

A JURIDICAL AND MANAGERIAL PERSPECTIVE ON THE IMPLEMENTATION OF PARTICULAR CONDITIONS IN FIDIC CONTRACTS TO MINIMIZE DISPUTES AND ENHANCE PROJECT EFFICIENCY

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Abstract

The use of FIDIC contracts in construction projects in Indonesia requires adaptation through Particular Conditions to align with the national legal system and local conditions. Particular Conditions serve as an important instrument to accommodate regulations such as Law No. 2 of 2017 on Construction Services, the Civil Code (KUH Perdata), and the Arbitration Law, while also adjusting contractual provisions to the specific needs of each project. From a juridical perspective, the drafting of Particular Conditions must consider the principle of freedom of contract, balance of rights and obligations between parties, and must not conflict with public order and applicable laws. From a managerial standpoint, Particular Conditions play a role in improving project efficiency by providing clarity regarding risk allocation, payment mechanisms, reporting, quality control, and dispute resolution. This helps prevent potential conflicts between the project owner and contractor and supports faster and more accurate coordination and decision-making. This study uses a normative approach, analyzing legislation, reviewing literature, and conducting case studies to address the research questions concerning the implementation of Particular Conditions in FIDIC contracts in Indonesia and their role in minimizing disputes and improving project efficiency. The results show that Particular Conditions are not merely supplementary documents but strategic tools for integrating legal, technical, and managerial aspects to ensure the smooth execution and success of construction projects.

Keywords: *Particular Conditions, FIDIC, construction contract, dispute, project.*

Abstrak

Penggunaan kontrak FIDIC dalam proyek konstruksi di Indonesia memerlukan penyesuaian melalui Particular Conditions agar sesuai dengan sistem hukum nasional dan kondisi lokal. Particular Conditions berfungsi sebagai instrumen penting untuk mengakomodasi regulasi seperti UU No. 2 Tahun 2017 tentang Jasa Konstruksi, KUH Perdata, dan UU Arbitrase, sekaligus menyesuaikan ketentuan kontrak dengan kebutuhan spesifik proyek. Dalam perspektif yuridis, penyusunan Particular Conditions harus memperhatikan asas kebebasan berkontrak, keseimbangan hak dan kewajiban para pihak, serta tidak bertentangan dengan ketertiban umum dan hukum yang berlaku. Dari sisi manajerial, Particular Conditions berperan dalam meningkatkan efisiensi proyek dengan memberikan kejelasan terkait alokasi risiko, mekanisme pembayaran, pelaporan, pengendalian mutu, dan penyelesaian sengketa. Hal ini membantu mencegah potensi konflik antara pemilik proyek dan kontraktor, serta mendukung koordinasi dan pengambilan keputusan yang lebih cepat dan akurat. Penelitian ini menggunakan pendekatan normatif dengan mengkaji peraturan perundang-undangan, studi literatur, dan analisis kasus untuk menjawab rumusan masalah terkait penerapan Particular Conditions dalam kontrak FIDIC di Indonesia serta perannya dalam meminimalkan sengketa dan meningkatkan efisiensi proyek. Hasil penelitian menunjukkan bahwa Particular Conditions bukan hanya dokumen pelengkap, tetapi alat strategis dalam mengintegrasikan aspek hukum, teknis, dan manajerial demi kelancaran dan keberhasilan proyek konstruksi.

Kata Kunci: *Particular Conditions*, FIDIC, kontrak konstruksi, sengketa, proyek.

INTRODUCTION

FIDIC contracts have become a global standard in construction project management, largely due to their flexibility in accommodating Particular Conditions. Within the legal and managerial context in Indonesia, the use of Particular Conditions plays a strategic role in aligning the contract with national regulations and prevailing local practices. This alignment involves not only legal substance but also effective project governance, ensuring that the contract responds to the specific needs of each project. From a legal standpoint, these conditions must not conflict with national laws, such as Article 1320 of the Indonesian Civil Code, which sets the essential elements of a valid agreement—consent, capacity, a specific object, and a lawful cause. (Nachrawi & Heliany, 2023).

