

ANALYSIS OF THE SPECIAL CONDITIONS OF THE FIDIC CONTRACT IN RELATION TO THE BIDDING OPINION IN THE IMPLEMENTATION OF THE 2×7 MW TANJUNG SELOR POWER PLANT PROJECT: A LEGAL AND PRACTICAL STUDY

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Abstract

The FIDIC contract has become a reference in many international construction projects, including in Indonesia. However, in practice, adjustments to national law and local project conditions through Particular Conditions are necessary to align with domestic legal frameworks and project needs. For large-scale construction projects such as the Tanjung Selor 2×7 MW power plant, a clear, fair, and adaptable contract framework is essential. In this project, the standard FIDIC contract was modified through Particular Conditions to conform with the national legal system, especially in relation to dispute resolution, contractor responsibilities, and the implementation of local content requirements (TKDN), in accordance with national regulations such as Law No. 2 of 2017 on Construction Services. Before contract execution, a bidding opinion serves as a preliminary legal review of the tender documents and contract. This study analyzes the extent to which the Particular Conditions of the FIDIC contract influence the substance and effectiveness of the bidding opinion from both juridical and practical perspectives. The research method used is normative juridical with a case study approach. The analysis reveals that the bidding opinion plays a crucial role in identifying contractual risks from the outset, but its effectiveness heavily depends on the clarity of the Particular Conditions and the consistency of their application in practice. Since Particular Conditions are often a source of legal uncertainty in bidding opinions, standardized formats and improved coordination among procurement units are needed. From a practical standpoint, Particular Conditions can help mitigate potential disputes and expedite decision-making processes on the ground. Although Particular Conditions offer better legal protection and flexibility in implementation, interpretive gaps still exist that could lead to conflict if not precisely and thoroughly formulated. Therefore, drafting Particular Conditions should involve contract law experts and take comprehensive account of local project conditions.

Keywords: FIDIC, bidding opinion, Particular Conditions, Construction Contract, Tanjung Selor Power Plant, juridical study, contract law, construction contract

Abstrak

Kontrak FIDIC telah menjadi acuan dalam banyak proyek konstruksi internasional, termasuk di Indonesia. Dalam praktiknya, diperlukan penyesuaian terhadap hukum nasional dan kondisi proyek lokal melalui Ketentuan Khusus (Particular Conditions) agar selaras dengan hukum nasional dan kebutuhan proyek. Pada pelaksanaan proyek konstruksi skala besar, seperti proyek PLTU Tanjung Selor 2×7 MW tentu membutuhkan kerangka kontrak yang jelas, adil, dan dapat disesuaikan dengan kondisi di lapangan. Dalam proyek ini, digunakan standar kontrak FIDIC yang dimodifikasi melalui Ketentuan Khusus untuk menyesuaikan dengan sistem hukum nasional, khususnya yang berkaitan dengan penyelesaian sengketa, tanggung jawab kontraktor, dan pelaksanaan TKDN dilakukan untuk menyesuaikan dengan regulasi nasional seperti UU No.2 Tahun 2017 tentang Jasa Konstruksi. Sebelum pelaksanaan kontrak, bidding opinion berfungsi sebagai kajian hukum awal terhadap dokumen lelang dan kontrak. Penelitian ini akan menganalisis sejauh mana Ketentuan Khusus kontrak FIDIC memengaruhi substansi dan efektivitas bidding opinion dari sudut pandang yuridis dan praktis. Metode yang digunakan adalah yuridis normatif dengan pendekatan studi kasus. Hasil analisis menunjukkan bahwa bidding opinion memiliki fungsi krusial dalam mengidentifikasi risiko kontraktual sejak awal, namun efektivitasnya sangat bergantung pada kejelasan Ketentuan Khusus dan konsistensi penerapannya dalam praktik. Karena Ketentuan Khusus seringkali menjadi sumber ketidakpastian hukum dalam bidding opinion, maka diperlukan standarisasi

