

# ANALYSIS OF FORCE MAJEURE CLAUSES IN FIDIC FOR POST-PANDEMIC PROJECT STABILITY

Fajar Sungkara<sup>1)</sup>, Sarwono Hardjomuljadi<sup>2)</sup>

<sup>1</sup>Mahasiswa Magister Hukum Konstruksi, Universitas Pekalongan, Jl. Sriwijaya No.3,  
Bendan Kec. Pekalongan Bar., Kota Pekalongan, Jawa Tengah 51119

<sup>2</sup>Pengajar Magister Hukum Konstruksi, Universitas Pekalongan, Jl. Sriwijaya No.3,  
Bendan Kec. Pekalongan Bar., Kota Pekalongan, Jawa Tengah 51119

[fajarsungkara10@gmail.com](mailto:fajarsungkara10@gmail.com)

[sarwonohm2@gmail.com](mailto:sarwonohm2@gmail.com)

## Abstract

This paper analyzes the application of force majeure clauses in FIDIC standard contracts in the context of post-pandemic construction projects implemented by PLN. The COVID-19 pandemic has caused major disruptions in the development of electricity infrastructure, including delays in transmission, substation, and power plant projects that generally use FIDIC-based contracts. This study aims to evaluate whether the force majeure provisions in FIDIC are sufficient to ensure legal protection, project stability, and contractual efficiency for PLN projects after global disruptions. Using normative juridical methods and qualitative analysis, this study examines FIDIC contract clauses, Indonesian laws and regulations, and PLN's internal regulations. The results show that the force majeure provisions in FIDIC require adjustment through specific conditions that are more specific to pandemic risks, especially in strategic and state-funded electricity projects. This study concludes that the formulation of special clauses tailored to Indonesian law and PLN's operational practices is essential to prevent disputes and maintain the sustainability of national electricity infrastructure development.

**Keywords:** *FIDIC, force majeure, PLN, construction contract, pandemic*

## Abstrak

Tulisan ini menganalisis penerapan klausul force majeure dalam kontrak standar FIDIC pada konteks proyek konstruksi pasca-pandemi yang dilaksanakan oleh PLN. Pandemi COVID-19 telah menyebabkan gangguan besar dalam pembangunan infrastruktur ketenagalistrikan, termasuk keterlambatan pada proyek transmisi, gardu induk, dan pembangkit listrik yang umumnya menggunakan kontrak berbasis FIDIC. Penelitian ini bertujuan mengevaluasi apakah ketentuan force majeure dalam FIDIC sudah cukup untuk menjamin perlindungan hukum, stabilitas proyek, dan efisiensi kontraktual bagi proyek-proyek PLN setelah terjadinya gangguan global. Dengan metode yuridis normatif dan analisis kualitatif, studi ini menelaah klausul kontrak FIDIC, peraturan perundang-undangan Indonesia, serta regulasi internal PLN. Hasil penelitian menunjukkan bahwa ketentuan force majeure dalam FIDIC memerlukan penyesuaian melalui *particular conditions* yang lebih spesifik terhadap risiko pandemi, khususnya dalam proyek ketenagalistrikan yang bersifat strategis dan dibiayai negara. Studi ini menyimpulkan bahwa perumusan klausul khusus yang disesuaikan dengan hukum Indonesia dan praktik

operasional PLN sangat penting untuk mencegah sengketa dan menjaga keberlangsungan pembangunan infrastruktur ketenagalistrikan nasional.

**Kata Kunci:** *FIDIC, force majeure, PLN, kontrak konstruksi, pandemi*

## INTRODUCTION

The COVID-19 pandemic that has hit the world since the beginning of 2020 has had a major impact on the construction sector, including the development of electricity infrastructure managed by the State Electricity Company (PLN). Disruptions to the supply chain, delays in material delivery, and restrictions on labor activities have caused PLN projects to experience delays and even temporary suspension. This raises legal challenges in contract implementation, especially in determining whether pandemic events fall into the category of force majeure and how they impact the obligations of the parties (Wijaya & Kurniawan, 2021).