The use of Particular Conditions is a critical instrument for reducing the potential for disputes among parties. In practice, many project disputes arise from vague or overly general clauses in standard contracts, especially when local conditions and national laws are not taken into account. Therefore, the development of Particular Conditions should be based on thorough legal analysis and involve construction law experts to ensure their enforceability and legal validity. Indonesian law prohibits contract clauses that violate public order, decency, or existing legislation, as stated in Article 1337 of the Civil Code.

From a managerial perspective, implementing Particular Conditions affects project risk management strategies. In large-scale projects, technical, financial, and legal risks must be clearly mapped out from the outset. Particular Conditions allow for a fairer and more balanced allocation of these risks between the project owner and the contractor, ensuring that each party bears proportionate responsibility for unforeseen events. Both the 1999 and 2017 editions of the FIDIC contract allow sufficient flexibility for this customization, including clauses on Force Majeure, dispute resolution, and delay management. (Winata & Hardjomuljadi, 2021).

In public construction projects governed by Presidential Regulation No. 16 of 2018 on Government Procurement, contract clauses must conform to the established legal framework. When FIDIC is used in government projects, the Particular Conditions must accommodate local requirements such as the use of domestic products, support for small enterprises, and dispute resolution procedures in line with national law. Harmonizing

these elements helps prevent conflicting interpretations between FIDIC clauses and binding national regulations.

The effective application of Particular Conditions demonstrates that project success is closely tied to how well the contract clauses are implemented. One persistent weakness in construction contracts is the lack of robust dispute resolution mechanisms. For this reason, Particular Conditions often include more detailed provisions for resolving disputes, such as the use of a Dispute Adjudication Board (DAB) or arbitration under Indonesian law. In this context, institutions like the Indonesian National Arbitration Board (BANI) play a crucial role. (Negara, et.al, 2024)

A major challenge in drafting Particular Conditions is maintaining a fair balance between the interests of the project owner and the contractor. Overly one-sided clauses can create inequities that lead to conflict. Therefore, a multidisciplinary approach-bringing together engineering, legal, and risk management expertise is essential. Contract negotiation should not be treated as a mere formality but rather as a foundational step in fostering a healthy and equitable partnership.

Legally, Particular Conditions drafted unilaterally and in disregard of the principle of freedom of contract can be annulled. This is in line with the principle of *pacta sunt servanda*, as laid out in Article 1338 (1) of the Civil Code, which affirms that legally formed agreements are binding as law upon the parties. However, Article 1338 (3) emphasizes that contracts must be performed in good faith. Clauses that disproportionately burden one party or are manipulated in substance may violate principles of contractual fairness.

One critical aspect often customized in Particular Conditions is the implementation schedule and project financing. Standard FIDIC provisions may not align with Indonesia's project payment systems for instance, regarding advance payments, interim payments, or retention. These elements must be clearly stipulated in a dedicated contract section to avoid misinterpretation. They are directly linked to project cash flow management and the contractor's ability to meet agreed timelines. (Rahmawati, et.al, 2021).

Experience shows that many disputes stem from differing interpretations of design responsibilities, scope changes, or technical specifications. In FIDIC, especially the Red Book, design responsibility lies with the project owner, but ambiguities in this area often

lead to claims. Particular Conditions can clarify responsibilities for design modifications, their impact on project duration, and how resulting claims will be assessed. (Winata & Hardjomuljadi, 2021).

In terms of project efficiency, Particular Conditions enable adaptive provisions in response to technological advances and innovative construction methods. Contractual clauses relating to Building Information Modeling (BIM), digital quality control systems, or green construction practices can be integrated to fit project-specific needs. FIDIC provides ample flexibility for such customization, provided it aligns with the legal principles and overarching objectives of the contract.