format dan peningkatan koordinasi antar unit pengadaan. Dari sisi praktis, Ketentuan Khusus mampu memitigasi potensi sengketa serta mempercepat proses pengambilan keputusan di lapangan. Meskipun ketentuan Khusus memberikan perlindungan hukum yang lebih baik dan fleksibilitas dalam pelaksanaan, masih ditemukan celah interpretasi hukum yang dapat menjadi sumber konflik apabila tidak diatur secara rinci dan tidak dirumuskan dengan tepat. Oleh karena itu, penyusunan ketentuan khusus harus melibatkan ahli hukum kontrak dan mempertimbangkan kondisi proyek lokal secara menyeluruh.

Kata Kunci: FIDIC, bidding opinion, Ketentuan Khusus, Kontrak Konstruksi, PLTU Tanjung Selor, kajian yuridis, hukum kontrak, kontrak konstruksi

INTRODUCTION

The development of electricity infrastructure is one of the strategic priorities of the Indonesian government in meeting national energy needs and supporting economic growth, particularly in remote and border areas. One of these strategic projects is the Tanjung Selor 2×7 MW Steam Power Plant (PLTU) Project, located in North Kalimantan, which is part of the accelerated electricity development program implemented by PT PLN (Persero) under an Engineering, Procurement, and Construction (EPC) scheme. As part of the national electricity infrastructure, the Tanjung Selor 2×7 MW power plant project requires a clear, balanced, and legally compliant contractual framework, as construction contracts play a crucial role in ensuring the success of infrastructure projects. This project adopts the FIDIC (Fédération Internationale des Ingénieurs-Conseils) contract model, specifically the Yellow Book for EPC projects, and has been modified through Particular Conditions to align with the Indonesian legal context. The FIDIC Plant and Design-Build contract model is widely recognized as an international standard for design and build contracts.

In any large-scale infrastructure project such as the Tanjung Selor 2×7 MW PLTU, during the initial procurement stage, a bidding opinion—namely, a legal opinion on the tender documents and draft contract—serves as a key administrative requirement before signing the contract. This procurement stage forms the foundation for selecting a construction partner. In Indonesia, this process includes the preparation of a bidding opinion by a legal institution or advisor as a form of legal due diligence. In this context, the bidding opinion functions as a legal instrument to assess the validity and risks of the contract clauses prior to signing. Its main purpose is to provide legal certainty and identify potential contractual risks, particularly those stemming from the Particular Conditions in the FIDIC contract. When a project uses a FIDIC contract with Particular Conditions, the bidding opinion must consider the legal consequences of international clauses that are adapted to domestic law. This is necessary because FIDIC contracts cannot be applied in Indonesia without adaptation. Indonesia's national legal system, electricity sector regulations, and local social and geographical conditions require modifications through the Particular Conditions. These Particular Conditions serve as a crucial instrument for adjusting FIDIC's General Conditions to local needs and

regulations. However, their drafting must be carried out with precision to avoid legal conflicts, ambiguities, and potential disputes during implementation.

In practice, the drafting of bidding opinions faces several challenges, including the complexity of FIDIC clause language, limited understanding of foreign legal systems, and inconsistencies between standard contracts and national legal provisions. Therefore, a deep understanding of legal aspects and contract implementation practices is essential for improving the success of similar projects in the future. This highlights the importance of analyzing how bidding opinions are prepared and interpreted within the legal framework and project execution context.

Based on the above, this study aims to analyze how FIDIC Particular Conditions are interpreted in bidding opinions, with a focus on the Tanjung Selor 2×7 MW power plant project. It further examines the extent to which bidding opinions provide a strong legal foundation for project implementation and explores the juridical and practical implications of their application. This research is expected to contribute to strengthening construction contract governance and improving decision-making quality in national infrastructure projects.

