficiently examining how contractual failures become reinterpreted within criminal justice processes.

The fourth relevant body of literature concerns criminalization and the limits of criminal law. Scholars such as Kusworo (2023) and Scherbakova (2024) have warned against the tendency to expand criminal law into areas that may be more appropriately governed through civil, administrative, or regulatory mechanisms. Criminal law is distinctive because it carries stigma, coercion, and the possibility of deprivation of liberty. Consequently, criminalization requires careful justification. The principle that criminal law should not become the default response to every social harm is closely associated with the idea of ultima ratio, according to which punitive intervention should be reserved for conduct that cannot be adequately addressed through less intrusive legal mechanisms. This does not imply that economic or procurement-related wrongdoing should be treated leniently. Rather, it requires a careful differentiation between harmful outcomes and criminally attributable conduct. Similarly, Bowman et al. (2024) and Sani et al. (2023) emphasize that criminal responsibility concerns the attribution of wrongdoing to persons who can properly be held accountable for conduct that violates public norms. The existence of harm, therefore, is not equivalent to the establishment of criminal guilt.

A fifth strand of literature concerns causation, judicial reasoning, and the attribution of legal responsibility. In complex institutional settings, harmful outcomes are rarely produced by a single action or actor. Public construction projects involve procurement officials, project managers, consultants, supervisors, contractors, subcontractors, auditors, and government institutions. Determining criminal responsibility in such contexts requires more than identifying a financial loss; it requires explaining how that loss can be legally and factually connected to the conduct of a particular defendant. Bennet (2024) and Lapatnikov (2022) demonstrate that causation in law is not simply a scientific question of physical sequence but also a normative process through which legal institutions determine which causes should count for purposes of assigning responsibility. This insight is particularly relevant to corruption cases involving public projects because state financial loss may result from a chain of administrative, contractual, technical, and economic decisions. Judicial reasoning therefore becomes central to determining whether the evidence establishes a sufficiently direct and legally meaningful connection between individual conduct and the alleged loss.

Socio-legal scholarship adds a further dimension to this discussion by showing that law does not operate in isolation from the institutions and social relationships through which it is applied. Ahmad et al. (2022) and Jasmine and Widiatno (2024) demonstrate that legal outcomes are shaped by differences in organizational capacity and institutional resources, while Lestev (2022) shows how law acquires meaning through everyday practices and social narratives. In the context of public procurement, the legal classification of conduct as an administrative failure, contractual breach, or criminal offense is therefore not merely a technical exercise in statutory interpretation. It is also a process shaped by institutional authority, professional knowledge, audit practices, prosecutorial discretion, and judicial interpretation. The boundary between legal categories is constructed through interactions among institutions that possess different mandates and understandings of responsibility. This makes public construction procurement a particularly productive field for the sociology of law because it reveals how legal classifications are produced at the intersection of the state, the market, and the justice system.

Despite these substantial contributions, the existing literature remains fragmented. Studies of procurement corruption primarily emphasize corruption risks and integrity mechanisms; administrative law scholarship focuses on public accountability and the control of governmental authority; construction law examines contractual performance and remedies; while criminal law scholarship addresses the justification and limits of punishment. Less attention has been directed toward the boundary itself: the legal and institutional process through which an administrative irregularity or contractual breach is transformed into a criminal allegation in public construction procurement. Existing studies also tend to treat state financial loss as either evidence of corruption or a consequence of governance failure without sufficiently examining how such loss should be connected to individual criminal responsibility through causation and proof. The analytical problem, therefore, is not simply whether corruption has occurred, but how legal institutions determine the point at which a governance or contractual failure crosses the threshold into criminal wrongdoing.

This study advances a boundary-based approach to public construction procurement by examining administrative governance, contractual relations, and criminalization as interconnected but legally differentiated domains. Rather than assuming that project failure and criminal liability exist on a single continuum, the study conceptualizes accountability as graduated. Administrative irregularities may require administrative correction or sanctions; contractual breaches may trigger contractual remedies; and criminal prosecution becomes justified only when the legally required elements of corruption, including culpable conduct and a demonstrable causal relationship to actual state financial loss, are established. The contribution of this approach lies in shifting attention from the outcome of project failure alone to the institutional and normative process through which responsibility is legally classified. Judicial reasoning is consequently examined not only as a mechanism for resolving an individual dispute but also as a boundary-setting process that determines which legal regime should govern particular forms of conduct.

Accordingly, this study aims to analyze how courts distinguish administrative irregularities, contractual breaches, and criminal conduct in public construction procurement; how judicial reasoning constructs the boundary between administrative or contractual responsibility and criminal corruption liability; and how this boundary affects legal certainty, accountability, fair adjudication, and public governance. By placing judicial reasoning within the broader interaction between state administration, contractual governance, and criminal justice, the study seeks to contribute to sociology of law by demonstrating that legal boundaries are not merely abstract doctrinal lines. They are institutional products that shape how public officials, contractors, auditors, prosecutors, and judges understand responsibility in the governance of public resources. In this sense, the study argues for a more differentiated conception of accountability—one capable of protecting public finances and combating genuine corruption without allowing every administrative failure or contractual dispute to be automatically absorbed into the criminal justice system.

RESEARCH METHOD

This study employs normative legal research with a socio-legal orientation to examine the legal boundary between administrative governance, contractual responsibility, and criminal liability in public construction procurement. The research is normative in its primary analytical orientation because the central question concerns the interpretation, classification, and application of legal norms governing procurement failures and corruption liability. However, a socio-legal orientation is incorporated to situate judicial reasoning within the broader institutional relationships among public authorities, contractors, auditors, and criminal justice institutions. This approach allows the study to examine not only what the law prescribes, but also how different legal regimes interact in defining responsibility for failures in public construction projects.

The research applies four complementary approaches. First, the statute approach examines the legal framework governing public procurement, construction services, administrative authority, state financial accountability, and corruption offenses. This approach is used to identify the normative criteria through which administrative violations, contractual breaches, and criminal conduct are distinguished. Second, the conceptual approach draws on the concepts of criminalization, legal accountability, causation, legal certainty, and ultima ratio to develop an analytical framework for determining the threshold at which non-criminal misconduct may become criminally relevant. Third, the case approach focuses primarily on Decision No. 10/Pid.Sus-TPK/2026/PN Kpg as the principal case through which the interaction between contractual performance, administrative sanctions, alleged state financial loss, and criminal liability is examined. Fourth, a comparative case approach is employed through comparison with Decision No. 2189 K/Pid.Sus/2019 to identify similarities and differences in judicial reasoning concerning causation and the attribution of criminal responsibility in public procurement-related cases.

The study relies on primary and secondary legal materials. Primary materials include relevant legislation on corruption, government procurement, construction services, administrative governance, and criminal procedure, as well as the selected judicial decisions. Secondary materials consist of peer-reviewed journal articles, scholarly books, and academic literature addressing procurement corruption, administrative accountability, construction contracts, criminalization, causation, and sociology of law. Legal materials were selected based on their relevance to the central research problem and their capacity to explain the transition from administrative or contractual misconduct to criminal liability.