Adapting the contract through Particular Conditions is also vital to meet increasingly stringent environmental and labor regulations. For example, in large-scale infrastructure projects, compliance with environmental impact assessments (AMDAL), the use of local labor, and proper waste management should be explicitly regulated to prevent administrative violations. In this regard, FIDIC contracts must be harmonized with Law No. 32 of 2009 on Environmental Protection and Management and with Labor Law provisions.

Strong legal documentation is indispensable in drafting Particular Conditions. Any amendments or additions must be formally recorded in writing and signed by both parties to prevent future conflicts. This aligns with the principle of legality in contract law, which requires that all provisions have a clear legal basis and are supported by valid written evidence. Such documentation serves as the primary reference in dispute resolution when breaches occur.

Case studies from infrastructure projects in Indonesia indicate that successfully managing Particular Conditions significantly reduces claims and supports project continuity. The key to success lies in the collaboration between project owners, legal consultants, and project managers in crafting realistic and enforceable clauses. In the framework of modern project management, a contract is not merely a legal instrument but also a strategic tool for control and performance evaluation. (Nachrawi & Heliany, 2023).

While FIDIC has proven to be a globally recognized standard for contract drafting, its implementation must not disregard the national legal context. Each adopted Particular Condition must be tested against Indonesian laws and regulations. Otherwise, those

clauses may be rendered legally unenforceable. Therefore, conducting a thorough legal audit of the contract documents prior to implementation is essential to ensure their validity and applicability within Indonesia's jurisdiction.

RESEARCH METHOD

This research has initially conducted a comprehensive literature survey was carried out based on journals, law texts, conference proceedings, government publications and previous research investigations.

RESULT AND DISCUSSION

The Implementation of Particular Conditions in FIDIC Contracts under the Indonesian Legal System

In the realm of international construction contracts, FIDIC (Fédération Internationale Des Ingénieurs Conseils) has become one of the most widely adopted standards. This standard contract framework is generally divided into two key parts: the General Conditions, which are standardized clauses applicable across various projects, and the Particular Conditions, which are tailored clauses created to align the contract with national laws, project-specific requirements, and the unique interests of the parties involved. (Fredella, 2023). In Indonesia, the use of Particular Conditions is not merely a formality to accommodate local requirements it must also conform to the national legal system, which is rooted in the freedom of contract principle, as established under Article 1338(1) of the Indonesian Civil Code (KUHPerdata), which states: "All legally executed agreements shall bind the parties as law."

A foundational aspect of integrating Particular Conditions into FIDIC contracts in Indonesia lies in the principle of legality and adherence to the nation's legal norms. While FIDIC contracts are international in nature, their implementation must comply with Indonesia's domestic laws, particularly Law No. 2 of 2017 on Construction Services. Article 27(1) of this law stipulates that the implementation of construction services must adhere to national regulations, technical norms, and professional ethics. This means that every clause included in the Particular Conditions must not contradict these mandatory provisions.

In practice, Particular Conditions serve as a critical tool to bridge the gap between the General Conditions of FIDIC and the specific legal or project-related requirements within Indonesia. These adjustments often relate to the responsibilities of the contracting parties, risk allocation, dispute resolution mechanisms, and payment terms. These are especially important under Indonesian law, which emphasizes a balanced distribution of rights and obligations within contracts. When an imbalance is deemed to exist, a court may annul certain provisions on the grounds of fairness, in accordance with Articles 1320 and 1339 of the Civil Code, which address the legal validity of agreements and the obligation to act in good faith. (Zuliana & Haryanto, 2024).

Another layer of complexity arises from Indonesia's civil law system, which places greater emphasis on codified laws rather than case law—a stark contrast to the common law tradition from which FIDIC originates. This legal difference necessitates adaptation through Particular Conditions to ensure that the contract is not only formally valid but also practically enforceable within the Indonesian jurisdiction. Without these adjustments, legal conflicts may emerge—especially concerning dispute resolution clauses and jurisdictional matters that are often rigidly defined in FIDIC's General Conditions.

