

# Indonesia Construction Service Law Relating to MRT Development Contracts: A Legal Review with Fidic International Contract

Suherman\* and Annisa Mayangsari

Faculty of Law University Pembangunan Nasional Veteran Jakarta, Indonesia

**Abstract:** This research was very important because of incomplete regulations related to Late Payment Arrangements and Variation Procedure Arrangements which are regulated in the Construction Services Law because this was very necessary considering the complexity of problems that occur in the construction world in Indonesia. The amendments to the Implementing Regulations also needed to be improved as regulated in Article 51 of Presidential Regulation NO. 54 of 2010 concerning lump sum contracts, there were no price adjustments and additional work, because in fact any construction work for price adjustment and additional work almost always occurred and almost impossible to avoid. So that these regulations could not be applied in the field and could hinder the implementation of construction project work in Indonesia. It was because most of the construction projects in Indonesia required cooperation with foreign investors.

**Keywords:** Contract MRT, FIDIC, Indonesia construction service Law.

## INTRODUCTION<sup>1</sup>

Construction projects usually require very large funds; therefore, it is necessary to have cooperation with foreign investors in the project. However, the laws and regulations governing construction in Indonesia have not been fully regulated yet and there are even regulations that cannot be applied in the field so that they can obstruct the construction work. In addition, international contracts related to construction work have been regulated by the *Federation Internationale des Ingenieurs Conseils* (FIDIC) *Yellow Book (design and build)*. Many foreign investors who wish to invest in construction projects have to refer to FIDIC. So, this research was very important to do to find out what provisions exist in the Construction Services Law in Indonesia that have not been referred to and regulated in FIDIC. It is also necessary to understand what provisions exist that cannot be applied in the field so that they can hinder construction service work in Indonesia.

This research was also very important because Indonesia as a developing country needs foreign investor funds from abroad for construction development in Indonesia. The FIDIC research with the previous one discusses the rights and obligations of

national construction contracts with international FIDIC contracts<sup>1</sup>. Other researches relate to liability for quality defects under national construction laws and under FIDIC.<sup>2</sup> Meanwhile, this research was different from previous research because it discussed the incomplete regulation of construction services that cannot be applied in the field when it was viewed from the international FIDIC contract. It is mainly related to *Mass Rapid Transit Underground CP 106 contract*.

Every *contract package* of MRT Jakarta construction with Japanese - and Indonesian contractors, where are the basis and principles of the contract used was from *Federation Internationale des Ingenieurs Conseils* (FIDIC) *Yellow Book (design and build)*, PT. MRT Jakarta using the FIDIC contract format is the Jakarta MRT Project Development is the first in Indonesia, where there is no experience of the development of MRT projects in Indonesia, so a contract is needed *employer's requirements*, base number two PT. MRT Jakarta why use FIDIC in contractual agreements because FIDIC is an International Federation, all international contractors in the world understand the terms and procedures for contracts, base number three is because the project MRT Jakarta loans funded from *Japan International Corporation Agency* (JICA) projects with loan funds from abroad.

In FIDIC contracts, procurement and construction contractors are required to build complete facilities in

\*Address correspondence to this author at the Faculty of Law University Pembangunan Nasional Veteran Jakarta, Indonesia; Tel: (021)-7656971; Fax: 021-7699431/ 021-76956971; E-mail: suherman\_upn@yahoo.com

<sup>1</sup>Billy Ardiansyah, Kantya Pratita Danurdara, Arif Hidayat, (2016), *Comparison of the Conformity of Rights and Obligations of National Contracts and International Contracts against Fidic Standards in Construction Projects*, Jurnal Karya Teknik Sipil, Volume 5, No. 2 p. 253 – 261, Retrieved from <https://media.neliti.com/media/publications/105518-ID-perbandingan-kesesuaian-hak-dan-kewajiban.pdf>.