The analysis follows a doctrinal thematic strategy. Each legal source and judicial decision is examined through five analytical dimensions: (1) the nature of the alleged administrative irregularity; (2) the existence and legal consequences of contractual breach; (3) the fulfillment of statutory elements of criminal conduct; (4) the causal relationship between the defendant's conduct and state financial loss; and (5) the judicial reasoning used to classify and attribute responsibility. The findings are then compared across these dimensions to identify the legal threshold separating different forms of accountability.

RESULTS AND DISCUSSION

Public Construction Failure as a Multi-Regime Legal Problem

Public construction failure should not be treated as a legally self-evident category. The failure to complete a public infrastructure project, delays in performance, deviations from contractual specifications, deficiencies in work volume, or disputes over payment may produce serious consequences for public services and state finances. Yet the legal significance of these events cannot be determined solely from their outcomes. The same factual event may simultaneously involve questions of administrative authority, contractual performance, financial accountability, and criminal responsibility. The central finding of this study is therefore that public construction failure constitutes a multi-regime legal problem: a single project failure may activate several legal regimes, but the coexistence of those regimes does not automatically transform every violation into criminal conduct.

The principal case examined in this study illustrates this complexity. The dispute emerged from the implementation of a government-funded construction project in which the relationship between the public institution and the private provider was initially structured through a formal procurement and contractual framework. The provider was bound by obligations concerning the execution, completion, quality, and timing of the contracted work, while the government institution exercised authority as project owner, budget user, contract administrator, and supervisory actor. When problems arose during implementation, the legal relationship did not immediately enter the domain of criminal law. The initial issues concerned the execution of contractual obligations, project progress, and the consequences of non-performance. Administrative and contractual mechanisms were subsequently activated, including measures related to contract termination, delay sanctions, performance guarantees, and restrictions affecting the provider's participation in future procurement processes.

These facts are significant because they demonstrate that the legal life of a public construction project begins within a governance structure rather than within the criminal justice system. Public procurement is a regulatory process through which the state converts public policy objectives into contractual relationships with private actors. The government does not operate merely as a commercial contracting party. It simultaneously exercises public authority, manages public resources, establishes procurement rules, supervises implementation, and remains accountable for the use of public funds. This dual institutional position makes public procurement structurally different from ordinary private contracting (Sugiartha et al., 2022b; Tongat, 2024). The contractor, meanwhile, operates within a relationship that is contractual but also heavily regulated by public law. Its failure to perform may therefore trigger consequences beyond ordinary private-law remedies, including administrative sanctions designed to protect the integrity of the procurement system.

The existence of multiple legal consequences, however, should not obscure the distinction between different forms of wrongdoing. Administrative law addresses the legality and propriety of governmental action, procedural compliance, institutional authority, and public accountability. Contract law addresses reciprocal obligations, performance, breach, and remedies between parties. Criminal law, by contrast, concerns conduct that has crossed a legally defined threshold of public wrongdoing and therefore warrants penal intervention. These regimes may overlap in practice, but they do not operate according to identical standards. As argued by Rahman et al. (2024) and Suno & Fransiska (2022), accountability is inherently multidimensional because public institutions are subject to different forums of scrutiny, each with its own expectations and consequences. A finding that may be sufficient to establish administrative responsibility does not necessarily satisfy the evidentiary and normative requirements of criminal liability.

This distinction is particularly important in construction procurement because project implementation is rarely a simple linear process. Construction performance depends on technical conditions, financial flows, supervision, design quality, material availability, labor capacity, coordination among institutions, and decisions made at different stages of implementation. A delay may result from contractor incapacity, but it may also be connected to design changes, payment delays, site conditions, weak supervision, or decisions made by public authorities. Similarly, incomplete performance may constitute a contractual breach without necessarily demonstrating fraudulent intent, abuse of authority, or other criminal elements. Construction law has developed specific legal mechanisms precisely because performance failures are expected to occur within complex contractual relationships. These mechanisms include extensions of time, liquidated damages, termination, performance security, claims, dispute resolution, and other corrective instruments (Gröning, 2024; Katz, 2026).

The legal significance of the administrative and contractual measures identified in the present case must therefore be understood carefully. The application of contract termination, delay penalties, performance guarantees, or blacklisting does not establish that criminal prosecution is impossible. A single act may, under certain circumstances, generate administrative, civil, and criminal consequences. Fraudulent conduct within a contractual relationship, for example, does not become immune from criminal liability simply because a contract exists between the parties. Nevertheless, the prior existence of administrative and contractual mechanisms remains legally relevant because it requires a more precise inquiry into the character of the alleged wrongdoing. The question is not whether a project failed, nor whether the state suffered a financial consequence, but what type of conduct produced that failure and which legal regime is normatively appropriate to govern it.

This finding challenges a tendency in public corruption discourse to treat adverse financial outcomes as the starting point for criminal attribution. Public procurement is undoubtedly vulnerable to corruption, and criminal law remains essential where public authority or contractual relationships are intentionally manipulated for unlawful benefit. Yet anti-corruption enforcement becomes analytically problematic when the distinction between poor performance and criminal conduct is collapsed. Crosby (2023) notes that procurement systems are vulnerable because of information asymmetry, institutional discretion, and complex relationships between public and private actors. However, vulnerability to corruption should not be confused with proof of corruption. Similarly, Sasmita et al. (2023) emphasize that corruption must be understood in relation to institutional incentives and the misuse of public authority, rather than simply through the existence of inefficient or harmful outcomes.

The present study therefore conceptualizes public construction failure as a multi-regime legal problem. This concept refers to a situation in which a single factual sequence is simultaneously capable of producing questions within different legal domains. This sequence does not imply that every procurement dispute necessarily progresses from one stage to the next. Rather, it identifies the principal legal environments within which the conduct must be assessed. Administrative governance concerns whether public authority was exercised lawfully and whether procurement procedures were properly followed. Contractual relations concern whether the parties performed their obligations and whether remedies are available for delay, defective work, or non-performance. Criminal accountability concerns whether a legally defined offense has been committed and whether responsibility can be attributed to an identifiable individual according to the applicable standards of criminal proof.

The analytical value of this framework lies in its rejection of automatic legal escalation. A procedural irregularity does not automatically become a contractual breach, and a contractual breach does not automatically become a criminal offense. Each transition requires an additional legal determination. The classification of conduct must therefore precede the attribution of responsibility. This point is particularly important because criminal law is not merely another remedial mechanism within the procurement system. It carries qualitatively different consequences, including punishment, stigma, and potentially the deprivation of liberty. The decision to classify conduct as criminal consequently requires a higher degree of legal justification than the decision to impose administrative or contractual sanctions (Perez, 2022; Sugiartha et al., 2022a).

From a broader governance perspective, this differentiated approach is consistent with contemporary discussions of regulatory pluralism. Modern governance rarely relies on a single institution or instrument to regulate complex social and economic activities. Instead, regulation operates through overlapping systems involving legislation, contracts, administrative agencies, professional standards, audit mechanisms, and courts. Recent scholarship on regulatory governance increasingly emphasizes the importance of coordination among these instruments and the risks that arise when one regulatory mechanism displaces the function of another (Kalinyuk, 2022; Sari et al., 2023). In public construction procurement, criminal law should therefore be understood as part of a broader architecture of governance rather than as the automatic endpoint of every institutional failure.