As a strategic State-Owned Enterprise, PLN widely utilizes the FIDIC international contract model, specifically using the Red Book, in the procurement of construction works such as transmission, substation, and generation projects. The force majeure clause in FIDIC is designed to provide flexibility when events beyond the parties' control occur. However, these standard provisions often do not specifically regulate events such as pandemics and their impact on electricity projects with their own characteristics (Rahman & Sari, 2022). Inaccuracies in formulating clauses or the absence of responsive particular conditions can cause delays in filing claims, legal uncertainty, and lead to disputes between PLN and contractors.

Recent research indicates that the force majeure clause in FIDIC requires adaptation through specific conditions tailored to the national legal system and project context (Saputra et al., 2023). In PLN projects that are strategic in nature and use public funds, the legal and administrative risks of delays are very significant.

The formulation of the problem in this study is how the effectiveness of force majeure clauses in FIDIC contracts on PLN construction projects in responding to post-pandemic conditions, and whether strengthening through special conditions is needed. This study aims to evaluate the adequacy of force majeure clauses in FIDIC contracts used by PLN and provide technical recommendations for the preparation of special

clauses in order to ensure the stability and sustainability of national electricity projects in the future.

## **RESEARCH METHODS**

This research uses normative juridical method, which is an approach that focuses on the study of legal norms written in laws and regulations, international standard contracts, and policy documents that bind parties in construction legal relations. This method was chosen because it is in accordance with the characteristics of the study which aims to assess the suitability and adequacy of the force majeure clause in the FIDIC standard contract to the legal needs and stability of electricity construction projects in post-pandemic Indonesia. The normative juridical approach in this context does not only rely on textual analysis of regulations, but also includes an understanding of the principles of contract law, the principle of *pacta sunt servanda*, the doctrine of *imprevisio*, and the theory of risk in international construction law.

Primary legal data in this study include provisions in the 1999 and 2017 editions of the FIDIC Red Book contract, Law Number 2 of 2017 concerning Construction Services, Presidential Regulation Number 16 of 2018 and its amendments concerning Government Procurement, as well as PLN's internal regulations relating to construction procurement and contract risk management. In addition, actual tender documents and particular conditions used by PLN in strategic electricity infrastructure projects were also reviewed. Secondary data was collected from scholarly sources such as international construction law journals, recent academic articles, and relevant research publications in the last five years.

The analysis is conducted qualitatively with an interpretative approach to contractual norms and clauses, which are then systematically evaluated against the empirical context of post-pandemic construction projects. This research also integrates conceptual and comparative approaches, by comparing the force majeure arrangements in FIDIC with the doctrine in Indonesian national law, as well as looking at the contractual practices of other countries that have adapted FIDIC to deal with pandemic risks. The results of the analysis are focused on building normative arguments for the importance of drafting particular conditions that are contextual, specific, and aligned

with the national legal system to support project efficiency and prevent future construction disputes.

## **RESULT AND DISCUSSION**

This study shows that force majeure clauses in FIDIC standard contracts (either the 1999 edition or the 2017 edition) generally provide a legal basis for parties to partially discharge contractual obligations in the event of extraordinary events that are beyond their control and cannot be reasonably predicted, but in their implementation on PLN's post-pandemic electricity projects, these clauses have proven insufficiently specific to accommodate the complexity of systemic and prolonged pandemic risks. In FIDIC 1999 Clause 19 and FIDIC 2017 Sub-Clause 18, epidemics and governmental actions are mentioned as examples of force majeure or exceptional events, but they do not explicitly detail how pandemics impact supply chains, workforces, or project execution in government procurement systems.

In transmission and substation projects managed by PLN, the COVID-19 pandemic has caused significant delays in implementation, especially due to restrictions on personnel movements, logistical delays, and policies to limit community activities that have a direct impact on field progress. The results of the FIDIC-based PLN contract documents show that the particular conditions used in the pre-pandemic period generally do not regulate in detail the provisions regarding the handling of pandemic risks, both in terms of extension of time and cost compensation. This creates confusion when contractors submit claims based on force majeure, because PLN as an employer is subject to government regulations that are not always aligned with claim mechanisms in international contracts.

Another important finding is that in PLN projects financed by foreign financing sources, the use of FIDIC is generally mandatory, however, the funder's requirements do not prohibit the existence of specific conditions adapted to the national legal system.

