

# The Role of the Power of the Board of Directors of a Business Entity in the Quality of Government Construction Projects: A Case Study of the Decision of the Maumere District Court Number 16/Pdt.G/2020/PN Mme

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## Abstract

Based on Law No. 2 of 2017 on Construction Services and Law No. 40 of 2007 on Limited Liability Companies, as well as Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services, construction services are an essential part of national development. However, the execution of the authority of the board of directors often becomes a critical point that affects the quality of projects, as occurred in the case of the construction of the Dormitory of the Catholic School of Philosophy St. Paulus Ledalero (Case Study of Court Decision Number 16/Pdt.G/2020/PN Mme dated December 16, 2020). The research method used is juridical-empirical, with a case study approach and interviews with relevant parties, such as the Commitment Making Officer, Head of the Work Unit, and Chairperson of the Advocacy Team. The research findings indicate that existing regulations still have weaknesses in terms of supervision and law enforcement, which negatively impacts the quality and standards of work. It is concluded that a more comprehensive and adaptive regulatory reform is needed, including the establishment of strict criteria for the recipients of authority, as well as more effective supervision and law enforcement mechanisms to address the challenges faced in government construction service procurement.

*Keywords:* Authority of The Board of Directors, Construction Services, Work Quality, Legal Policy, Supervision.

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## 1. Introduction

Based on Law No. 2 of 2017 on Construction Services, national development aims to build a just and prosperous society (Firdaus 2020), based on Pancasila and the Constitution of the Republic of Indonesia of 1945, through the implementation of construction services as one of the societal activities to produce a building that functions as infrastructure supporting social activities. The implementation of construction services, as stipulated in Article 3 of Law No. 2 of 2017, is based on the participation of the construction services business sector through a series of procurement activities, thereby building a strong, reliable, and highly competitive business structure and providing quality construction services.

As an effort to ensure the maximum value-for-money in the construction services sector, increase the use of domestic products, enhance the role of Micro, Small, and Medium Enterprises (MSMEs), and promote sustainable development, the government has established procurement guidelines through Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services and the Regulation of the Government Procurement Policy Agency No. 12 of 2021 on Guidelines for Implementing Government Procurement of Goods/Services through Providers (Fajarini 2019)

Law No. 2 of 2017 on Construction Services defines construction services businesses as individual or corporate entities that provide services in the field of construction (Ayyub and Mustakim 2020). Limited liability companies are considered the most commonly used type of business entity by construction services practitioners in Indonesia. According to the provisions of Article 1 of Law No. 40 of 2007 on Limited Liability Companies, corporate activities are represented by the General Meeting of Shareholders, the Board of Commissioners, and the Board of Directors.

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Under certain conditions, the Board of Directors has the right and authority to delegate power to another party in the form of a Power of Attorney (Syarif, Makkawaru, and Hamid 2023; Utamy and Wahjuni 2020)

In construction services tenders, the authority of the Board of Directors is one of the requirements for participating in the tender. If the Board of Directors is unavailable for certain reasons, this requirement can be delegated to a permanent employee through a power of attorney and proof of permanent employment as stipulated in point 3.4.1 of Attachment II of the Regulation of the Government Procurement Policy Agency No. 12 of 2021. Once declared the winner of the tender, the Board of Directors can also delegate authority to permanent employees to sign the contract, as stipulated in point 7.3.3 of the same regulation.

In construction services procurement regulations, there are no specific rules regarding the form and content of a power of attorney, as stipulated in Article 103 of Law No. 40 of 2007 on Limited Liability Companies or Article 1795 of the Civil Code, which states that a power of attorney must be specific, meaning that the authority granted by the Board of Directors should only be for certain legal acts.

Due to the absence of specific regulations, in practice, two types of Board of Directors' power of attorney systems have emerged: opening branches and replacing the Board of Directors to execute construction work. Another practice involves leasing a company to carry out construction work, where the business entity only participates in the tender until declared the winner and signs the contract, then the Board of Directors issues a power of attorney with a notarial deed to open a branch office and execute the work until completion, with the recipient of the power paying a commission/fee to the grantor (Sarawa and Mas' ud 2020).