This perspective also clarifies the role of accountability. Accountability does not necessarily mean punishment. It involves the capacity of institutions to require explanation, assess conduct, impose consequences, and correct failures. Administrative sanctions may restore compliance; contractual remedies may compensate losses or redistribute risks; and criminal punishment may condemn conduct that violates fundamental public norms. Treating these mechanisms as interchangeable weakens the internal logic of each legal regime. A differentiated system of accountability is therefore not a strategy for reducing responsibility. On the contrary, it allows responsibility to be imposed through the legal mechanism most appropriate to the nature of the violation.

The evidence examined in the principal case supports this interpretation. The existence of contractual and administrative responses before or alongside criminal proceedings demonstrates that the underlying events were legally complex and could not be understood exclusively through the language of corruption. The legal inquiry required the reconstruction of several distinct questions: Was there a failure of contractual performance? Were administrative rules or procurement procedures violated? Did the conduct result in a legally demonstrable state financial loss? Most importantly, did the available evidence establish conduct that satisfied the statutory elements required for criminal liability? These questions cannot be collapsed into one another without weakening the precision required by each legal regime.

Accordingly, the central argument of this section is that the legal problem does not begin with criminal liability; it begins with the classification of the underlying conduct. Before determining whether a person should be criminally responsible, the legal system must identify the juridical character of the relevant conduct. Was the problem primarily a matter of administrative governance, contractual performance, or criminal wrongdoing? The answer cannot be inferred simply from the severity of the project's failure or the magnitude of the alleged financial loss. It must be constructed through statutory interpretation, factual assessment, causal analysis, and the evaluation of the specific legal obligations governing the actors involved.

Administrative and Contractual Responses: The First Layer of Legal Accountability

The legal consequences arising from public construction failure should not be examined exclusively through the lens of criminal liability. A central finding of this study is that public procurement law already provides a structured set of non-penal mechanisms for responding to failures in project implementation. In the case under examination, these mechanisms included contract termination, delay penalties, the enforcement of performance guarantees, administrative sanctions, blacklisting, and other corrective contractual measures. Their existence is legally significant because they demonstrate that the procurement system possesses its own internal architecture of accountability. Before a project failure is translated into a question of criminal responsibility, the legal system may already have classified the underlying conduct as a matter of administrative non-compliance or contractual non-performance.

This does not mean that administrative or contractual measures operate as substitutes for criminal law in every situation. Nor does it imply that the application of a contractual remedy immunizes a contractor or public official from criminal prosecution. Where evidence establishes fraud, collusion, bribery, abuse of authority, deliberate misrepresentation, or another legally defined criminal act, the existence of a contract cannot shield the relevant actor from prosecution. The opposite proposition, however, is equally important: the existence of contractual failure cannot itself establish criminal responsibility. A project may fail because the contractor breached its obligations, but a breach is not synonymous with a crime. The distinction between these propositions forms the normative basis of the present study's concept of graduated legal accountability.

The framework should not be interpreted as a rigid sequence in which every case must pass through administrative and contractual stages before criminal law becomes available. Some conduct may be criminal from the outset, particularly where the procurement process itself is manipulated through bribery, fraud, collusion, or deliberate abuse of public authority. Rather, the framework is classificatory. It requires the legal system to identify the juridical nature of the conduct before determining the appropriate form of accountability. The central question is therefore not whether several legal consequences may arise from the same event, but what normative basis justifies the movement from one form of legal responsibility to another.

This distinction becomes particularly important in public construction procurement because contractual and administrative mechanisms are not incidental responses to project failure. They are integral components of the governance system. Contract termination is a legally recognized response to serious non-performance. Delay penalties are designed to allocate the financial consequences of late completion. Performance guarantees provide financial protection against the risk that contractual obligations will not be fulfilled. Blacklisting and other administrative sanctions protect the integrity of future procurement by restricting the participation of providers who have violated procurement requirements. Corrective measures, similarly, may seek to restore compliance or mitigate the consequences of defective performance. These instruments demonstrate that the legal system recognizes public construction failure as a governance problem requiring differentiated institutional responses rather than immediate penal intervention.

From a contractual perspective, these remedies are part of the allocation of risk between the government and the provider. Construction contracts are designed not only to prescribe ideal performance but also to govern situations in which performance becomes delayed, incomplete, defective, or disputed. Modern construction law therefore contains mechanisms for extensions of time, compensation, damages, termination, security enforcement, and dispute resolution (Grudecki & Sitarz, 2024; Ishak et al., 2023). The existence of these remedies reflects an important legal reality: contractual relationships anticipate the possibility of failure. A breach is serious and may impose substantial financial consequences, but its legal character must still be distinguished from conduct that satisfies the elements of a criminal offense.

The same principle applies to administrative accountability. Public procurement is governed by procedural rules because the use of public resources requires transparency, competition, fairness, and institutional control. Administrative irregularities may therefore trigger sanctions even when no criminal offense has been established. This distinction reflects the multidimensional character of public accountability. As Rachmat & Waluyo (2023) argue, accountability operates through different institutional forums, each capable of demanding explanations and imposing consequences according to its own normative standards. Administrative responsibility concerns whether an actor complied with the legal and procedural requirements governing public authority and procurement. Criminal responsibility, in contrast, requires the satisfaction of a more specific threshold defined by substantive criminal law and evidentiary standards.

The present case demonstrates why this distinction should be preserved. The use of contractual and administrative mechanisms indicates that the underlying project failure was not legally invisible before the initiation of criminal proceedings. On the contrary, the procurement system had already generated consequences in response to the difficulties in project implementation. This prior legal response does not resolve the separate question of criminal liability, but it establishes an important analytical context. It requires investigators, prosecutors, and courts to explain why the conduct should be understood as more than non-performance or non-compliance. If criminal prosecution follows, the transition must rest on evidence demonstrating a qualitatively different form of wrongdoing rather than simply on the fact that previous remedies proved insufficient to restore the project or compensate for the loss.

This point can be described as the principle of differentiated legal response. The principle holds that legal responsibility should correspond to the juridical character of the conduct being assessed. Administrative misconduct should initially be understood through the rules governing public administration; contractual failure through the law of obligations and contractual remedies; and criminal liability through the statutory requirements of criminal law. The principle does not prohibit overlapping consequences. A single act may violate administrative regulations, breach contractual obligations, and satisfy criminal elements simultaneously. However, each form of liability must be independently justified. Criminal responsibility cannot simply be inferred from the existence of administrative or contractual wrongdoing.

The distinction is consistent with the broader concern regarding overcriminalization. Criminal law carries consequences that differ fundamentally from other forms of legal regulation. It authorizes the state to impose punishment and attaches public stigma to the individual who is found criminally responsible. For this reason, the expansion of criminal law into domains traditionally governed through civil, contractual, or administrative mechanisms has generated sustained concern in legal scholarship (Aven & Flage, 2023; Hasbi et al., 2023). The problem is not that criminal law should be absent from economic governance. Serious corruption in public procurement can cause substantial financial harm, undermine public trust, and distort competition. The concern is instead one of legal differentiation: criminal law should respond to criminal wrongdoing, not become an automatic institutional response to every governance failure.