<sup>2</sup>Cicik Widiyawati, (February, 2020), Jurnal Education and Development Vol. 8 No. 1, *Comparison of Construction Work Contract Arrangements based on FIDIC General Conditions of Contract For Work in Civil Engineering Construction and the Construction Services Law Regarding Responsibility for Quality Defects*, Retrieved From <http://journal.ipts.ac.id/index.php/ED/article/view/1509/687>

accordance with what is stated in the construction contract agreed by the parties, so that products produced from construction activities for the owner can be directly used or operated. The facility construction process is related to the budget and a certain period agreed by the parties, it is the project owner and the contractor, in accordance with the contract the facility being built must be able to function in accordance with the standards set out in the work plan for the construction requirements. A contract or agreement is very important in supporting engineering, procurement and construction projects and accommodating the interests of both parties, if the contract cannot be understood properly or deeply then the contract is a big risk and will be borne by one of the parties. Contracts that have been agreed by the parties must be understood and/or referred to the content and purpose contained therein. This is so that there are no risks or disputes that arise between the two parties and if there is a dispute between the two parties and if there is a dispute or difference in understanding, the parties can refer to the contract that has been agreed, above so that in a construction project it is necessary to have an agreement or contract as an agreement between the service user and the service provider used as a legal basis, in the form of a construction contract<sup>3</sup>. At Indonesia, the underlying construction contracts used were:

1. Construction services law number 18;
2. Construction services law number 2 of 2017;
3. Presidential Regulation of the Republic of Indonesia number 54 of 2010;
4. Presidential Regulation of the Republic of Indonesia number 70 of 2012;

FIDIC has the certainty of construction contract where normally during the implementation period, the complexity and size as well as the agreed price and scope of work can change in line with project implementation, where the clause in the construction contract must provide three basic rules for: *risk sharing*, *variation*, *dispute resolution* and FIDIC accommodate this. One type of FIDIC contract is; *Conditions of Contract for Plant and Design -Build*.

There is still a lack of security in FIDIC contracts not widely used as a reference standard in Indonesian construction contracts, where the FIDIC contract used as a reference standard in construction projects minimizes the imbalance between the risk of limited disputes in construction work between the Provider and User. Based on the above background, the researcher will examine in depth related to the Comparison of FIDIC with the Indonesian Construction Services Law related to Contracts *Mass Rapid Transit Underground* CP 106.

## RESEARCH METHODOLOGY

The research adopted a statutory research methodology in the form of a comparative law approach and a statutory approach. The comparative approach was to make comparisons between two or more laws and regulations, it was between the laws and regulations in Indonesia related to the construction services law in Indonesia with international regulations, it was the *Federation Internationale Des Ingenieurs Conceils (FIDIC)*. This research needed to be carried out to find out how the comparison of construction service arrangements in Indonesia with FIDIC so that it can be seen that there were regulations from Indonesian construction services that were still not suitable or have not been regulated according to FIDIC.

Legal research was a theoretical research. This research used secondary data with three legal materials, including primary legal materials in the form of statutory regulations, most of the materials needed were available in libraries, secondary legal materials, including books and journals related to contracts. construction in Indonesia or related to FIDIC regulation, then tertiary legal materials such as legal dictionaries. The main objective of statutory research is to analyze, explain and examine legal rules of construction, facts and principles, legal provisions and theories.

## FIDIC CONTRACT TERMS REGARDING DESIGN AND CONSTRUCTION CONTRACTS

Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works, Designed by Contractor: The Plant and Design/Build Contract (Yellow book), only includes electrical and mechanical work in which part of the design work is carried out by the contractor. In a FIDIC contract, the principle of balanced risk sharing is applied, i.e. balanced distribution of risks for the parties. This contract was previously not very well

---

<sup>3</sup>Simpson. Laurence P. 1995. *A contract is an agreement between two persons consisting of promises which the law will enforce, or the performance of a with the law in some way recognizes as a duty*. Simpson, Laurence P. *Contract*, 2nd edition, West Publishing Co, St. Paul Minnesota, p. 1.

known in Indonesia, but over time with the process of developing facilities and infrastructure development, it is necessary to have a comprehensive contract form that can accommodate the interests of the parties proportionally using FIDIC contracts which are more often used by companies that often carry out construction projects that are has a high level of complexity. The construction contract in Law number 18 of 1999 provides all documents governing the legal relationship between service users and service providers in carrying out construction work.<sup>4</sup>

In FIDIC, contract documents are contractual agreements, performance letters, requirements, specifications, drawings, schedules and other documents listed in the contract agreement or appointment letter.<sup>5</sup> The contract document in the construction contract as stated in Government Regulation No.29 of 2000 concerning the implementation of construction services, that the construction contract can consist of a letter of agreement, tender documents, proposals or offers, a memorandum of agreement, a statement from the user service stating that they received the offer from service providers, statements from service providers stating their ability to do work<sup>6</sup>.

