

# **FIDIC PARTICULAR CONDITIONS IN INDONESIAN ELECTRICITY INFRASTRUCTURE PROJECTS : STUDY REVIEW WITH FIDIC'S GOLDEN PRINCIPLES**

**Singgar Mataniari Wibowo<sup>1)</sup>, Sarwono Hardjomuljadi <sup>2)</sup>**

<sup>1</sup> Master of Construction Law Student, Universitas Pekalongan, Jl. Sriwijaya No.3, Bendan Kec. Pekalongan Bar., Kota Pekalongan, Jawa Tengah 51119

<sup>2</sup> Professor of Master of Construction Law, Universitas Pekalongan, Jl. Sriwijaya No.3, Bendan Kec. Pekalongan Bar., Kota Pekalongan, Jawa Tengah 51119

E-mail: [mataniari.2509@gmail.com](mailto:mataniari.2509@gmail.com)

E-mail: [sarwonohm2@gmail.com](mailto:sarwonohm2@gmail.com)

## **Abstract**

This study discusses the implementation of FIDIC Special Conditions in electricity infrastructure projects in Indonesia, focusing on FIDIC's golden principles issued in 2019. This study uses a qualitative approach with a case study method, covering electricity infrastructure projects using FIDIC contracts. The analysis was carried out thematically based on the narrative and related contract documents.

This study found that the use of FIDIC contract standards in Indonesia is influenced by the recommendations of international lenders, FIDIC's reputation as a fair and balanced contract, and its international recognition. However, there are frequent breaches of the basic principles of FIDIC due to excessive adjustments to the Special Conditions by employers, resulting in an imbalance of risk and reward.

To address this issue, FIDIC published golden principles emphasizing the importance of clarity, ambiguity, and balance in the design of Special Conditions. It is important for all parties to the contract to understand and apply these principles in order to minimize disputes and improve project efficiency.

A clear, structured, and nationally adaptive implementation of Special Conditions clauses in FIDIC contracts can help reduce the risk of disputes in electricity infrastructure projects in Indonesia. This approach provides legal certainty and creates a more transparent and efficient construction work environment, supporting professional, fair, and consistent dispute resolution with the Indonesian legal system.

**Keywords:** *FIDIC, Particular Conditions, Golden Principles*

## **INTRODUCTION**

A construction contract is defined as a contract that binds two or more parties (usually the Service User and the service provider) on a set of conditions (general and specific), policies and clauses decided by the service provider, agreed upon by both parties and recorded in the contract (Shadid, 2015: 1). It is common knowledge that the parties often see construction work contracts only at a glance about the "value of the contract" and the "signature" (Rivai, 2018).

In Indonesia, the FIDIC contract standard that is widely used today is the FIDIC Rainbow Series 1999 which consists of FIDIC Conditions of Contract for Construction 1999 (Red Book), FIDIC Conditions of Contract for Plant & Design Build 1999 (Yellow Book), and FIDIC Conditions of Contract for EPC/Turnkey Project (Silver Book), which FIDIC has actually published the Second Edition in 2017 and 2021.

However, the use of FIDIC General Conditions of Contracts needs to be supported by an increased understanding of contract clauses, especially the philosophy of FIDIC Conditions of Contract and how to interpret the clauses correctly, so that construction claims can be minimized appropriately and professionally (Jo Johnson – Sarwono).

FIDIC contracts are the most common standard form of international construction contracts in the world today. FIDIC contracts are often used in large and small construction projects because the clauses are considered fair to the contracting parties, besides that the use of FIDIC contracts is also often a requirement for the lender and also as an added value to attract prospective job implementers to participate in tenders. The use of standard FIDIC contract documents at PT PLN (Persero) is generally applied to projects whose funding is sourced from loan.

## **RESEARCH METHOD**

This study employs a qualitative approach using the case study method to analyze the implementation of FIDIC Particular Conditions in electricity infrastructure projects. The research population were the electricity infrastructure projects which using "FIDIC" and the writer involve at the projects. The analysis was conducted thematically

based on narratives and contractual documents related to electricity infrastructure construction.