Recent scholarship on regulatory governance reinforces this argument. Regulatory systems increasingly operate through combinations of rules, institutions, incentives, sanctions, monitoring mechanisms, and enforcement strategies rather than through a single command-and-punishment model. Pratama (2022) emphasizes that effective regulation depends on the appropriate selection and coordination of regulatory instruments. The choice of legal response should therefore consider the nature of the problem, the institutional context, and the objective of intervention. In the context of public procurement, this suggests that accountability should not be understood as synonymous with criminal prosecution. A well-functioning accountability system is one capable of distinguishing misconduct, correcting failures, compensating for losses, deterring future violations, and imposing punishment where punishment is genuinely warranted.

The logic of responsive regulation is particularly useful in explaining this differentiated architecture. Although responsive regulation was initially developed to understand the relationship between regulatory enforcement and compliance, its broader insight remains relevant: legal systems should possess a range of responses and should not rely automatically on their most coercive instrument. The choice of response should be proportionate to the nature and seriousness of the conduct, while escalation should be justified by identifiable changes in the character of the violation. Applied to public construction procurement, this means that criminal law remains available where the conduct reveals a level of intentionality, deception, abuse, or unlawful appropriation that exceeds ordinary administrative or contractual failure. The presence of prior administrative or contractual remedies is therefore not evidence against criminal liability; rather, it helps clarify the legal landscape within which the threshold of criminalization must be assessed.

This argument is especially important where project failure has already generated state financial consequences. Financial loss may increase the seriousness of a dispute, but it does not determine the legal category of the underlying conduct. A contractor may be liable to compensate the government because of non-performance, while a public official may be subject to administrative sanctions for weak supervision. These consequences may coexist with criminal prosecution only if the facts independently establish the relevant criminal elements. The legal system must therefore resist a form of outcome-based reasoning in which the existence of loss retrospectively transforms all preceding failures into criminal conduct. Such reasoning risks collapsing the distinction between accountability and punishment.

The concept of graduated legal accountability developed in this study offers a way to preserve this distinction without weakening anti-corruption enforcement. Its central premise is not that criminal law should always be the last chronological response, but that criminal liability represents a qualitatively distinct form of accountability. The threshold for entering the criminal domain must therefore be justified through the specific elements of the offense, the available evidence, culpability, and the attribution of harmful consequences. Administrative sanctions and contractual remedies remain legally meaningful because they respond to different forms of failure and pursue different institutional objectives.

From State Financial Loss to Criminal Liability: The Problem of Causal Attribution

One of the most persistent difficulties in corruption cases involving public construction procurement lies in the tendency to treat state financial loss as if it were self-executing evidence of individual criminal responsibility. The present study finds that such an approach risks collapsing three legally distinct phenomena into a single proposition: project failure, state financial loss, and criminal liability. Although these phenomena may arise within the same sequence of events, they do not carry the same legal meaning. A construction project may fail; that failure may contribute to a measurable financial loss; and yet the existence of both circumstances does not automatically establish that a particular individual has committed a criminal offense. The decisive legal question is therefore not simply whether the state suffered a loss, but how that loss can be attributed, in legal and evidentiary terms, to the conduct of a particular person.

This distinction is central to the present case. The construction project under examination generated a dispute over the implementation and completion of contractual obligations, followed by administrative and contractual responses, and eventually by allegations concerning state financial loss. At this point, the legal analysis cannot proceed merely by moving chronologically from an unsuccessful project to a financial calculation and then to criminal prosecution. Criminal responsibility requires a different analytical structure. The law must identify the conduct attributed to the defendant, establish its relationship to a statutory prohibition, demonstrate the relevant form of culpability, and show that the alleged loss can be legally connected to that conduct. In this sense, state financial loss is a legal consequence requiring attribution rather than an independent proof of criminal guilt.

The first stage concerns the factual and institutional failure of the project. This may involve delayed completion, incomplete work, defective construction, deviations in volume, payment disputes, inadequate supervision, or the termination of the contract. The second stage concerns the economic consequences of that failure, including whether public funds were improperly paid, whether the state received less value than the amount expended, or whether financial resources became unrecoverable. The third stage is qualitatively different. It concerns whether a specific individual can be held criminally responsible for conduct that legally caused or contributed to the loss.

The distinction matters because factual sequence does not necessarily establish legal attribution. A project can fail before a financial loss becomes visible, and a financial loss can emerge from a combination of institutional, technical, contractual, and individual factors. Construction projects are particularly vulnerable to such complexity because their implementation involves multiple actors, including procurement officials, commitment-making authorities, technical supervisors, consultants, contractors, inspectors, auditors, and other institutional actors. Decisions are distributed across different stages of the project, from planning and procurement to implementation, supervision, payment, and acceptance. As a result, the fact that a financial loss eventually occurs does not by itself answer the question of whose conduct caused that loss in a legally relevant sense.

This is where the concept of causal attribution becomes central. Causation in criminal law cannot be reduced to the simple proposition that one event happened before another. Temporal sequence is not sufficient to establish criminal responsibility. Criminal law requires an evaluative connection between conduct and consequence. As Ksendzov (2022) argues, causation is indispensable to criminal responsibility because punishment for harmful outcomes presupposes more than factual involvement; it requires that the defendant's conduct occupy a legally meaningful place in the production of the prohibited harm. Similarly, legal causation involves normative judgments about which consequences should properly be attributed to a person's conduct and which consequences are too remote, contingent, or institutionally mediated to support liability.

The problem becomes particularly significant in corruption cases involving public expenditure. State financial loss is often treated as an objective indicator of wrongdoing because it can be quantified through audits, expert assessments, or comparisons between contractual value and actual work. Yet quantification answers only one part of the legal problem. It may establish the amount of loss, but it does not necessarily establish the source of criminal responsibility. The calculation of loss must therefore be separated from the attribution of loss. The first asks: How much did the state lose? The second asks: Why, and because of whose legally culpable conduct, did the loss occur?

The first element requires the identification of concrete conduct. Criminal liability cannot rest on the general proposition that a project failed or that an individual occupied a particular institutional position. The conduct must be specified: what did the defendant do, authorize, omit, conceal, manipulate, or falsely represent? The second element requires a connection between that conduct and the statutory requirements of the relevant criminal offense. Not every technical deviation or contractual breach constitutes an unlawful act in the criminal sense. The third element concerns culpability. The prosecution must demonstrate the legally required mental or fault element associated with the offense, whether intentional conduct, knowledge, or another form of culpability recognized by the applicable law.

Only after these elements have been established does the question of causation become fully meaningful. The inquiry then asks whether the identified conduct contributed to the alleged loss in a sufficiently direct and legally relevant manner. This requires more than demonstrating that the defendant was present within the institutional environment in which the project failed. It requires a demonstrable connection between the conduct and the harmful financial consequence.