This project is a combination of various resources and a series of activities gathered in a temporary organization to achieve certain goals. Construction project activities are activities that go through a long-structured planning process where this usually takes into account potential problems that may arise. Construction project activities have (3) characteristics that make them different from any activity or industry, including<sup>7</sup>:

1. Construction projects are unique (the set of activities in a construction project is never identical or identical);
2. Does not require small amounts of resources (resources in construction projects are intended as money, machinery, materials, and methods); and

3. Requires organization (in every construction activity an organization is needed that aims to unite the vision as the final result of construction activities).

According to FIDIC *Yellow Book (Design and Build)*, contract means contract agreement, terms, service user conditions, offers and other documents listed in the contract agreement. The advantage gained from the project with the Design and Build scheme is that the work can be carried out with integrity, the construction work can be prepared from the initial stage, it is at the design stage the contractor can make certain innovations that is able to speed up completion, improve the quality of work or innovate for savings by conducting studies the design. In addition, the owner will be easier to monitor the work because the work is a work package by the contractor.

Scheme of the Design and Build project in accordance with the provisions of the contract FIDIC *Yellow Book (Design and Build)* is as follows:

1. The responsibility for the design becomes the responsibility of the contractor.
2. The owner requires certain performance specifications for the design by the contractor.
3. The contractor carries out all engineering, procurement and construction work until the facility is complete and ready to operate at the time of delivery.
4. There is no consultant planner or supervisor but is carried out directly by the owner.
5. The contract - is a fixed price (*lumpsum*).
6. Existence of testing procedures including completed tests (*test after completion*).
7. Every claim that arises is based on a very strict procedure.
8. The contractor takes over all the implementation risks and the owner manages the remaining risk to the implementation risk.
9. The final contract price and completion time are more certain.

## **CONSTRUCTION CONTRACTS UNDER THE CONSTRUCTION SERVICE ACT**

Construction Services are construction consulting services and or construction work. The construction

<sup>4</sup>Government regulations. 1999. Construction Services Law NO.18 Article 1. Concerning Indonesian Construction Services. State Secretariat. Jakarta.

<sup>5</sup>FIDIC. 2008. Contract Requirements for Construction Implementation. Indonesian Language Edition, Jakarta: LPJK, INKINDO, FIDIC, 2008. Article 1.1.1

<sup>6</sup>Government regulations. 2000. Law No.29, Article 22, *General provisions concerning Construction Services*. State Secretariat. Jakarta

<sup>7</sup>I. Ervianto. Ulfam 2005. *Construction Project Management*. Andi offset, Yogyakarta, hal.11.

service sector is a community activity to realize a building that functions as a support or infrastructure for social and economic activities of the community to support the realization of national development goals. Construction services are regulated by separate laws and must be adjusted with time. The most recent construction services law is Law No. 2 of 2017 concerning Construction Services in which this law revokes law Number 18 of 1999 concerning Construction Services, which has not been able to meet the demands of good governance requirements and the dynamics of implementation development of construction service. The background to the issuance of Law Number 2 of 2017 concerning Construction Services is:

1. The national development aims to create a just and prosperous society;
2. That the construction service sector is a community activity to realize a building that functions as a support or infrastructure for social and economic activities of the community for national development;
3. That the implementation of construction services must guarantee order and legal certainty;
4. That Law Number 18 of 1999 concerning Construction Services has not been able to meet the demands of the need for good governance and the dynamics of the development of construction services;
5. That based on considerations as referred to in letter a, letter b, letter c, and letter d, it is necessary to stipulate a Law on Construction Services;

The legal basis of Law Number 2 of 2017 concerning Construction Services is Article 20 and Article 21 of 1945 Constitution of the Republic of Indonesia. National development aims to create a just and prosperous society based on Pancasila and 1945 Constitution of the Republic of Indonesia. In accordance with these development objectives, both physical and non-physical development activities have an important role for the welfare of society. The Construction Services Sector is a community activity in realizing buildings that function as supporting or infrastructure for socio-economic activities and supporting the realization of national development goals.