This situation occurred in the construction of the Dormitory of the Catholic School of Philosophy St. Paulus Ledalero for the 2018 fiscal year, as ruled by the Maumere District Court in decision number 16/Pdt.G/2020/PN Mme on January 12, 2021. PT Syarif Maju Karya was declared the winner of the construction services tender and entered into an agreement with Victor Wahyudi, as the authorized representative of PT Syarif Maju Karya, with the Commitment-Making Officer of the Non-Vertical Work Unit for Special Flats and Housing in the East Nusa Tenggara Province for the 2018 fiscal year, based on the Last Amendment Deed No. 591 dated February 15, 2018, by Notary Sugeng Purnawan, SH. The contract execution was delayed due to changes in the Budget Implementation List, which caused a three-month delay in the down payment disbursement, impacting the contractor's capital and leading to delayed work progress.

On November 27, 2018, the contract was amended to extend the work period from 240 calendar days to 271 calendar days. Despite this extension, the work was delayed by 75.40%, achieving only 24.06% progress. Consequently, the Commitment-Making Officer terminated the contract on December 31, 2018, following three rounds of performance review meetings, as stipulated in the General Terms of the Contract.

The use of a power of attorney by the Board of Directors in construction work that does not comply with Law No. 40 of 2007 on Limited Liability Companies, the Civil Code, and the absence of clear provisions in Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services during the tender phase is deemed to be detrimental to many parties. It negatively impacts the quality of the work, leads to contract breaches and terminations, and results in findings of state losses based on audit reports by the Audit Board and Internal Government Supervisory Apparatus. Furthermore, the goal of development to provide welfare to the public is unmet due to incomplete infrastructure (Wibowo 2021).

Discussion of the issue of the Board of Directors' authority in the provision of construction services, in relation to the fulfillment of work quality in flat construction, utilizes the theory of "law as a tool of social engineering" as the analytical tool and basis for recommendations on regulating the Board of Directors' authority in construction work, both in the tender and execution phases. This analysis aims to reduce the misuse of authority that negatively impacts the quality and standards of construction work. The theory of "law as a tool of social engineering," introduced by Roscoe Pound, suggests that law is an instrument for societal reform, with the expectation that law can change social values. In Indonesia, this concept has been developed by Mochtar Kusumaatmadja to suit the country's conditions (As-Suvi and Zainullah 2022).

In addressing the various challenges related to the regulation and implementation of the authority of the board of directors in government construction services procurement, this study focuses on two main aspects. First, the implementation of the authority of business entity directors and its impact on the fulfillment of work quality and standards in government construction projects. Second, the formulation of more effective policies to regulate the authority of directors to ensure that the quality and standards of work are well maintained.

Additionally, this article aims to provide a deeper understanding of the current legal implementation and offers policy recommendations based on comprehensive analysis and the application of the theory of "law as a tool of social engineering." In this way, the article is expected to address the various challenges faced in the procurement of construction services in Indonesia, while simultaneously improving the quality and timeliness of the completion of government construction projects.

## 2. Research Method

This study employs a juridical-empirical method, a legal research approach that emphasizes the application and implementation of normative legal provisions in legal events occurring within society (Christiani 2016). The research focuses on an analysis of the court decision related to the construction of the Dormitory of the Catholic School of Philosophy St. Paulus Ledalero, as well as a comparison of this decision with the prevailing laws and regulations, particularly Law No. 40 of 2007 on Limited Liability Companies and Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services.

The population and sample of the study consist of relevant court rulings and parties involved in the execution of the construction project, such as the Commitment-Making Officer, the Head of the Work Unit, and the Chairperson of the Legal Advocacy Team from the Directorate General of Housing, who were involved during the trial. The selection of these subjects was made purposively, with the goal of obtaining in-depth and relevant information on the research topic.

