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Fidic Contracts and their Role in Regulating Construction Projects

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Abstract

This research aimed to clarify the characteristics of the FIDIC contract in regulating construction projects and to determine the role of the FIDIC contract in regulating their project work. To achieve the research objectives, the descriptive approach was used. The research found that FIDIC contract includes general and special conditions that regulate construction work and achieve a balance between the rights and obligations of the various parties to the contract. Although FIDIC contracts are international models commonly used in construction projects, and provide a detailed framework for the terms and procedures regulating the relationship between the employer, the contractor, and the consultant, but they are not considered law in themselves, but rather are applied alongside the applicable national law. The applicable law is the local law that governs the contract, interprets its provisions, and determines rights and obligations in the event of conflict or discrepancy.

Keywords*:* *FIDIC contract, regulating, construction projects*, *employer, contractor*

1. Introduction

In recent years, the construction sector has witnessed significant developments, necessitating the development of new contracts that are compatible with the nature of the changes and developments occurring and respond to the scale of the sector's updates.

Construction companies have developed clear models of contracts that can be adopted within the construction sector (Al-Sabah and Al-enezi, 2024). Purba and Prastowo (2020) argued that given the complexity of large-scale construction projects and the overlap between contracting parties, including banks, insurance companies, and contracting companies, there is an urgent need to draft contracts capable of accurately and flexibly meeting the construction process requirements of various projects (Jaworski, 2018). These contracts include the rights, duties, obligations, and responsibilities of the contracting parties, and are called 'FIDIC' contracts.

The term 'FIDIC' is derived from the French word for 'Federation Internationale Des Ingenieurs Conseils' derived from the initials of the name of this union. The FIDIC contract primarily aims to reduce potential risks that may arise after concluding a construction contract between project parties, including engineers, consultants, contractors, and the employer (Maithreyi and Naveen, 2024). In the event that the contract violates certain standards, it protects the rights of all parties.

FIDIC contracts are relatively new contracts, emerging as a result of the economic, social, and technical repercussions witnessed by the construction sector (Udom, 2014). FIDIC contracts are considered suitable for addressing the risks, problems, and legal disputes that may arise between contracting parties in construction projects, particularly due to the high cost of such contracts and the multiplicity of contracting parties, which may also be from foreign countries with potentially differing legal systems.

Purba and Prastowo (2020) emphasized that construction projects are prone to problems and disputes between contracting parties during implementation, especially if the implementation process lasts a long time, where it is extremely rare for implementation to proceed without changes or additions to the original contract clauses. This contributes to extending the project implementation period and the contractor's claim for financial compensation for the extended project duration. Therefore, this research aims to clarify the characteristics of the FIDIC contract in regulating construction projects and to determine the role of the FIDIC contract in regulating their project work.

1.1 Research problem and questions

Construction contracts require a set of contracts necessary to regulate the relationships between the various parties involved in the construction process, including the employer, the contractor, and the engineer. They also require addressing the changes and challenges facing the implementation of work, as the legal contract is the foundation upon which the legal regulations related to construction and building contracts depend (Al-Sabah and Al-enezi, 2024). This requires careful drafting of clauses and establishing fair conditions to avoid problems and disputes that may arise during the implementation of construction contracts.

Developing countries, in particular, have witnessed tremendous development in the construction sector, including the construction of buildings, roads, bridges, airports, and other projects (Purba and Prastowo). This development has been followed by an increase in the volume of disputes and conflicts arising between the various parties of the contract. This is due to a number of factors beyond the control of the contractors, some of which result from errors committed by one party to the contract, contributing to harm to the other party. Moreover, the rapid establishment of contracting companies has contributed to the emergence of some contractors who claim to possess experience in construction and building. This has contributed to the emergence of buildings and facilities that do not conform to the required and approved specifications, threatening the safety of individuals and owners and creating disputes between the parties of the contract. This calls for intervention to resolve disputes, away from litigation, which is characterized by its slow procedures. Based on that, the problem of the research can be summarized in the following questions:

1. What are the characteristics of a FIDIC contract?
2. What is the impact of the drafting of a FIDIC contract on determining the applicable law in construction projects?

1.2 Research importance (significance)

The importance of this research is evident from the importance of the contract that the current research highlights, which is the FIDIC contract. Familiarity with FIDIC contracts has become essential for entering global markets for various construction projects, and also for attracting foreign capital. This contract has become the primary language used in the new global market for the construction sector.