In real-world application, Particular Conditions have proven valuable in providing flexibility to tailor contractual terms according to project needs and the government's legal framework. For instance, FIDIC's General Conditions define force majeure in general terms. However, under Indonesian law, particularly Articles 1244 and 1245 of the Civil Code, force majeure has specific implications related to liability and compensation, which must be considered when drafting these clauses.

Dispute resolution provisions within the Particular Conditions often become focal points in FIDIC contracts. While the General Conditions promote the use of the Dispute Adjudication Board (DAB), this may not always align with practices in Indonesia, where dispute resolution institutions such as the Indonesian National Board of Arbitration (BANI) or the District Court (Pengadilan Negeri) may be more applicable—particularly when one party does not consent to DAB procedures. Indonesian Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution offers a legal basis for selecting dispute resolution forums, provided that mutual agreement is reached. (Lasmasari, 2023).

Particular Conditions are especially critical in infrastructure projects funded by the state budget (APBN/APBD) or foreign loans. In such cases, the contract must align with

Presidential Regulation No. 16 of 2018 on Government Procurement of Goods and Services (as amended), which emphasizes the principles of efficiency, accountability, and transparency. Therefore, any modifications or additions via Particular Conditions must uphold these core principles-particularly concerning payment systems, quality control, and project supervision.

A common challenge in implementing Particular Conditions stems from the limited understanding among legal and technical practitioners of FIDIC's underlying philosophy and structure. This often leads to the drafting of Particular Conditions that unintentionally conflict with the General Conditions or create legal ambiguities. Ideally, Particular Conditions should complement and adapt, not contradict or override, the General Conditions. As such, maintaining consistency throughout the contract is vital to prevent misinterpretation and potential disputes.

Particular Conditions also help refine the legal responsibilities of both the employer and the contractor. Under Indonesian law, liability is shaped by principles of good faith, negligence, and causality. Thus, clauses on indemnity, insurance, and liability must be carefully adjusted to prevent disproportionate legal burdens-especially when local small businesses or contractors are involved and are protected under national legal provisions.

While Article 1338 of the Civil Code grants broad freedom of contract, this freedom is not absolute. Clauses that violate public order, morality, or mandatory statutory provisions remain invalid. Therefore, drafting Particular Conditions requires a thorough legal analysis from multiple perspectives-civil law, administrative law, and sector-specific construction law.

One commonly addressed aspect in Particular Conditions relates to project delays and extensions of time. Under Indonesian law, such matters are closely tied to breach of contract (*wanprestasi*) and penalty provisions, which are governed by Article 1267 of the Civil Code. Provisions concerning penalties or liquidated damages must be adjusted to reflect the principles of proportionality and fairness, which are often emphasized in Indonesian court rulings.

Particular Conditions frequently include clauses on progress payments, retention, and termination of contract. These financial mechanisms must comply with Indonesian legal norms, especially the principle of contractual clarity and fairness of performance, as outlined in Article 1233 of the Civil Code. Clauses that allow unilateral contract

termination without valid justification may be challenged in court for violating fair contract principles. (Simanjuntak, 2021).

Additionally, subcontracting and third-party involvement must be regulated in line with national laws. Under Indonesian contract law, a third party that is not a signatory to the main contract cannot be held legally liable unless explicitly provided for and agreed upon by all parties. This reflects the principle of privity of contract, which, while universally recognized, must be applied with consideration for local legal context.

In international construction projects carried out in Indonesia, there are often clashes between FIDIC provisions and national labor laws, especially regarding working hours, occupational safety, and workers' rights. Particular Conditions must be tailored to comply with Law No. 13 of 2003 on Manpower (as amended), ensuring protection for local workers, including provisions for compensation, social security, and workplace safety.