This approach also prevents an important analytical mistake: the transformation of institutional complexity into individual guilt by means of outcome-based reasoning. Public construction projects are governed through a network of administrative decisions and contractual relationships. A loss may result from inadequate planning, inaccurate cost estimation, technical design problems, delayed approvals, weak supervision, changes in project conditions, contractor non-performance, or failures by several actors simultaneously. These factors do not necessarily exclude criminal responsibility, but they make causal analysis indispensable. Where multiple causes contribute to the same outcome, criminal law must determine which conduct is sufficiently connected to the harm and whether the defendant's contribution satisfies the statutory threshold for liability.

The comparison with Decision No. 2189 K/Pid.Sus/2019 is particularly relevant to this problem. The comparative case illustrates the importance of distinguishing the factual existence of unsuccessful government work from the independent proof required to establish individual criminal responsibility. A failure in the implementation of a government project may create financial consequences for the state, but criminal liability cannot be constructed solely by moving from the existence of incomplete work to the conclusion that a particular actor caused a criminal loss. The judicial analysis must establish the connection between the defendant's specific conduct, the statutory elements of the offense, and the alleged financial consequence. This comparative perspective reinforces the central finding of the present study: criminal liability requires a chain of attribution rather than merely a chain of events.

The distinction between these two chains is conceptually important. A chain of events is chronological. It may show that a contract was awarded, work was performed incompletely, payments were made, the project failed, and the state subsequently suffered a financial loss. Such a chronology can be factually persuasive, but it remains insufficient for criminal responsibility unless the legal system can identify how particular conduct produced or materially contributed to the legally relevant outcome. A chain of attribution, by contrast, is normative and evidentiary. It requires the court to explain why a particular person's conduct should be treated as the legally relevant source of the harm.

This is also the point at which judicial reasoning performs its most important boundary-setting function. Judges do not simply verify whether an audit has identified a financial loss. They must assess whether the evidence establishes the legal pathway from conduct to consequence. The reasoning must address competing explanations for the loss, the role of other institutional actors, the contractual context of the project, and the relationship between administrative failures and the alleged criminal act. In a complex public construction project, causation is rarely a purely mechanical question. It is a process of legal selection: determining which facts matter for criminal responsibility and which belong instead to the broader history of administrative or contractual failure.

Contemporary scholarship on criminal responsibility increasingly emphasizes this distinction between factual causation and normative attribution. Legal responsibility does not arise from every factual contribution to a harmful outcome. The law must determine whether the contribution is sufficiently substantial, direct, and normatively relevant to justify attributing the consequence to the actor (Sriwidodo & Tumanggor, 2024). This distinction is particularly useful for corruption cases because the financial consequences of public procurement are often produced through collective and institutional processes. The mere fact that an individual participated in one stage of that process does not automatically justify attributing the entire loss to that person.

For the present study, this insight has direct implications for the interpretation of state financial loss. Financial loss should not be positioned as the starting point from which criminal guilt is inferred retrospectively. Instead, it should be treated as one component within a broader structure of criminal proof. The prosecution must establish the relevant conduct independently, demonstrate its unlawful character, prove culpability, and construct a legally defensible connection between the conduct and the loss. If the loss can be explained equally or substantially by independent administrative, contractual, technical, or institutional factors, the causal attribution to an individual requires particularly careful judicial scrutiny.

This does not weaken the protection of public finances. On the contrary, it strengthens the legitimacy of anti-corruption enforcement by ensuring that criminal punishment is directed toward conduct that satisfies the legal criteria for criminal wrongdoing. A legal system that automatically equates financial loss with criminal guilt risks both over-criminalization and analytical inconsistency. It may punish actors for institutional failure without adequately demonstrating their individual culpability, while simultaneously obscuring the structural conditions that produced the loss.

Judicial Reasoning as Boundary-Setting: Constructing the Threshold of Criminalization

The preceding analysis demonstrates that public construction failure may simultaneously generate administrative, contractual, financial, and criminal questions. Yet the coexistence of these legal dimensions does not itself determine which legal regime should ultimately govern a particular act. The decisive institutional question is therefore who determines the point at which administrative irregularity or contractual non-performance crosses into criminal wrongdoing. The findings of this study indicate that judicial reasoning occupies this critical position. In the context of Decision No. 10/Pid.Sus-TPK/2026/PN Kpg, the court's ratio decidendi operates not merely as a justification for a particular outcome, but as a mechanism for defining the practical boundaries between administrative governance, contractual responsibility, and criminal law.

The central finding can therefore be stated as follows: judicial reasoning functions as a boundary-setting mechanism between administrative governance, contractual responsibility, and criminal law. This function becomes particularly important in public procurement cases because the facts brought before the court do not arrive in a legally neutral form. They are already interpreted by different institutional actors. Auditors describe financial discrepancies and calculate state losses. Procurement officials describe procedural compliance and administrative authority. Contractors frame disputes through contractual performance, technical specifications, and project conditions. Prosecutors reconstruct the same events as evidence of criminal conduct. The court must then determine which of these institutional descriptions has legal relevance for criminal responsibility and whether the available evidence satisfies the threshold established by criminal law.

This process is more complex than simply deciding whether a defendant is guilty or not guilty. At its core, judicial reasoning involves a process of legal classification. The court must identify the nature of the conduct before determining its legal consequence. A procedural deviation may constitute an administrative irregularity. A failure to complete work may constitute a contractual breach. A financial discrepancy may give rise to restitution, compensation, or administrative sanctions. However, none of these classifications automatically establishes corruption. Criminal liability requires a separate determination that the conduct satisfies the statutory elements of the relevant offense and that the required connection between conduct, culpability, and legally relevant consequences has been established.

In this respect, the ratio decidendi of Decision No. 10/Pid.Sus-TPK/2026/PN Kpg becomes the central site of analysis. The relevant question is not simply whether the court accepted or rejected the allegation of corruption, but how the judges moved from the factual record to legal classification. The reasoning must be examined through several interrelated dimensions: how the court reconstructed the implementation of the project; how it assessed evidence concerning the progress and quality of construction; how it interpreted the position and authority of the defendant; how it connected individual conduct with the alleged state financial loss; and how it evaluated the elements of unlawfulness, culpability, and causation. Together, these dimensions reveal the threshold at which the court distinguishes a legally problematic project from a criminally punishable act.

The importance of this process lies in the fact that the same factual event can support competing legal narratives. Consider an incomplete construction project. From the perspective of contract law, the central question may concern whether the provider performed its obligations and whether the government was entitled to terminate the contract or enforce a performance guarantee. From an administrative perspective, the focus may shift toward whether procurement officials complied with procedures, exercised authority properly, or performed adequate supervision. From a criminal law perspective, however, the inquiry becomes narrower and more demanding: whether a particular individual committed conduct prohibited by criminal law, with the required culpability, and whether the alleged state loss can be legally attributed to that conduct. Judicial reasoning determines which of these narratives is sufficient to cross the threshold of criminalization.

This finding supports the development of the concept of judicial boundary-setting. Judicial boundary-setting refers to the institutional process through which courts distinguish overlapping forms of legal wrongdoing and determine the conditions under which one form of legal responsibility should be translated into another. The concept does not suggest that courts possess unlimited discretion to create legal categories. Courts remain bound by statutory provisions, evidentiary rules, and principles of legal interpretation. Nevertheless, in complex cases involving multiple legal regimes, the application of these rules necessarily requires classification. Courts must decide which facts are legally relevant, which causal explanations are sufficiently established, and which institutional failures meet the legal threshold for criminal punishment.