Given the importance of the topic, FIDIC contracts related to construction work were chosen. In this research, the characteristics of these contracts and their role in regulating construction projects will be explained in a simple language. Therefore, this research is important for investors, engineers, and all those interested in construction and building work, as well as contractors. Legal professionals are not the only ones interested in FIDIC contracts; rather, they include all parties involved in the construction process.

2. Research methodology

To achieve the research objectives, the descriptive approach will be used. The descriptive approach is defined as one that describes reality without introducing variables or factors, as it studies the essence rather than the method.

3. Literature review

3.1 FIDIC contract: Concept and contracting parties

As previously explained, the word FIDIC is derived from the initials of the French name for the International Federation of Consulting Engineers (Federation Internationale Des Ingenieurs Conseils), which is considered the institutional framework that issues the most important contracts in the field of contracting. This federation was founded in 1913 in cooperation with three European associations of consulting engineers (the Belgian Association of Consulting Engineers (CICB), the French Association of Consulting Engineers (CICF), and the Swiss Association of Consulting Engineers (CSIC)).

A FIDIC contract is defined as a contract drafted to regulate the relationship between the various parties responsible for implementing a construction project, including contractors, engineers, and employers, whether in the field of civil, electrical, or mechanical engineering contracting (Jaworski, 2018). The contract includes a detailed explanation of the rights and obligations of all parties to the project. It also includes an explanation of the work required of the consulting engineer, as the owner's representative and the person responsible for project management. Maithreyi and Naveen (2024) added that the FIDIC contract includes the general and special conditions associated with various types of construction contracts. This clarification aims to distribute risks among the various parties to the contract to achieve a balance in the rights and obligations required of them and to define the legal rules to be implemented.

A FIDIC contract is divided into two parts, each containing applicable clauses. The first part is called the ‘General Conditions’, which contains clauses that can be applied to various similar contracts (Udom, 2014). It outlines the responsibilities of the parties, the guarantees they must provide, and the nature of the work to be performed. The second part is called the ‘Conditions of Particular Application’, which defines the parties involved in the contract, including the employer and the engineer, who were mentioned in the first part. The information contained in the second part is detailed information related to the information contained in the first part.

The employer and the contractor are considered the most important parties of the FIDIC contract, as each has clear and defined rights and obligations (Udom, 2014). The employer is the driving force behind the contract, the party that finances the construction work, and the party to whom ownership of the project reverts after its completion. In a FIDIC contract, the employer engages the services of a consulting engineer to conduct a feasibility study and estimate the estimated cost of the project, as well as to supervise and implement the work (Lapidus et al., 2023). The consulting engineer is usually appointed by a contract concluded between them and the employer, which specifies their rights and obligations. This means that the consulting engineer does not appear as a party to the contract; rather, they are appointed solely by the employer.

Regarding the contractor, he/she is the person whose bid has been accepted by the employer and who undertakes to implement the construction works assigned to him/her under the contract (Saket, 2015). Typically, each project has a main contractor, but he/she may also employ a group of subcontractors responsible for certain specialized works, such as mechanical, electrical, etc. The contractor's obligations in construction contracts are divided into obligations arising from the contract concluded between the parties and obligations imposed on the parties by law.

3.2 The characteristics of a FIDIC contract

The FIDIC contract is distinguished by its comprehensive provisions and the ability to be developed according to the rapid changes and developments within construction projects. The FIDIC contract has several unique characteristics that distinguish it from other contracts and have enabled it to gain the trust of workers in the construction sector. These characteristics include the following (Udom, 2014):

1. The FIDIC contract constitutes comprehensive and consistent rules applicable to international and domestic construction contracts.
2. The FIDIC contract is characterized by its detailed organization, consisting of twenty clearly worded articles.
3. The FIDIC contract distributes risks among the contracting parties according to a fundamental principle, which states that the contractor bears the risks known to him/her in addition to the risks that the contractor must take into account when submitting a bid.
4. The FIDIC contract does not require the writing of new clauses when contracting to commence a new project.
5. The FIDIC contract has significantly reduced the rate of disputes and disagreements between contracting parties. The FIDIC contract includes various forms and types of standard contracts, allowing the company to choose the form it desires that suits the size and nature of the project

One of the significant advantages of the FIDIC contract over other engineering contracts is the presence of a consulting engineer for the project, who is assigned tasks that add a certain degree of privacy beyond the engineer's usual status within the civil organization of construction contracts. The FIDIC contract places many tools in the hands of the consulting engineer, which have reciprocal legal effects. He is responsible for issuing approvals, approving and supervising work, and determining the specifications used. He also determines losses and compensation to be paid, in addition to the possibility of issuing decisions that are usually only issued by arbitration courts.