The research period is set for six months in 2024, with the research location centered at the headquarters of the Ministry of Public Works and Housing in Jakarta, where most of the data and information were collected. The research instruments used include court decision documents, interviews with relevant parties, and legal literature reviews. Interviews were conducted to further explore the understanding and application of the law related to the authority of directors in the procurement of construction services.

The research procedure begins with the collection of related documents and regulations, followed by interviews with the selected subjects. The collected data were then analyzed using descriptive-qualitative analysis techniques, where the court rulings are compared with the applicable legal provisions and the theory of "law as a tool of social engineering" (Hamdani et al. 2023). The results of this analysis will be used to assess whether the court ruling aligns with the legal theory that underpins the study.

## 3. Results and Discussions

### 3.1. Implementation of the Authority of the Board of Directors in Business Entities for Government Construction Services Procurement to Ensure Quality and Standards

The evaluation of the implementation of legal provisions related to the authority of the board of directors in government construction services procurement, as regulated in Law No. 40 of 2007 on Limited Liability Companies and Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services, reveals several challenges in practice (Aji 2021). Based on interviews with the Commitment-Making Officer and Head of the Work Unit, it was found that the execution of the board's authority often becomes a critical point in the success of construction projects. According to the Commitment-Making Officer, the delegation of authority by the board often results in reduced quality control.

This view is supported by the Head of the Work Unit, who stated that when the Defendants fail to fulfill their obligations, including payment and material management, it not only delays the project but also reduces the overall quality of the work. The Head of the Work Unit also emphasized the need for stricter oversight to ensure the quality of the project. According to the Head of the Work Unit, there are gaps in enforcement and oversight that need to be addressed, as although regulations are in place, their implementation in the field is often ineffective, as seen in the case of the Dormitory Construction for the Catholic School of Philosophy St. Paulus Ledalero.

The case of the Dormitory Construction for the Catholic School of Philosophy St. Paulus Ledalero provides a concrete example of how the lack of oversight in the delegation of authority can lead to misuse of power, which significantly impacts the quality of the work. These challenges indicate that while regulations exist, their implementation in practice often does not meet expectations. Therefore, there is a need for enhanced oversight and law enforcement to ensure that the authority of the board is exercised in accordance with applicable regulations. Empirical analysis shows

that the implementation of the board's authority has a significant impact on the quality of construction work, the timeliness of project completion, and the overall quality of results. Based on interviews with the Chairperson of the Advocacy Team, it was found that there are weaknesses in the regulation and oversight of the board's authority, which negatively impacts the quality of the work. According to the Chairperson of the Advocacy Team, the implementation of the board's authority must be more tightly regulated to ensure that the authority is not misused. The regulations provide significant freedom for the board in delegating authority, but without adequate oversight, this leads to abuse in the form of work delegation, which results in challenges in maintaining quality standards.

These interview results show that the lack of oversight and strict regulation on the implementation of the board's authority directly affects the quality and success of construction projects. The case of the Dormitory Construction for the Catholic School of Philosophy St. Paulus Ledalero serves as a concrete example of how poorly regulated authority delegation can lead to default and a decline in work quality. The implementation of law in the context of the board's authority in construction projects in Indonesia cannot be separated from the influence of social and cultural norms in society. These norms often influence how the law is implemented and accepted by construction industry actors. For example, in some cases, patronage culture or kinship relations can influence who is granted authority by the board, even if the individual lacks the necessary skills or experience. This can lead to ineffective delegation of authority and reduced project quality.

In addition, the evaluation of the effectiveness of the law in engineering the behavior of construction industry actors shows that the law often fails to change behavior if not accompanied by strict oversight and enforcement. Strong social norms and entrenched business practices can also hinder the application of laws intended to ensure the quality of work. This analysis shows that to ensure that the law can function effectively as a tool of social engineering, policies need to consider and align social norms with legal standards, particularly at the stage of government goods/services procurement regulation. In this regard, the formulation of more effective regulations on the authority of the board must take into account the interaction between law and social norms, ensuring that construction industry actors comply with the quality standards that have been set. The policies formulated must bridge the gap between social norms and legal regulations by introducing mechanisms that ensure the delegation of the board's authority is not only legally compliant but also accepted and internalized by construction service providers according to the social norms observed by society.