Construction services are carried out based on the principles of honesty and fairness, benefits, equality, harmony, balance, professionalism, independence, openness, partnership, security and safety, freedom, sustainable development, and environmentally sound. This Law regulates the implementation of Construction Services with the aim of providing direction for the growth and development of Construction Services to realize a strong, reliable, highly competitive business structure and quality results of Construction Services; realizing an orderly implementation of Construction Services that guarantees equality of position between Service Users and Service Providers in carrying out their rights and obligations, and increasing compliance in accordance with statutory provisions;

In the event of a dispute between the parties, this law puts forward the basic principles of deliberation to reach an agreement. For administrative violations in this Law, administrative sanctions are imposed, while in order to avoid legal vacancies, this Law stipulates that institutions formed under the implementing regulations of Law Number 18 Year 1999 continue to carry out the duties of certification and registration of business entities. and construction workers. until the formation of institutions as referred to in this Act.

In the implementation of the contract based on FIDIC Yellow Book standard provisions, which include several clear clauses that cover the type of work. After signing the contract, everything agreed upon in writing will be included in the contract. The contract does regulate all agreements that occur at the beginning, but in the implementation phase of construction works, it is often found differences in the tender phase with the construction phase, so changes are needed to adjust and construction projects cannot be made. on time so that an additional extension of the implementation time is required for the contract. clauses in general conditions or general terms of the contract. The clause is explained as follows:

#### **14.8. Delayed Payment**

If the contractor does not receive payment in accordance with sub-clause 14.7 (payment), the contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub clause 14.7 (payment) irrespective (in the case of its sub paragraph) of the date which any interim payment certificate is issued.

Unless otherwise stated in the particular conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of currency of payment and shall be paid un such currency. The contractor shall be entitled to this payment without formal notice or certification and without prejudice to any other right or remedy.

### 13.3. Variation Procedure

If the engineer requests a proposal, prior to instructing a Variation, the contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- a. A description of the proposed design and /or work to be performed and a programme for its execution,
- b. The contractor proposal for any necessary modifications to the programme according to Sub-Clause 8.3 (Programme) and to the programme according to Sub-Clause 8.3 (Programme)and to the Time for completion and
- c. The contractor's Proposal for adjustment to the Contract Price.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2) Value Engineering as otherwise, respond with approval, disapproval or comments. The Contractor shall not delay any work wishlist awaiting a response. Each instruction to execute a Variation, with any requirements for the recording of costs, shall be issued by the engineer to the contractor, who shall acknowledge receipt. Upon instruction or approving a Variation, to the engineer shall proceed in accordance with Sub-clause 3.5 (Determinations) to agree or determine adjustments to the Contract Price and the schedule of payments. These Adjustments shall include reasonable profit and shall take account of the contractor submissions under sub clause 13.2 (value engineering) if applicable.

In both clauses understood, the contractor must carry out what is specified in the contract and complete the work in accordance with the contract and the order of the project owner, and must repair any damage to the work in accordance with the contract.

Prof. Subekti states that a contract is a form of agreement or a written agreement or agreement is an event where someone promises to another person or where both people promise to do one thing. The agreement is fundamental in the contract. Civil Code article 1313 defines a treaty of action in which one or more people. The contract function itself can be divided into two types, they are juridical function and economic function. The juridical function of a contract is to provide legal certainty for the parties, while the economic function is to transfer resources (ownership) from lower to higher use values<sup>8</sup>.