In essence, the application of Particular Conditions in FIDIC contracts within Indonesia aims to strike a balance between contractual flexibility and legal compliance. Successful drafting and implementation demand a deep understanding of Indonesian legal principles, clear contractual language, and a cautious interpretation of international clauses. Ultimately, the legal strength of Particular Conditions depends on their effectiveness in bridging the differences between international contract frameworks and Indonesia's regulatory landscape for the construction sector.

The Role of Particular Conditions in FIDIC Contracts in Enhancing Project Managerial Efficiency and Minimizing Disputes Between Parties

Particular Conditions in FIDIC contracts are far more than just supplementary provisions to the General Conditions—they serve as strategic instruments that tailor the contract to fit the specific nature of a project. In project management, these customized clauses offer clear, actionable guidance for the parties involved, helping them fulfill their duties, responsibilities, and rights in a structured and coherent manner. Managerial efficiency isn't driven solely by technical planning; it also relies heavily on legal and contractual certainty that is enforceable.

Construction projects typically involve intricate workflows and multiple stakeholders from diverse disciplines. This is where Particular Conditions become indispensable, as they define procedures, schedules, reporting formats, and decision-making authorities in

more concrete terms. While the General Conditions provide a general framework, the Particular Conditions fill in the details aligned with local needs and project-specific realities thereby reducing confusion during execution and streamlining decision-making in the field.

Effective project management requires early clarity on how risks are allocated. Particular Conditions serve as tools to distribute risks more equitably, enabling each party to understand its responsibilities and the consequences of its actions or omissions. With clearly defined mechanisms for claims, time extensions, and cost compensations, parties can plan both preventive and corrective actions ultimately improving the overall efficiency of project delivery.

In terms of communication and reporting, Particular Conditions also establish a framework for structured information flow. Provisions regarding the frequency and format of progress reports, approval procedures for technical decisions, and internal conflict escalation channels help create a more organized oversight process. This reduces miscommunication, which is often a root cause of issues in large-scale construction projects.

Dispute resolution is another area where Particular Conditions play a vital role. Although the General Conditions of FIDIC recommend resolving disputes through a Dispute Adjudication Board (DAB), Particular Conditions allow parties to opt for alternative mechanisms better suited to the local context such as the Indonesian National Arbitration Board (BANI) or local mediation. This ensures disputes can be resolved more efficiently, with lower costs and less disruption to project implementation. (Suardika, 2023).

By clearly outlining responsibilities, Particular Conditions help prevent overlaps or ambiguities between project owners, contractors, and consultants. These detailed arrangements enable each party to focus on their specific roles, improving accountability and accelerating project realization. (Prawitasari, et al., 2023).

Managerial efficiency isn't just about saving time and money; it's also about optimal resource management. Particular Conditions can regulate cooperation between local and international stakeholders, including the use of local labor, materials, and logistics in accordance with national regulations. In publicly funded or foreign loan-financed

projects, this is especially critical to prevent regulatory violations and inefficiencies. (Gede, 2020).

In practice, many contract disputes stem from misalignment between stakeholder expectations and on-site realities. Well-crafted Particular Conditions grounded in technical, legal, and managerial analysis can bridge this gap. When designed in line with national laws and good governance principles, these provisions help ensure the project runs smoothly and aligns with its original objectives.

Particular Conditions also allow for managerial flexibility in response to project dynamics. When design changes or unforeseen site conditions arise, the contract can already include procedures for variations or budget adjustments. This prevents hasty, unilateral decisions that often trigger disputes between contractors and project owners.

Professionally drafted Particular Conditions also function as risk mitigation tools whether legal or technical. When not managed properly, risk becomes a key source of conflict. Clauses like “early warning,” “claim procedures,” or a “risk register” provide a structured way to anticipate and respond to risks reducing both legal and financial uncertainty for all involved. (Fredella, 2023).