The legal reasoning of the judge in deciding the Dormitory Construction case for the Catholic School of Philosophy St. Paulus Ledalero only considered the legal standing of the board's authority based on Law No. 40 of 2007 on Limited Liability Companies, namely that it represents the legal entity of the company. Therefore, it is considered as part of the legal entity, which, in the case of a special power of attorney, grants the authority to act on behalf of the company in all matters, with no exceptions, only for the objects delegated by the board. Therefore, the board's authority is deemed legitimate under the provisions of Article 1, paragraph (5) of Law No. 40 of 2007 on Limited Liability Companies. However, the judge did not take into account other facts, such as the individuals to whom the board can delegate authority under Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services and Regulation of the Government Procurement Policy Agency No. 12 of 2021 on Guidelines for Implementing Government Procurement of Goods/Services through Providers. There is also the fact that the board had issued two types of authority: the authority to sign contracts and the authority to execute the work. This shows that the judge did not fully fulfill his duty under the law, which requires judges to explore, follow, and understand the values of law and justice that live in society (Purwanto and Maimunah 2023).

From a legal theory perspective, this ruling shows that the judge's approach was more formal and did not take into account the theory of law as a tool of social engineering, which could have been applied in this context. The theory put forward by Roscoe Pound emphasizes that the law should function as a tool for creating positive social change, including maintaining work quality and ensuring public welfare through government construction projects. In this case, a normative approach is insufficient to address deeper issues caused by a lack of oversight in the use of board authority. The misuse of power that contributes to default in construction projects should receive more attention, including through the imposition of stricter sanctions and recommendations for improving oversight systems. Therefore, the ruling is deemed to have inadequately considered the social aspects and long-term impacts that should be integral to the application of the law. If the theory of law as a tool of social engineering were applied in this analysis, the ruling would not only emphasize the legality of the board's authority but also how the law can guide behavioral changes in the execution of construction projects to be more responsible and maintain work quality.

### 3.2. Policy on the Regulation of the Board of Directors' Authority in Government Construction Services Procurement

The implementation of the board's authority in construction services procurement in Indonesia still faces several weaknesses in the current policies and regulations (Aji 2021; Siswanto 2023; Sos 2020). Interviews with the Commitment-Making Officer, Head of the Work Unit, and Chairperson of the Advocacy Team revealed that one of the main problems is the lack of oversight of the delegated authority and inconsistency in law enforcement. According to the Commitment-Making Officer and Head of the Work Unit, the weaknesses in the current regulations, as seen in the construction of the Dormitory for the Catholic School of Philosophy St. Paulus Ledalero, include insufficient oversight of the delegated authority and inconsistencies in law enforcement. These two parties highlighted that the existing regulations do not provide clear and strict enough guidelines for regulating the board's authority, which often leads to misuse of authority that negatively impacts the quality of construction work.

The Chairperson of the Advocacy Team also added that to improve this situation, there is a need for regulations that govern the delegation of the board's authority in contract execution, as well as stricter oversight of the execution of construction work delegated by the board to ensure more effective work quality and standards. This underscores the need for comprehensive regulatory reform that not only establishes clearer and stricter standards for the delegated authority but also ensures stricter oversight of the execution of that authority. Discussions on how existing regulations can be strengthened or updated indicate that improvements should focus on strengthening oversight and law enforcement mechanisms. The legal gaps that currently allow for a decline in work quality and timeliness of project completion must be addressed. Therefore, a more systematic and holistic approach is needed through regulatory updates aimed at closing these gaps and ensuring that construction services procurement in Indonesia is carried out with higher standards of quality and accountability.