RESEARCH METHOD

This study employs a normative juridical approach combined with a case study method. The normative juridical approach focuses on analyzing applicable legal norms, both written and unwritten, and examines the conformity of contractual provisions with the national legal framework, particularly regarding the FIDIC-based construction contract in the Tanjung Selor 2×7 MW power plant project. This includes examining relevant legislation such as Law Number 2 of 2017 on Construction Services, as well as regulations governing public procurement. Meanwhile, the case study approach is used to analyze how these provisions are practically implemented in the execution of the project. This combined approach aims to evaluate the alignment of the bidding opinion with Indonesian national legal principles, as well as the conformity of the Particular Conditions with the domestic legal framework and their implications for contract execution—especially in the context of public procurement and EPC contracts.

The data collection techniques used in this study are as follows:

- a) Document study, including review of tender documents, bidding opinions, the FIDIC contract (including the Particular Conditions), and relevant national regulations such as the Construction Services Law, Presidential Regulation No. 16 of 2018 on Public Procurement, as well as internal policies of PLN.
- b) Comparative analysis, conducted to compare the standard FIDIC provisions with the modified version used in the project, and to assess the legal aspects discussed in the bidding opinion.

The data analysis in this study is conducted using a qualitative approach through the following stages:

1. Identification and categorization of the Particular Conditions clauses in the project contract;
2. Comparison between the General Conditions and the Particular Conditions to identify substantive differences;
3. Legal conformity analysis to assess the alignment of the Particular Conditions with Indonesian laws and regulations;
4. Drawing juridical and practical conclusions regarding the impact of the Particular Conditions on contract implementation.

This methodology is expected to provide a comprehensive understanding of the harmonization between international standard contracts and local requirements in the context of national infrastructure projects.

RESULTS AND DISCUSSION

In PLN's practice, the bidding opinion serves as an essential administrative requirement prior to contract signing. Its primary purpose is to ensure that no contractual clauses conflict with national law and to evaluate potential legal risks arising from the Particular Conditions of the FIDIC contract. The analysis of the Particular Conditions in the FIDIC contract for the Tanjung Selor 2×7 MW power plant project was conducted by comparing the standard principles of the FIDIC General Conditions with the modified Particular Conditions, while also assessing their juridical and operational implications within the framework of Indonesian law and national construction practices.

The Strategic Role of Bidding Opinion in Construction Project Procurement

The bidding opinion is a written legal opinion prepared by legal advisors or the legal division of PLN prior to the signing of a construction contract. This document serves as a legal verification tool to assess the completeness and compliance of the tender documents and draft contract with the applicable national regulations, including Law No. 2 of 2017 on Construction Services, Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services, as well as the company's internal policies. In the Tanjung Selor 2×7 MW power plant project, the bidding opinion was prepared to ensure that the Particular Conditions in the FIDIC contract do not conflict with national law and do not pose legal risks in the future due to the modified clauses.

Practical Challenges in Drafting Bidding Opinions

Several challenges encountered in the drafting of bidding opinions include:

1. Misalignment between the standard FIDIC format and PLN's internal policies.
2. Ambiguities in contractual language that hinder objective legal assessment.
3. Time constraints in the preparation process, which often result in incomplete or less comprehensive analysis.

Particular Conditions Affecting the Bidding Opinion

Several clauses within the FIDIC Particular Conditions for this project were critically analyzed in the bidding opinion, including:

1. The dispute resolution clause that shifts the forum from the Dispute Adjudication Board (DAB) to the Indonesian National Board of Arbitration (BANI).
2. The clause defining the role of the Engineer as limited to a representative of the project owner.
3. The clause on variation of works and price adjustments, which are subject to local regulations.
4. Each of these provisions requires legal review to ensure compliance with regulations such as the Construction Services Law and the Presidential Regulation on Government Procurement.