In construction projects carried out by PLN using FIDIC-based contracts, there are several important national regulations that serve as a legal basis and reference for preparing, adjusting, and implementing contracts, especially related to procurement, contractual risks, and construction implementation such as:

1. Law Number 2 Year 2017 on Construction Services

- Is the main foundation that regulates the legal relationship between service providers and service users in construction.
  - States the principles of drafting construction contracts, including the balance of rights and obligations, as well as protection against risks arising during the project.
  - Relevant in the application of force majeure as it sets out the rights and obligations of the parties for events beyond their control.
2. Presidential Regulation No. 16/2018 on Government Procurement of Goods/Services (along with its amendments, including Presidential Regulation 12/2021)
- Regulates the procedures for procurement of construction services by state-owned enterprises (BUMN), including PLN.
  - Provides room for the use of international contract standards (such as FIDIC), but must still be adjusted to the provisions of national law.
  - Requires the inclusion of risk and force majeure clauses in contract documents.
3. Regulation of the Minister of Public Works and Public Housing (PUPR) Number 14 of 2020 concerning Standards and Guidelines for Procurement of Construction Services Through Providers
- Provides technical guidance on the preparation of construction service provider selection documents.
  - Regulates the obligation of service users (including PLN) to adjust contract clauses to the actual conditions of the project and national legal provisions.
  - Provides a reference in drafting specific conditions in FIDIC-based contracts.
4. PLN's Internal Board of Directors Regulation on Strategic Project Governance
- Regulates PLN's internal procedures in implementing strategic projects, including the use of standard contracts and adjustments to project risks.
  - Usually includes standard provisions for EPC contracts or lump sum contracts that often use FIDIC.

- Relevant to see how PLN applies the force majeure principle in its contractual practices..

5. Indonesia Civil Code

- Articles 1244 and 1245 of the Civil Code are the legal basis for force majeure in Indonesia.
- Used as a reference in resolving contractual disputes if contractual clauses are inadequate.

This research aims to evaluate whether the force majeure clause in FIDIC has sufficiently provided legal protection and contractual efficiency for PLN's post-pandemic construction projects, as well as how particular conditions can be formulated appropriately in the context of Indonesian national law. With a normative juridical approach, this research discusses how the provisions in FIDIC interact with national laws and regulations and PLN's internal policies as a state-owned enterprise engaged in the electricity sector, the following is a comparative table 1 on Force Majeure provisions in FIDIC and Indonesian National Regulations.

Comparative Table: Force Majeure Provisions in FIDIC and Indonesian National Regulations

No	Aspect/Category	FIDIC Red Book (1999 & 2017)	Indonesian National Regulation	PLN Project Contract
1.	Force Majeure / Exceptional Events	FIDIC 1999: Sub-Clause 19.1 mentions war, riots, epidemics and government action. FIDIC 2017: Sub-Clause 18.1 regulates extraordinary events more	The Construction Services Law does not provide an explicit definition, but Article 47 paragraph (2) recognizes force majeure as a basis for time extension. Civil Code: Articles 1244-1245 regulate the burden of proof for overmacht.	There is a need to strengthen the definition and scope of force majeure in Particular conditions, as FIDIC is not automatically compatible with the national legal framework..

		flexibly		
2.	Legal Impact of Force Majeure	Right to extension of time (EOT) and partial exemption from liability, but cost compensation is limited and must be proven	According to Article 55 of Presidential Regulation No. 16/2018, force majeure can be a reason for contract changes, including extensions of time and approved additional costs.	The practice in PLN tends to be conservative in providing cost compensation, so it needs clearer specific conditions..
3.	Claim Submission Requirements	It must be done in writing within a certain period of time (usually 28 days from the incident), accompanied by evidence and a narrative of the impact.	PUPR Ministerial Regulation 14/2020 requires a mechanism for submitting addendums/justifications with supporting documents	Harmonizing claim procedures is important so that foreign contractors do not make mistakes in procedures and cause administrative disputes.
4.	Employer's Authority	The Engineer is tasked with assessing and verifying claims, but FIDIC emphasizes fair and impartial decisions.	The service user (PLN) plays a dominant role, often relying on supervisory consultants. There is not always a separation of objective (independent) functions as in FIDIC.	Need to separate or clarify the Engineer's function in the PLN contract to align with the FIDIC decision-making system.
5.	Use of Particular	FIDIC	Presidential regulation	PLN can and