The sociology of law is particularly useful for understanding this function. Courts do not operate in an institutional vacuum. They receive information produced by other legal and administrative institutions and transform that information through the distinctive language and procedures of adjudication. A state auditor may identify a financial loss, but the auditor does not determine criminal guilt. A procurement authority may terminate a contract, but termination does not itself resolve the criminal character of the conduct. A prosecutor may construct a theory of corruption, but the accusation remains subject to judicial scrutiny. The court becomes the institutional site where these different normative languages are translated, tested, and ultimately classified.

This institutional translation is crucial. Financial language focuses on losses, deficits, payments, and economic consequences. Administrative language focuses on authority, procedures, compliance, and institutional responsibility. Contractual language focuses on obligations, performance, breach, remedies, and risk allocation. Criminal law, by contrast, focuses on prohibited conduct, culpability, proof, causation, and punishment. These languages may refer to the same project, the same payment, or the same individual, but they do not ask identical questions. Judicial reasoning must therefore prevent the categories of one legal regime from being transferred automatically into another.

The distinction between state financial loss and criminal liability provides a clear illustration. An audit finding may establish that the state received less value than the amount paid. That finding may be highly relevant to the factual circumstances of the case. However, the court must still determine whether the loss resulted from conduct attributable to the defendant in a manner that satisfies the requirements of criminal law. The transformation of an audit finding into criminal liability therefore requires a process of legal reasoning. The judge must assess the reliability and relevance of the evidence, examine alternative explanations, determine the role of other actors, and establish whether the causal connection between the defendant's conduct and the loss has been sufficiently proven.

This is why the court's reasoning should not be reduced to a formal exercise in listing statutory elements. A persuasive ratio decidendi must demonstrate how the legal elements relate to the factual record. The question of unlawfulness, for example, cannot be answered solely by showing that a project encountered problems. The reasoning must identify the conduct that is considered unlawful and explain why that conduct exceeds the boundaries of ordinary contractual or administrative non-compliance. Similarly, culpability cannot be inferred simply from the defendant's institutional position. The court must establish the relationship between the defendant's authority, knowledge, decisions, and the conduct alleged to constitute the offense.

The same applies to causation. As demonstrated in the previous section, a chain of events is not necessarily a chain of attribution. Judicial reasoning is the mechanism through which this distinction is made operational. The court must determine whether the evidence establishes a legally meaningful pathway from the defendant's conduct to the alleged loss. Where multiple institutional and technical factors contributed to the project outcome, the reasoning must address why one person's conduct should be treated as criminally attributable. The stronger the institutional complexity surrounding the project, the more important it becomes for the court to distinguish factual participation from criminal causation.

This analytical process has broader implications for the threshold of criminalization. Criminalization should not be understood as the automatic consequence of discovering a legal violation. A legal violation may trigger different institutional responses depending on its character. A failure to comply with procurement procedures may require administrative sanctions. A failure to perform contractual obligations may justify termination, damages, or enforcement of guarantees. Criminal law becomes applicable when the conduct possesses additional characteristics that satisfy the statutory and evidentiary requirements of criminal responsibility. Judicial reasoning determines whether those characteristics have been established.

The threshold of criminalization can therefore be conceptualized as a process rather than a single factual event. Each stage serves a different function. Factual conduct establishes what happened. Legal classification identifies the relevant legal domain. The assessment of statutory elements determines whether the alleged conduct potentially falls within a criminal prohibition. Evidentiary evaluation tests whether the allegations are sufficiently supported. Causal attribution connects the defendant's conduct to the legally relevant consequence. Judicial determination then resolves whether the accumulated evidence satisfies the threshold for criminal liability.

The contribution of this framework lies in demonstrating that the boundary between governance failure and criminal wrongdoing is institutionally constructed through adjudication. Courts do not simply encounter a pre-existing boundary in the facts. The boundary emerges through the application of legal categories to contested evidence. This does not mean that the boundary is arbitrary. Rather, it is constructed through legally constrained reasoning. Statutes provide the formal elements, evidence provides the factual basis, and judicial reasoning connects the two.

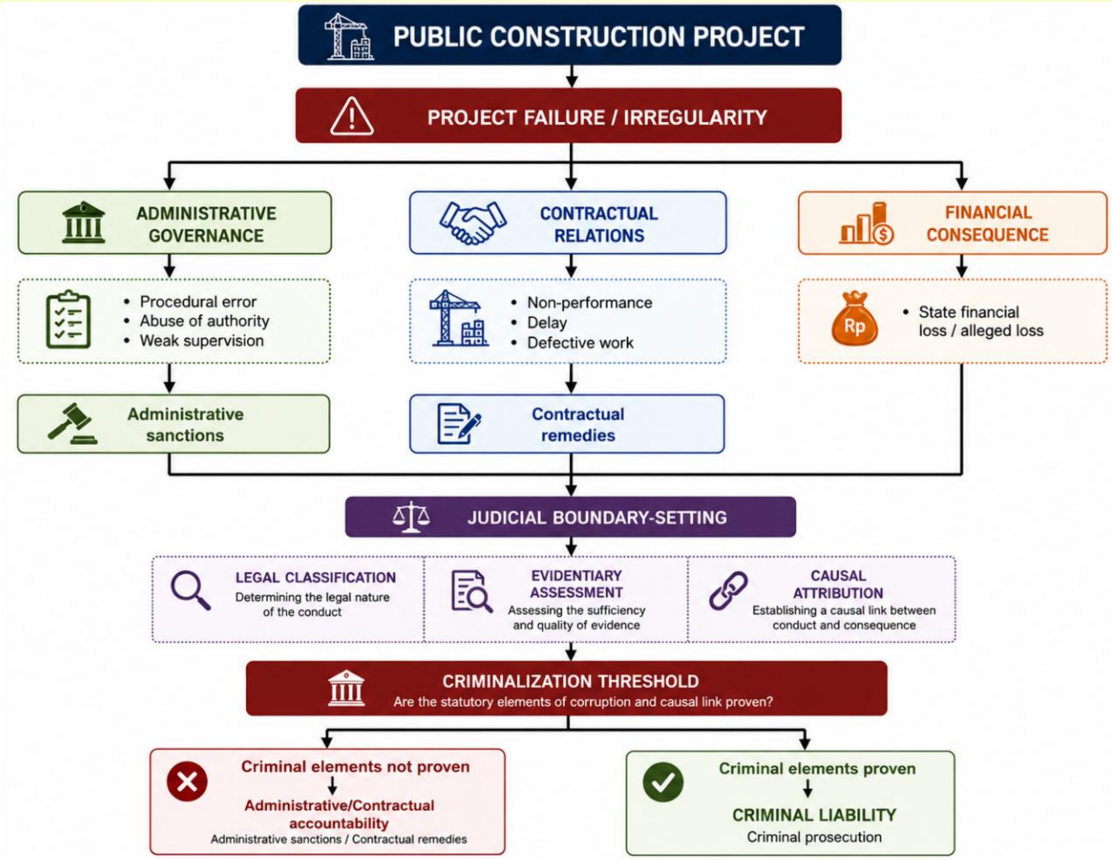

Figure 1. Judicial Boundary-Setting in Public Construction Procurement
Source: research analysis, 2026

This perspective advances the sociology of law dimension of the present study. It shows that the court functions as an institution of legal differentiation in a setting where multiple accountability systems overlap. Public procurement creates a particularly revealing environment for observing this process because the same event may trigger the involvement of administrative agencies, contracting authorities, auditors, investigators, prosecutors, and courts. Each institution constructs the event according to its own mandate. Judicial adjudication is distinctive because it must ultimately decide whether these institutional narratives are sufficient to justify the exercise of the state's most coercive power: criminal punishment.