Rationalization of Particular Conditions

The Particular Conditions in this contract were formulated to address several key needs:

1. Legal Adaptation

Indonesia's legal system is based on civil law, whereas the FIDIC model is rooted in common law principles. Particular Conditions enable the harmonization between international contract standards and national legal frameworks, including Law No. 2 of 2017 on Construction Services, Presidential Regulation No. 16 of 2018 on Government Procurement, and PLN's internal regulations as the project owner.

2. Risk and Responsibility Allocation

The Particular Conditions redefine the distribution of risks compared to the standard FIDIC model. For example, certain natural and logistical risks are partially borne by the project owner to reflect the geographical challenges specific to North Kalimantan.

3. Role of the Parties

Certain clauses limit the independence of the Engineer and reinforce the authority of the Employer (PLN), thereby centralizing decision-making and enhancing project control.

Juridical Aspect: Compliance with National Law

Particular Conditions that deviate from or introduce new legal clauses must remain compliant with Indonesian statutory regulations. In practice, the General Conditions of the FIDIC Yellow Book 1999 are not fully aligned with Indonesia's civil law-based legal system. Therefore, several provisions in the FIDIC contract are modified through Particular Conditions to accommodate Indonesian regulations, including but not limited to the following:

1. Dispute Resolution Clause

FIDIC generally recommends the establishment of a Dispute Adjudication Board (DAB) as an initial dispute resolution mechanism. However, in this project, the Particular Conditions replace the DAB with arbitration under BANI (Indonesian National Board of Arbitration). This modification is intended to

facilitate legal access and enforcement of arbitral awards domestically, despite reducing flexibility for foreign parties. Moreover, this adjustment offers cost efficiency but has sparked debate regarding the enforceability of arbitral decisions against foreign parties.

The conformity of this modification with Indonesian regulations—particularly the shift in dispute resolution to BANI and the designation of Indonesian law as the governing law—is consistent with the principle of national legal sovereignty and the ease of enforcing arbitration decisions within the jurisdiction.

2. Authority of the Engineer

Under standard FIDIC provisions, the Engineer holds a relatively independent position as a neutral intermediary and supervisor. However, in the contract for this project, the Engineer is positioned as subordinate to the Owner (PLN), thereby reducing neutrality in technical decision-making. Legally, this raises potential ambiguity in the scope of authority for claim resolution. Whereas FIDIC assigns a semi-independent role to the Engineer, the Particular Conditions redefine this role as more representative of the Project Owner (PLN), with the Engineer's authority constrained by the Employer's prior approval. This structural adjustment may result in partiality in both technical and administrative decisions.

3. Variations (Change of Work)

The clause governing variation orders is adjusted to comply with the approval mechanisms mandated by Indonesian public procurement regulations. The variation procedure in the contract has been modified to require formal approval from the project owner for any significant changes. This provision clarifies that not all variations can be approved solely by the Engineer but must be authorized by the Employer. While this aligns with national legal requirements, it often delays decision-making on site.

4. Governing Law

The contract stipulates that Indonesian law shall be the governing law, despite the fact that the FIDIC standard is originally developed within the context of a common law system. This necessitates editorial adjustments to legal terminology in order to avoid ambiguity. Since not all provisions in the FIDIC

General Conditions have direct equivalents in Indonesian law, the Particular Conditions must explicitly fill these legal gaps. The adoption of Indonesian law as the governing law is crucial, as the unadjusted application of international legal principles may conflict with national regulations, such as Law No. 2 of 2017 on Construction Services.

Practical Aspects: Impact on Project Implementation

The application of Particular Conditions also directly impacts the dynamics of project execution in the field. The practical effects identified are as follows:

1. Geographical and Logistical Conditions

The PLTU Tanjung Selor is located in an area with limited access; therefore, the Particular Conditions include clauses that allow for an extension of time (EOT) if delays occur due to geographical factors. This clause helps avoid disputes arising from logistical force majeure. The Particular Conditions permit an extension of time if there are logistical obstacles due to the remote location of the project. While this provides protection for the contractor, there is no detailed technical guideline on proving the obstacles, which often leads to unilateral claims. The extension of time due to material distribution obstacles is explicitly accommodated.