## **THE USE OF “FIDIC” IN INDONESIAN ELECTRICITY INFRASTRUCTURE PROJECTS**

Factors driving the use of the FIDIC Contract Standard in Indonesian electricity infrastructure projects can be described as below:

1. Being an International contract standard recommended by Lenders such as JICA, IBRD and JBIEC
2. Known for *Fair & Balanced Contract*
3. Internationally recognized and common contract document standards
4. Assuming a Fair & Balanced contract, the use of "FIDIC" may attract participation in *the conduct of the bidding*

In the preparation of FIDIC Standard Contract Documents into Contract Documents, FIDIC suggests that General Conditions (General Conditions of Contract) be complemented by Particular Conditions (Special Conditions of Contract). Particular Conditions (Contract Specific Conditions) are required to:

1. Reflect the specific needs of the Project
2. Reflects the need for local regulations as well as local culture
3. Reflects the needs of the Lender/Loan Agreement

However, during the preparation of the Particular Conditions, there were many violations of “Fair and Balance” spirit occurs due to Employer makes too many changes/additions to clauses as the Employer try to make the contract in favour to them, so the FIDIC Contract Documents are only limited to the name "FIDIC". It became worse due to these clause giving a wrong perception of potential contractors.

In Indonesian electricity infrastructure projects; as the writer became the part of the projects; there were several factors cause errors in the preparation of FIDIC contracts.

1. Confusion in determining the FIDIC Contract Standard used with the type of work to be done

2. The need to adjust to local regulations and erroneous customs
3. Employers deliberately change the Risk/Reward balance for their benefit

To address this globally, FIDIC published the Golden Principles in 2019 to uphold its brand reputation and ensure that FIDIC's Contract Standards are fair and balanced.

## **FIDIC'S GOLDEN PRINCIPLES**

FIDIC's Golden Principles which issued in 2019 describes as follows:

1. The **duties, rights, obligations, roles and responsibilities** of all the Contract Participants must be generally as implied in the General Conditions.
2. The Particular Conditions must be drafted **clearly and unambiguously**.
3. The Particular Conditions must **not change the balance of risk/reward** allocation provided for in the General Conditions.
4. All time periods specified in the Contract for Contract Participants to perform their **obligations must be of reasonable duration**.
5. Disputes must be referred to a **Dispute Avoidance/Adjudication Board** for a provisionally binding decision as a condition precedent to arbitration.

Lets discuss it poin by point, at the first The **duties, rights, obligations, roles and responsibilities** of all the Contract Participants must be generally as implied in the General Conditions. This principle requires that the roles, duties, obligations and rights of the Contract Participant (i.e. all parties referred to in the Contract – Employer, Contractor, Engineer, Dispute Board/DAAB, Sub-contractor, etc.) do not change significantly from his/her role and responsibilities under the General Condition.

### Examples of Common Violations:

1. Eliminating the obligation of the Employer to be responsible for late payment penalties.
2. Requires approval of work methods in the implementation of EPC contracts

The roles, duties and obligations of other Contract Participants as defined in the GCs are equally important for efficiently delivering the contractual objectives. Thus, for the Red, Pink and Yellow Books, this requires that an Engineer be appointed with

appropriate authority, competence and resources to carry out his/her role, and that she/he fulfils their duties and obligations as defined in the Contract. Further, the Engineer must exercise their contractual authority and make fair determinations in accordance with the Contract, taking due regard of all relevant circumstances. This means that s/he must not make determinations that only suit the Employer's interests, without having due regard to the Contractor's rights and entitlements under the Contract.