The function of law as a tool for social change can be effectively implemented through the establishment of strict criteria for the recipients of board authority in government construction services procurement (Loosemore, Higgon, and Osborne 2020). The establishment of clearer and stricter criteria is intended to ensure that board authority can only be delegated once—from the procurement phase until the final handover of the work—and only to individuals or entities that are competent and experienced. In the event of revocation and/or redelegation of authority, it must be done by mutual agreement in the contract to minimize risks that impact the decline in work quality. The Commitment-Making Officer emphasized the importance of this by stating that setting stricter criteria for recipients of board authority is crucial to ensuring that there is no reissuance of the board's authority (at both the tender and construction phases), that the individuals or entities granted authority have adequate competence, and that if the board revokes and/or redelegates authority, the reasons for revocation must be clear and mutually agreed upon by the Commitment-Making Officer and the Service Provider.

The establishment of these criteria, as cited in the interviews, includes various aspects, such as good faith in issuing authority, the timing of authority issuance, technical experience, managerial capacity, and the integrity of the delegated authority, as well as mutual agreement on revocation/redelegation of authority. In addition to establishing strict criteria, thorough evaluation of the execution of the board's authority and the imposition of sanctions are key elements in guiding social behavior in the desired direction. This evaluation not only serves as a selection tool but also as a control mechanism to ensure that the delegated authority can meet the established quality standards. The Head of the Work Unit and the Chairperson of the Advocacy Team emphasized the importance of a more thorough evaluation of who is granted authority in construction projects. The Head of the Work Unit stated that this evaluation must consider technical experience, managerial ability, and the track record of performance in previous projects to ensure that those granted authority are truly ready and capable of fulfilling their responsibilities. The Chairperson of the Advocacy Team added the importance of not only limiting the delegation of authority to strict rules about when and to whom authority is delegated but also ensuring there is clear agreement if authority needs to be revoked or redelegated. Additionally, strict oversight and evaluation of how the authority is executed, along with the imposition of firm sanctions for violations, are also crucial to maintaining the quality and integrity of the project.

The adaptability of law to social conditions is one of the key dimensions in ensuring that the law can function effectively as a tool of social control and change (Yao et al. 2023). In the context of government construction services procurement, effective oversight mechanisms are essential to ensure that the delegation of the board's authority is carried out in accordance with applicable regulations and can adapt to changing social conditions. The development of these oversight mechanisms requires a comprehensive approach in which the law not only regulates but is also able to adjust to the social and industrial dynamics that exist. The Head of the Work Unit emphasized the importance of this aspect by stating that effective oversight mechanisms require integration between internal company oversight and external third-party oversight. Internal oversight by the company serves as the first line of defense in ensuring that the

delegation of the board's authority follows the established standards and procedures. External oversight, on the other hand, provides an independent and objective view of the company's compliance with applicable regulations. The combination of these two forms of oversight is essential to ensure that the law can adapt to the changing social and industrial conditions. The Chairperson of the Advocacy Team also emphasized this by stating that internal and external oversight plays a crucial role in ensuring compliance with regulations and maintaining the quality standards of construction work.

The adaptability of the law to social conditions requires the development of effective and comprehensive oversight mechanisms. With the proper integration of internal and external oversight, the law can be more flexible and responsive to the changes occurring in society, thus ensuring the quality and integrity of the board's authority implementation. This combination ensures that existing regulations are not only followed nominally but are also truly applied in practice, with the necessary adjustments to face the changing social and industrial challenges.

The effectiveness of law in achieving social objectives, particularly in the context of government construction services procurement, depends heavily on consistency in law enforcement (Fajarini 2019). Consistent law enforcement not only ensures that regulations are strictly followed but also serves as a solid foundation for achieving social goals such as justice and welfare. In construction projects, for instance, compliance with regulations governing the board's authority is a crucial factor in ensuring that the project is executed according to established standards. The Commitment-Making Officer emphasized the importance of this by stating that consistent law enforcement is the foundation of an effective regulatory system. Without strict enforcement, regulations will only serve as guidelines without any real impact.