From this perspective, judicial boundary-setting also serves an important rule-of-law function. A legal system committed to accountability must be capable of responding effectively to corruption. At the same time, a legal system committed to fairness and legal certainty must prevent criminal law from becoming a general instrument for resolving every failure in public administration or contract performance. The court's role is therefore not to choose between accountability and legal protection. Its task is to ensure that accountability is imposed through the appropriate legal category and according to the appropriate evidentiary threshold.

The analysis of Decision No. 10/Pid.Sus-TPK/2026/PN Kpg consequently demonstrates the broader significance of ratio decidendi in complex procurement cases. Judicial reasoning does more than explain why a defendant should be convicted or acquitted. It establishes the practical boundary between different systems of legal responsibility. Through the interpretation of evidence, statutory provisions, causation, and culpability, the court determines which failures remain within the domain of administrative governance, which belong to contractual responsibility, and which cross the threshold into criminal law.

The final finding of this study can therefore be formulated as follows: the boundary between administrative irregularity, contractual breach, and criminal corruption is not established merely by the existence of a legal violation or state financial loss. It is constructed through a process of legal classification, causal attribution, evidentiary assessment, and judicial reasoning. This finding brings together the entire argument of the article. Public construction failure is a multi-regime legal problem; administrative and contractual mechanisms constitute the first layer of accountability; state financial loss requires individual causal attribution; and judicial reasoning ultimately determines whether the conduct has crossed the threshold of criminalization.

Boundary-Based and Graduated Legal Accountability

The findings support a three-layer conceptual framework that explains how public construction failure moves across administrative, contractual, and criminal domains without treating these domains as legally interchangeable. The framework draws on two complementary strands of contemporary socio-legal thought. The first is legal pluralism, which recognizes that governance may operate through multiple normative orders whose relationships can be complementary, cooperative, or conflictual rather than organized within a single hierarchical legal system (Jacob & Gunadi, 2023; Zulyadi & Hossain, 2022). The second is really responsive regulation, which emphasizes that regulatory responses should be calibrated to the nature of conduct, institutional context, regulatory capacity, and the performance of regulatory instruments rather than relying on uniform or predominantly punitive intervention (Hapsari & P, 2023; Owusu-Bempah, 2024). These perspectives provide a useful basis for explaining why the same project failure may generate administrative, contractual, and criminal consequences, while the legal justification for each response remains distinct.

The first layer, Multi-Regime Legal Problem, identifies the structural character of public construction failure. A failed or incomplete public project does not enter the legal system as a criminal event from the outset. It emerges within an institutional setting in which public authority, procurement rules, contractual obligations, financial administration, technical supervision, and criminal law intersect. The same factual event may therefore acquire different legal meanings depending on the institutional framework through which it is assessed. A delay may constitute contractual non-performance; a procedural deviation may raise an administrative issue; a financial loss may trigger audit or recovery mechanisms; and, under additional conditions, particular conduct may become relevant to criminal law. These classifications cannot simply be collapsed into one another. Legal pluralism is useful precisely because it directs attention to the interaction of different normative and institutional orders rather than assuming that a complex governance problem has a single legal identity (Hyun, 2024; Pylypenko, 2023).

The second layer, Graduated Legal Accountability, follows from this plurality. The findings indicate that the existence of several applicable legal regimes requires differentiated rather than undifferentiated accountability. Administrative irregularities may warrant correction or administrative sanctions; contractual non-performance may activate termination, delay penalties, performance guarantees, or other contractual remedies; and conduct satisfying the statutory elements of a criminal offense may justify criminal prosecution. This does not establish a rigid sequence in which every contractual dispute must first pass through administrative sanctions before criminal law can apply. Rather, it establishes a principle of differentiated legal response: the form of accountability must correspond to the juridical character of the conduct and the legal basis for imposing that accountability.

This distinction is important because contractual resolution and criminal liability are neither mutually exclusive nor automatically equivalent. Contract termination, for example, does not immunize an actor from criminal responsibility where independent evidence establishes criminal conduct. Conversely, contractual failure cannot by itself establish criminal responsibility. The relevant issue is therefore not whether administrative, contractual, and criminal consequences may coexist, but what normative and evidentiary conditions justify moving from one form of accountability to another. This interpretation is consistent with responsive regulation, which rejects the assumption that the most coercive regulatory instrument is necessarily the most appropriate response to every form of wrongdoing. Regulation becomes more effective when its response is sensitive to conduct, institutional circumstances, and the capacities and limitations of available regulatory instruments (Al-Billeh et al., 2023; Van Cleve, 2022). Bennet (2024) similarly demonstrates the continuing relevance of context-sensitive regulatory responses in addressing corporate wrongdoing and the relationship between preventive, corrective, and coercive mechanisms.

The third layer, Judicial Boundary-Setting, explains how the distinction between these legal domains is ultimately constructed in adjudication. The court does not merely determine whether a statutory provision has been violated. It classifies the underlying conduct, evaluates the evidentiary basis for competing claims, determines causal attribution, and decides whether the facts satisfy the legal threshold for criminal responsibility. Judicial reasoning therefore operates as an institutional mechanism for translating different forms of knowledge into legally consequential categories. Audit findings may describe financial loss; procurement officials may identify procedural deviations; technical actors may explain project performance; contractual documents may establish rights and obligations; and prosecutors may construct these facts as evidence of criminal conduct. The court must determine which of these facts are legally relevant, how they relate to one another, and whether they establish the elements required for criminal liability.

This function makes judicial reasoning central to the socio-legal significance of the findings. The boundary between administrative failure, contractual breach, and criminal wrongdoing is not necessarily visible in the factual sequence itself. A project may move through a series of delays, variations, incomplete works, contractual sanctions, financial adjustments, and audit findings. Yet criminal law requires more than a chain of events. It requires a legally supported chain of attribution connecting identifiable conduct, statutory violation, culpability, causation, and legally attributable harm. Judicial reasoning is therefore the institutional site at which a potentially ambiguous governance failure is either retained within administrative or contractual accountability or interpreted as conduct crossing the threshold of criminalization.