The second principle, The Particular Conditions must be drafted **clearly and unambiguously**. This principle promote the clarifications in the implementation of the tender and agreements at the time of the implementation of the tender must be well organized and reflected in the Contract Document, moreover all Particular Conditions must be drafted with reference to the existing General Conditions and taking into account the other clauses of the contract, and any deletion of a General Condition must be replaced with a Particular Condition of the same scope

Examples of Common Violations:

Removal of the clause of The Employer's financial arrangements, so that the contractor does not know whether his work can be paid

The conditions of a FIDIC Contract comprise the GCs and the PCs, which incorporate any additions or changes to the GCs. A FIDIC Contract will only be clearly and unambiguously drafted if the PCs are clearly and unambiguously drafted, and interface harmoniously with the GCs and the Appendix to Tender/Contract Data.

The third, The Particular Conditions must **not change the balance of risk/reward** allocation provided for in the General Conditions. The 3rd Principle is closely related to the 1st Principle, as a significant change in roles, duties, obligations and rights as defined in the General Condition will inevitably change the Fair & Balanced Risk/Reward allocation. "Consider which Party can best foresee, control and bear risk & which Party benefits or suffers if risk occurs" **Abrahamson's Principles**

Examples of Common Violations:

1. Abolish the contractor's right to make claims against changes in field conditions in the Red book
2. Removing price adjustment clauses in multiyear contracts

Fair and balanced risk/reward allocation is widely accepted as the most appropriate basis for drafting of construction contracts to minimise the prospects of disputes, enhance the likelihood of achieving successful project outcomes, and to keep the Contract Price moderate and optimum. It is a fundamental principle on which FIDIC Contracts are based.

The forth principle, All time periods specified in the Contract for Contract Participants to perform their **obligations must be of reasonable duration**. The 4th Principle requires that the duration for the activities specified in the General Condition must not be excessively reduced or extended in the Particular Condition, except for the duration of time qualified by "unless otherwise agreed". This is in accordance with the principle of Fair & Balanced in the allocation of Risk/Reward in the 3rd Principle

Examples of Common Violations:

Significantly increasing the duration of the progress payment time, for example, payment is made after 3 months from the Interim Certificate

The consequences of reducing the time periods provided for in the GCs may result in a Contract Participant having insufficient time to properly perform their required duties or to exercise their rights. An earlier trigger of a time bar than is contemplated in the GCs is one potential consequence of reducing time periods.

The last principles where disputes must be referred to a **Dispute Avoidance/Adjudication Board** for a provisionally binding decision as a condition precedent to arbitration. Unless there is a conflict with the Law in Government, all formal disputes must be referred to the Dispute Avoidance/Adjudication Board to obtain

a temporary binding decision on the dispute arising as a precedent for conditions for arbitration. FIDIC considers the availability of an independent and impartial Dispute Board as fundamental to a fair and balanced Contract.

## **CONCLUSION**

The clear, structured, and nationally adaptive implementation of Particular Conditions clauses in FIDIC contracts can help reduce the risk of disputes in Indonesian electricity infrastructure projects. This approach provides legal certainty and creates a more transparent and efficient construction working environment, supporting dispute resolution in a professional, equitable, and consistent manner aligned with the Indonesian legal system.

Effective application of FIDIC Particular Conditions in Indonesian electricity infrastructure projects enhances project execution efficiency in terms of time, cost, as well as administrative and legal management. Adjustments to critical clauses clarify contractual legal aspects and support smoother construction processes by minimizing dispute potential, optimizing resource utilization, and promoting transparent, professional project implementation compliant with national regulations.

## REFERENCES

Sarwono Hardjomuljadi (2009), Pre Contract Strategy for Minimizing Construction Claims Impact on Hydro Electric Power Plant Projects in Indonesia. Dissertation.

FIDIC (2019). FIDIC'S GOLDEN PRINCIPLES.

William Godwin QC (2020) THE 2017 FIDIC CONTRACTS. Wiley Blackwell.

Jaeger, A. V., & Hök, G. S. (2021). FIDIC Contracts: Law and Practice. CRC Press.

Sarwono Hardjomuljadi (2023), Kamus Kontrak Konstruksi (FIDIC Conditions of Contract). Balai Pustaka, Jakarta.