2. Utilization of Local Resources

There are Particular Conditions that mandate the use of local labor and materials from the North Kalimantan region, provided they meet the required quality standards. This policy aligns with the principle of local empowerment; however, challenges arise in meeting technical specifications when not accompanied by sufficient training. The requirement for local labor aims to support community empowerment. The provision prioritizing the use of local labor and materials promotes the social aspects of the project. However, from a technical perspective, contractors face difficulties in meeting international specifications, which are still required under the FIDIC contract.

3. Cross-Party Coordination

Since the Particular Conditions provide additional limitations and procedures for technical decisions, the coordination process between the

Contractor, Engineer, and Owner becomes more complex. The Particular Conditions do not explicitly regulate the roles of each party in cases of overlap. This lack of clarity often causes obstacles in making quick decisions, especially during the intensive construction phase. It leads to delays in technical decision-making because all parties tend to be cautious in interpreting contract clauses. However, in practice, it appears that some of the Particular Conditions are not well coordinated between the parties, resulting in ambiguity and obstacles in implementation.

4. Claims Administration and Documentation

The clause regarding time and cost claims, which is modified in the Particular Conditions, requires more detailed and evidence-based documentation. Although this provision effectively protects the contractor from unfair penalties, it requires clear standards for proof to prevent misuse. In practice, contractors face difficulties in meeting the proof standards due to limited administrative resources at the project site.

Moreover, contract modifications that are not accompanied by adequate documentation or legal explanations increase the potential for disputes, particularly related to:

- a) Interpretation of variation clauses,
- b) Delays due to external factors,
- c) Price adjustments due to market fluctuations and limited access to raw materials.

Risk Analysis and Potential Disputes

Some of the Particular Conditions, although drafted with the intention of legal protection and compliance, actually create potential for ambiguity in the future. Examples include:

1. A variation clause that does not explicitly specify the project owner's response time, leading to uncertainty regarding the execution timeline.
2. The national arbitration provision does not guarantee acceptance from foreign parties when the project involves foreign subcontractors.

These findings highlight the importance of drafting Particular Conditions that are not only legalistic but also operational and practical, ensuring that they can be effectively applied without causing obstacles during the project.

Comprehensive Assessment

Overall, the Special Conditions in this project have successfully adapted the FIDIC standards to the Indonesian context; however, some aspects need improvement. The following table presents the evaluation aspects, analyzing the special conditions in the contract against the bidding opinion evaluation:

No	Evaluated Aspect	Special Conditions in the Contract	Assessment in the Bidding Opinion	Notes
1	Dispute Resolution	The dispute forum is shifted from DAB to BANI	Deemed valid if explicitly stated and not contrary to Law No. 30/1999. Considered in line with the principle of national sovereignty, but needs a study of enforceability for foreign parties	Needs a reinforced arbitration clause that is enforceable in Indonesia. Add enforceability clauses for international parties
2	Engineer's Authority	The Engineer acts as the extension of the Owner (PLN)/ as the Owner's representative, not independent	Recognized as an adjustment to the organizational structure, but risks reducing neutrality, leading to conflicts of interest, requiring defined limits on authority	Internal SOPs are necessary to prevent misuse of authority. Clear authority limits are needed to avoid conflicts of interest.
3	Variation Clause	The change procedure is subject to the Owner's approval, not directly by the Engineer	In line with PBJ regulations, but may delay technical decisions	Need to establish a response time for the Owner
4	Governing Law	Indonesian law is established as the governing law	In line with national policy, but not all FIDIC terms have a local legal counterpart	Legal terminology adjustments are needed to avoid misinterpretation