The three layers should consequently be understood as an integrated analytical model rather than three independent propositions. Multi-Regime Legal Problem identifies the plural legal environment in which public construction failure occurs. Graduated Legal Accountability explains why that plurality should generate differentiated legal responses. Judicial Boundary-Setting identifies the institutional mechanism through which the boundaries between those responses are practically determined. The relationship can be expressed as follows:

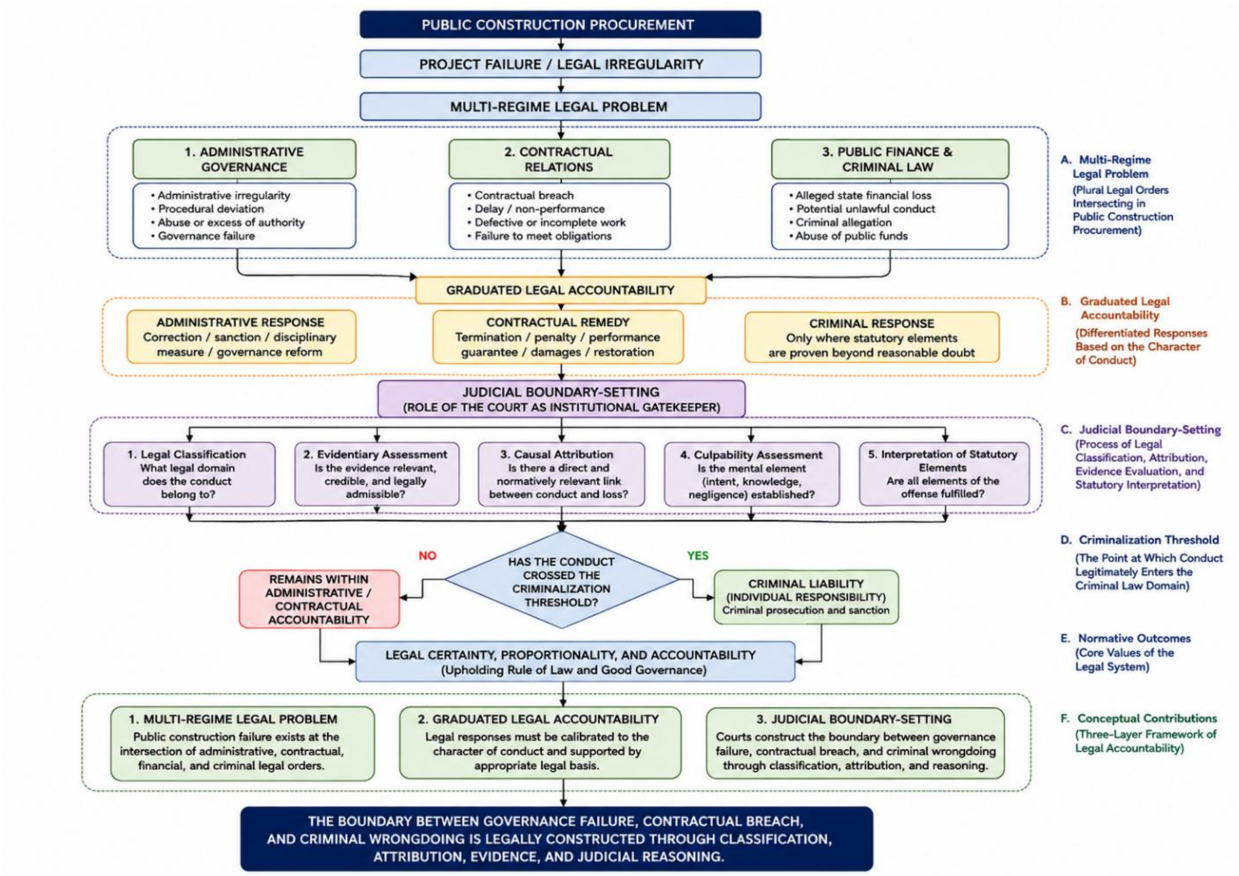

Figure 2. Integrated Three-Layer Framework of Legal Accountability in Public Construction Procurement
Sources: Research analysis, 2026

The model shows that criminalization should not be understood as the natural endpoint of every public construction failure. Rather, criminal liability represents a distinct legal threshold within a broader architecture of accountability. The existence of administrative or contractual mechanisms is therefore legally significant because it demonstrates that public procurement governance already possesses differentiated instruments for addressing non-compliance. At the same time, those mechanisms do not prevent criminal prosecution when the evidence establishes conduct that independently satisfies the elements of a criminal offense.

The framework also clarifies the article's central socio-legal contribution. The problem is not simply that public construction is governed by multiple legal regimes; it is that these regimes must be coordinated without erasing their different purposes, standards, and consequences. Administrative law is concerned primarily with the lawful exercise of public authority, contractual law with the performance and consequences of legally binding obligations, and criminal law with conduct that meets the legislatively defined threshold of public wrongdoing. Treating these domains as interchangeable risks both under-enforcement and over-criminalization.

The findings therefore support a more precise proposition: public construction failure is a multi-regime legal problem requiring differentiated accountability, while the boundary between administrative, contractual, and criminal responsibility is institutionally constructed through judicial classification, evidentiary assessment, causal attribution, and statutory interpretation. This proposition moves the analysis beyond a conventional question of whether a defendant should be convicted. It explains how legal institutions transform an initially complex governance failure into a particular form of legal responsibility.

In this framework, the principal contribution is not an argument against criminal enforcement but against automatic criminalization. Criminal law remains necessary where public construction arrangements are used to facilitate conduct that satisfies the requirements of criminal liability. What the findings challenge is the assumption that project failure, contractual breach, or state financial loss is sufficient in itself to establish individual criminal responsibility. The legitimacy of criminalization depends on whether the relevant conduct can be classified, attributed, and proved within the distinct normative requirements of criminal law.

CONCLUSION

This study concludes that public construction failure should not be treated as a criminal matter from the outset, because the underlying conduct may simultaneously engage administrative governance, contractual relations, public finance, and criminal law, each carrying distinct forms of legal responsibility. The analysis shows that administrative irregularities and contractual breaches may legitimately attract corrective measures, contractual remedies, or administrative sanctions, while criminal liability requires an additional threshold of statutory proof, culpability, and a demonstrable causal connection between the accused’s conduct and the attributable state financial loss. The court therefore plays a decisive role in distinguishing these forms of responsibility through legal classification, evidentiary assessment, causal attribution, and statutory interpretation. On this basis, the study contributes a three-layer framework of Multi-Regime Legal Problem, Graduated Legal Accountability, and Judicial Boundary-Setting, which explains how the boundary between governance failure, contractual breach, and criminal wrongdoing is constructed in public construction procurement. The framework does not exclude criminal enforcement but emphasizes that criminalization should follow the legal character of the conduct and the evidentiary threshold required by criminal law, thereby strengthening legal certainty, proportionality, and accountability in public procurement governance.

ETHICAL STATEMENT AND DISCLOSURE

This study was conducted in accordance with established ethical principles, including informed consent, protection of informants' confidentiality, and respect for local cultural values. Special consideration was given to participants from vulnerable groups to ensure their safety, comfort, and equal rights to participate. No external funding was received, and the authors declare no conflict of interest. All data and information presented were collected through valid research methods and have been verified to ensure their accuracy and reliability. The use of artificial intelligence (AI) was limited to technical assistance for writing and language editing, without influencing the scientific substance of the work. The authors express their gratitude to the informants for their valuable insights, and to the anonymous reviewers for their constructive feedback on an earlier version of this manuscript. The authors take full responsibility for the content and conclusions of this article.

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