Cash flow is another critical factor in project success, making payment provisions in Particular Conditions essential. Terms related to payment schedules, retention, penalties for delay, and final accounts provide assurance that contractors can meet their obligations. Without detailed arrangements, delayed payments can lead to costly disputes and project delays.

Particular Conditions also support more effective monitoring and evaluation systems. With clear auditing schedules, periodic evaluations, and risk reporting mechanisms, stakeholders can perform real-time oversight of project performance. This allows deviations from the plan to be identified early and corrected promptly before they escalate.

On the technical front, Particular Conditions can include local standards, working methods, and material requirements customized to fit Indonesian geographic and regulatory conditions. The General Conditions often fall short in addressing local specifics such as soil characteristics, tropical climate, or national safety standards. Adapting these elements through Particular Conditions helps prevent technical failures and responsibility disputes. (Winata & Hardjomuljadi, 2021).

They also empower project owners to implement more contextually relevant quality control measures. Clauses on material testing, routine inspections by independent consultants, and formal handover documentation strengthen the project's quality management system. This not only ensures compliance with technical specifications but also creates a robust legal trail in the event of future claims. (Lasmasari, 2023).

Ultimately, Particular Conditions transform the contract from a static legal document into a dynamic project management tool. Rather than merely dictating responsibilities, the contract becomes a living framework that supports collaboration, communication, decision-making, and performance evaluation. In this sense, Particular Conditions play a central role in fostering efficient, effective, and dispute-minimized construction projects under the Indonesian legal system.

CONCLUSION

1. The implementation of Particular Conditions in FIDIC contracts in Indonesia represents a crucial effort to align international standards with the national legal system, which is rooted in the principle of freedom of contract. However, this flexibility must still comply with mandatory local norms and regulations. Particular Conditions serve as an adaptive mechanism that allows for contractual flexibility while ensuring adherence to local laws such as the Construction Services Law, the Civil Code (KUH Perdata), and the Arbitration Law. A well-crafted set of Particular Conditions should reflect principles of fairness, a balanced distribution of rights and obligations, and avoid any conflict with public order or the legal protection of parties especially local contractors and stakeholders.
2. Particular Conditions play a strategic role in enhancing project managerial efficiency while also reducing the risk of disputes between parties. Far from merely supplementing the General Conditions, they adjust the contract's provisions to fit the unique characteristics of a given project and local context. By clearly defining operational procedures, risk allocation, payment mechanisms, reporting systems, and dispute resolution pathways, Particular Conditions provide legal and operational clarity. This, in turn, facilitates faster decision-making, reduces miscommunication, and strengthens accountability and coordination among parties. Furthermore, they contribute to better resource management, the implementation of relevant technical

standards, and the establishment of more effective monitoring and risk mitigation systems. As a result, the contract evolves from being merely a legal document into a dynamic and integral management tool that supports the success of construction project execution.

SUGGESTIONS

1. It is recommended that the drafting of Particular Conditions in FIDIC contracts in Indonesia be carried out by a multidisciplinary team comprising legal experts, project managers, and construction engineers with a solid understanding of local regulations. This is essential to ensure that the clauses do not contradict Indonesia's mandatory legal frameworks such as Law No. 18 of 1999 on Construction Services, the Civil Code, and Law No. 30 of 1999 on Arbitration while also upholding the principles of justice, legal protection, and a balanced distribution of rights and obligations, particularly for local businesses and contractors.
2. In project execution, it is strongly advised that Particular Conditions be utilized to their fullest potential as dynamic managerial instruments. Specific clauses concerning risk allocation, payment procedures, reporting systems, technical standards, and dispute resolution should be designed in a detailed and forward-thinking manner. This approach supports work efficiency, improved coordination among stakeholders, and effective conflict prevention. Thus, the contract becomes not just a legal agreement but a strategic tool for managing projects in a way that is efficient, transparent, and sustainable.

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