This statement underscores that regulations, no matter how good, will not achieve the desired objectives if not supported by consistent and strict law enforcement. In addition to consistency in law enforcement, the imposition of firm sanctions also plays a critical role in ensuring that industry actors in the construction sector comply with the established standards of quality and integrity. Firm sanctions serve as an effective deterrent, reducing the likelihood of misuse of the board's authority and violations of regulations. The Head of the Work Unit emphasized that firm sanctions will compel business actors to be more cautious in exercising the board's authority, reducing the potential for misuse.

Social control through law requires strong integration with the social norms and culture existing in society (Edelman 2011). The law does not only function to regulate societal behavior but must also be able to control social behavior by considering and taking into account local norms and culture. This is important so that the proposed policies can be accepted and internalized by society, allowing for effective implementation (As-Suvi and Zainullah 2022). The Head of the Work Unit and the Chairperson of the Advocacy Team emphasized the importance of this approach by stating that the conditions occurring in the field should be considered in policy formulation so that it can be accepted and implemented effectively, and that the formulation of ideal policies should consider these factors so that new policies can be accepted and executed.

This means that any legal policy aiming for maximum effectiveness must be designed with attention to the social and cultural context in which it is applied. Adjusting policies to the social context of Indonesia is another important step in ensuring that the law functions as an effective tool of social control. Policies that are not aligned with local norms and culture risk being rejected or improperly implemented by society, ultimately reducing the law's effectiveness in directing and controlling social behavior. The Chairperson of the Advocacy Team also stated that binding law is law that applies to everyone and must be fair, meaning it should not favor one side because it must support both order and fairness, thus new policies must be accepted by society for effective implementation. This demonstrates that social acceptance is a key factor in the successful implementation of legal policies. If policies are not accepted by society, the law will struggle to control social behavior according to the desired norms.

#### **4. Conclusion**

The research results indicate that the execution of authority often becomes a critical point affecting the success of construction projects. Gaps in law enforcement and supervision lead to a decline in quality control, negatively impacting the workmanship and quality of the projects. The case of the construction of the St. Paulus Ledalero Catholic Philosophy College Apartment serves as a concrete example of the challenges in executing this authority. The legal considerations of the judge in adjudicating the case appear to have followed the normative provisions; however, from the perspective of the theory of law as a tool of social engineering, the judge's decision seems limited

to a normative approach and does not fully account for the social impacts of this authority execution, particularly concerning the decline in work quality and the abuse of authority occurring in construction projects.

The theory proposed by Roscoe Pound emphasizes that law should serve as a tool for creating positive social change, including maintaining work quality and community welfare through government construction projects. The abuse of authority contributing to default in construction projects should receive greater attention, including the imposition of stricter sanctions and recommendations for improving oversight systems. Therefore, the ruling is considered to inadequately consider social aspects and long-term impacts that should be integral to legal application. If the theory of law as a tool of social engineering is applied in this analysis, the ruling would not only emphasize the legality of executive authority but also how the law can guide behavioral changes in construction project execution to be more responsible and maintain work quality.

The research findings show that the execution of executive authority in government construction procurement in Indonesia still faces significant challenges, particularly in terms of oversight and law enforcement. Weaknesses in regulation frequently lead to abuses of authority that negatively affect work quality and project completion timelines. To address these challenges, a more comprehensive and adaptive policy for regulating executive authority needs to be formulated. The new policy should include clearer and stricter criteria regarding the issuance, revocation, and transfer of executive authority. Additionally, strengthening oversight mechanisms is necessary to ensure that the execution of executive authority can be monitored more effectively, alongside stricter law enforcement with clear sanctions for violators, to prevent the recurrence of authority abuses that adversely impact construction work quality. The proposed policies should consider existing social and cultural norms in society, so they can be accepted and internalized by business actors. Thus, the law can function effectively as a tool for social change, not only regulating but also guiding the behavior of business actors to achieve the desired social goals of improving work quality in government construction projects.

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