	conditions	explicitly allows and encourages the use of particular conditions for local customization.	16/2018 and PUPR Ministerial Regulation 14/2020 allow adjustments as long as they do not conflict with national regulations and the precautionary principle.	should develop specific conditions to regulate the risk of pandemics, national disasters, or geopolitical crises in more detail and anticipation.
6.	Dispute Resolution	Dispute Resolution DB (Dispute Board) → Arbitration (ICC Rules, UNCITRAL, etc.)	National procurement systems tend to rely on mediation and arbitration of BANI or other national institutions.	Need to explicitly include dispute resolution forum, including DAB accommodation if following full FIDIC pattern

Table 1 shows how national legal provisions and PLN practices can be harmonized with the FIDIC contract structure, particularly through specific conditions that are responsive to force majeure risks such as pandemics.

Thus, this discussion confirms that the force majeure clause in FIDIC requires strengthening through more contextual and technical particular conditions, especially in PLN's strategic electricity projects involving macro risks such as a pandemic. Such adjustments not only provide legal certainty and protection for the parties, but also contribute to the efficiency of project implementation and the prevention of future contract disputes.

## CONCLUSION

Based on the results of the analysis of the force majeure clause in the FIDIC contract and its relevance to the conditions of post-COVID-19 pandemic electricity projects, especially projects run by PLN, it can be concluded that the standard provisions in FIDIC (either the 1999 or 2017 edition) are not fully adequate to address the complexity of pandemic risks in the implementation of strategic infrastructure projects. The pandemic has shown that force majeure events are not always momentary or isolated, but can be global in scale, prolonged, and have systemic impacts on various contractual aspects, including implementation schedules, supply chains, labor, and financing.

This research confirms that the flexibility of the FIDIC force majeure clause needs to be optimized through the formulation of particular conditions that are contextual and adaptive to Indonesian national legal norms, including the principles in the Civil Code, Presidential Regulation 16/2018 on Public Procurement, and PLN's internal regulations and policies. This is important to provide legal certainty, prevent disputes, and maintain the principle of proportionality of responsibility and risk between contract parties.

Theoretically, this research enriches the discourse of international contract law by highlighting the importance of recontextualizing standard clauses in the face of extraordinary global events. Practically, the findings recommend the reformulation of particular conditions in PLN projects to reflect the principles of legal prudence, fair risk distribution, and compliance with the principles of good governance in government projects.

Thus, the stability of post-pandemic construction project implementation is highly dependent on the parties' ability to anticipate systemic risks through contractual instruments that are structured holistically, adaptively, and in harmony with the national legal system.

## REFERENCE

FIDIC. (1999). *Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (Red Book)*. Fédération Internationale des Ingénieurs-Conseils.

FIDIC. (2017). *Conditions of Contract for Construction (Second Edition)*. Fédération Internationale des Ingénieurs-Conseils.

Indonesia. (1847). *Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)*. Staatsblad No. 23 of 1847.

Indonesia. (2017). *Law No. 2 of 2017 on Construction Services*.

Indonesia. (2018). *Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services*, as amended by Presidential Regulation No. 12 of 2021.

Ministry of Public Works and Public Housing (PUPR). (2020). *Ministerial Regulation No. 14 of 2020 on Standards and Guidelines for the Procurement of Construction Services through Providers*.

PT PLN (Persero). (n.d.). *Regulation of the Board of Directors of PT PLN (Persero) on Strategic Project Governance* (Internal document, year and number adapted to the version used).

Rahman, A., & Sari, D. (2022). Evaluation of the Application of Force Majeure Clauses in FIDIC-Based Construction Contracts in Infrastructure Projects. *Indonesian Journal of Construction Law*, 4(1), 45–58.

Saputra, I. R., Lubis, H., & Hartati, N. (2023). Adjustment of FIDIC Force Majeure Clauses to National Law and Pandemic Risks. *Journal of Legal and Development Studies*, 12(2), 101–118.

Wijaya, B., & Kurniawan, R. (2021). The Impact of the Pandemic on Contractual Obligations in Construction Projects in Indonesia. *Journal of Law and Economics*, 9(1), 65–78