3.3 FIDIC contract and the applicable law in construction projects

The terms and conditions of FIDIC contracts are dominated by some concepts of English law, both in form and content. This has contributed to make some FIDIC rules differ from those applied in countries influenced by French civil law, such as Arab countries and French-speaking African countries. Therefore, the International Federation of Consulting Engineers (FIDIC) has made efforts in subsequent editions to make it a more international document compatible with various other legal systems (Saket, 2015).

Despite the freedom to choose the contract law in international construction contracts and their avoidance of total reliance on English law, it is noted that the ideas of this system dominate FIDIC contracts to an exaggerated extent. When interpreting these contracts, national law is applied, creating a clash with some legal concepts, such as the concept of force majeure, which is not recognized in English law (Lawllc, 2018). This makes it difficult to establish precise standards for interpretation and places an additional burden on national judges, who must study legal systems that are foreign to their national law.

Furthermore, the application of FIDIC contracts faces challenges related to determining the applicable law. Some parties show an exaggerated tendency to rely on them entirely, ignoring national law. It is also believed that FIDIC contracts, as a recognized international document, oblige judges to apply their provisions, and that any dispute arising between the parties will be interpreted in accordance with English law. Therefore, FIDIC contracts address this issue by subjecting the contract to the law of the state or other authority, as specified in the tender annex. Some courts, such as German courts and some international courts, also resort to interpreting FIDIC contracts and some of the legal concepts contained therein according to English law. This is believed to be necessary to better understand the terms and concepts, given the prevalence of the English model in the international market. However, this approach may conflict with the applicable law of the contract, as private international law recognizes the freedom of the parties to choose the law governing a contract. Accordingly, the parties may choose the law of the domicile of the contractor or one of the contracting parties, the law of the place where the contract is concluded, or the law of the place where the construction works are to be performed.

4. Research conclusion

A FIDIC contract is a contract in which the contractor undertakes to construct a building under the supervision of an engineer, whether at the national or international level. The parties to this contract are subject to the Standard Rules for Construction Contracts issued by the International Federation of Consulting Engineers. These contracts include general and special conditions that regulate construction work and achieve a balance between the rights and obligations of the various parties to the contract. These contracts have undergone extensive amendments based on new developments to align with all legal developments. These contracts have achieved high rates of success and are used in various international engineering consultations, contributing to strengthening trust between the various parties to the contract. Consequently, they have been adopted as the primary standard for drafting work contracts in the construction field, due to their high success rate, making them among the most widely used and widely used contracts.

The research also concluded that FIDIC model contracts aim to play a neutral role between the contracting parties by ensuring equality between them and ensuring that the contract is not biased toward any party. These contracts seek to become a unified global standard for regulating construction contracts. By continually keeping pace with developments in the construction and infrastructure sector, and given its numerous advantages, it is expected to continue to play a significant role in the global construction industry in the coming years.

Although FIDIC contracts are international models commonly used in construction projects, and provide a detailed framework for the terms and procedures regulating the relationship between the employer, the contractor, and the consultant, but they are not considered law in themselves, but rather are applied alongside the applicable national law. The applicable law is the local law that governs the contract, interprets its provisions, and determines rights and obligations in the event of conflict or discrepancy. Private international law recognizes the freedom of parties to choose the law governing a contract. Accordingly, parties may choose the law of the contractor's or one of the contracting parties' domiciles, the law of the place where the contract is concluded, or the law of the place where the construction works are to be performed.

6.1 Recommendation

Based on the findings, the study recommends in providing an effort to unify the legal wording of FIDIC contracts and national laws to achieve consistency among banks and avoid conflicts in practical application. It also recommends training engineers, contractors, and consultants on the mechanisms for implementing FIDIC provisions, particularly with regard to claims and disputes.

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