No	Evaluated Aspect	Special Conditions in the Contract	Assessment in the Bidding Opinion	Notes
5	Use of Local Resources	Priority is given to local labor and materials	Supports local community empowerment	Technical training for local labor is needed to meet FIDIC standards
6	Logistics and Force Majeure Rules	Extension of time clauses are adjusted for geographic challenges	Considered fair and protects the contractor from unjust penalties	A technical guide for proving logistics barriers is needed
7	Claim Administration and Proof	Requires more detailed documentation and evidence-based claims	In line with cautionary principles, but considered burdensome for project execution	Establish proof standards and a simple yet robust documentation system
8	Harmonization with National Regulations	Conditions adjusted to the Construction Services Law and Presidential Regulation No. 16/2018	Generally aligned, though some areas remain ambiguous in interpretation	Legal notes are needed for each deviation from the General Conditions
9	Compliance with National Law	Adjusted to the Construction Services Law, Presidential Regulation No. 16/2018, and other Ministerial Regulations	Largely in compliance, but a more systematic analysis of each clause is needed	Legal assistance is recommended from the beginning of the project planning
10	Bidding Opinion Standards	No fixed format or template	Causes inconsistency and variation in interpretation across projects	Recommendation: develop national guidelines or internal PLN guidelines
11	Price Variation and Adjustments	Price adjustments use local indices	It is recommended to include a transparent calculation mechanism	Need to anticipate inflation and material price fluctuations

CONCLUSION

The bidding opinion plays a strategic role in assessing the compatibility of the Particular Conditions of the FIDIC contract with the national legal system, particularly in the context of the Tanjung Selor 2×7 MW power plant project. However, in practice, the bidding opinion tends to remain administrative in nature and has yet to fully function as an instrument for legal risk mitigation. The implementation of Particular Conditions in the FIDIC contract for this project illustrates that adapting international contract standards to the local legal and operational context is a necessary and strategic step. It is therefore essential to ensure that each clause is drafted in alignment with national regulations, with the involvement of legal experts in contract law from the early planning stages.

From a juridical perspective, most of the modifications made to the contract have aimed to align with national laws, particularly the Construction Services Law and procurement regulations. Nonetheless, certain modified clauses—such as the shift of dispute resolution forums from the Dispute Adjudication Board (DAB) to local arbitration (BANI), and the role of the Engineer as the owner's representative—require deeper legal analysis to ensure the protection of all parties' interests. Altering dispute resolution mechanisms can lead to legal uncertainty if not clearly and precisely articulated.

Practically, the Particular Conditions offer flexibility in addressing local challenges, such as logistics and community involvement. However, implementation in the field continues to face technical and coordination barriers, especially regarding interpretational inconsistencies among contracting parties and the lack of evidentiary mechanisms for subjectively worded clauses. Inconsistencies between contract terms and legal interpretations in the bidding opinion have created uncertainty and the potential for disputes. Therefore, there is a pressing need to standardize the drafting of bidding opinions, improve coordination between legal and procurement units, and provide targeted training to ensure that bidding opinions serve as effective contract management tools that uphold the principles of good governance.

In conclusion, the Particular Conditions in FIDIC contracts serve as a critical bridge between international standards and local project requirements. However, their formulation must be meticulous, structured, and grounded in sound legal understanding to minimize disputes and enhance project implementation effectiveness.

Recommendations

The following recommendations are proposed:

1. It is recommended that a legal audit of the Particular Conditions be conducted prior to contract signing to ensure compliance with national regulations.
2. The drafting of the Particular Conditions should involve legal consultants with expertise in both international and national construction contracts simultaneously.
3. Any Particular Condition that deviates from the General Conditions should be accompanied by a technical explanation and written legal basis to avoid misinterpretation.
4. A structured communication and reporting mechanism should be established among the parties (Owner, Engineer, Contractor) regarding the interpretation and application of the Particular Conditions.
5. Upon project completion, a comprehensive evaluation of the effectiveness of the Particular Conditions should be carried out to inform improvements for future similar projects.

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