In making a contract must be based on the principles of Contract Law. The principle of law is the basic thoughts contained in and behind the legal system, each of which is formulated in the laws and regulations and decisions of judges relating to individual provisions and decisions which can be viewed as an explanation<sup>9</sup>. To find legal principles, look for common characteristics in concrete rules or regulations<sup>10</sup>. There are principles implicit in the Criminal Code<sup>11</sup>: The principle of freedom of contract is regulated in Article 1338 of the Indonesian Penal Code, the principle of consensually or the principle of agreement, which is regulated in article 1320 of the Civil Code, the principle of legal certainty, the agreement applies as law for the party making it. *Pacta Sun Servanda* (Suherman)<sup>12</sup> and the principle of good faith, is the principle that parties must carry out ongoing contracts.

The stages in making the agreement are the pre-contract stage, it is the offer and acceptance stage, the contract stage, which is an adjustment of the will between the parties and the final stage is the post-contractual stage in the implementation of the agreement.<sup>13</sup> Provisions for the validity of the agreement as written in Article 1320 of the Civil Code, it is: There is an agreement, the ability to make an agreement, a certain matter and Causal law.

<sup>8</sup>Salim H.S., S.H., 2011. *Contract Law Theory and Contract Formulation Techniques*, Sinar Grafika Offset, Jakarta. p. 45.

<sup>9</sup>J. J. H. Briggink 1996. *Reflection About Law*, PT. Citra Adytia Bakti, Bandung 1996. p. 119.

<sup>10</sup>Mertokusumo, Sudikno *Understanding the Law*, Liberty, Yogyakarta 1999. p. 34-35

<sup>11</sup>Mariam Daus Badruzaman, KUHP Book III of Bond Law with Explanations, Alumni Bandung 1993. p. 108.

<sup>12</sup>Suherman, *Development of Pacta Sunt Servanda Principles in Long-Term Contracts*, Google scholar, <http://repository.upnvj.ac.id/61831/1/b20.pdf>

<sup>13</sup>Salim H.S., 2005. *Development of Innominate Contract Law in Indonesia*, Sinar Grafika, Jakarta, p. 16.

**Table 1: Payment Recapitulation is Late in the Project *Mass Rapid Transit Underground CP 106*.**

No.	Interim Payment Certificate (IPC) Number.	Certificated Period
1.	IPC #40	26 Jul 18 to 25 Sep 18
2.	IPC #41	26 Sept 18 to 25 Oct 18
3.	IPC #42	26 Oct 18 to 25 Nov 18
4.	IPC #43	26 Nov 18 to 25 Dec 18
5.	IPC #44	26 Dec 18 to 25 Jan 19
6.	IPC #45	26 Jan 19 to 25 Feb 19

## DELAY PAYMENT

In the Jakarta MRT construction work contract contracted with Sumitomo *Mitsui Construction joint operation* with Hutama Karya for CP Package 106 (SMCC HK). *Contract agreement number*; CON/008/MRT/VI/2013 dated June 11<sup>th</sup>, 2013 between PT. Jakarta MRT with SMCC Hutama Karya, with the area of Setia Budi Station, Hamlet Station to Hotel Indonesia Station, there was a late payment. The project began from 2013 to 2019, but in the implementation of construction there were many obstacles in the Construction phase which were constraints to late payments. The real cause of the delay that occurred in the execution of the contract was because many things were included;

1. The Contractor who cannot complete payment administration and documentation requirements.
2. Consultants who have not been able to properly check the administrative and documentation prerequisites of the Service Provider from the contractor.
3. JICA loan disbursement.
4. There are national holidays both in Japan and in Indonesia and the difference between disturbing days between Japanese banks and local Bank Indonesia.

Based on research data, the authors try to impose late payments between service users and service providers on the Project *Mass Rapid Transit Underground CP 106* is:

The impact of late payment can cause the contractor's financial condition to be unhealthy, which can result in contractor performance down and the project can be terminated. In addition to reducing financial burdens, the contractor will delay payments to

subcontractors. So that if the subcontractor does not have enough capital and the delay lasts a long time it can be ensured that the subcontractor will lose even bankruptcy<sup>14</sup>.

According to the contract terms FIDIC Yellow Book (Design and Build) article 14.8 Late Payment, it is understood that if the contractor does not receive payment according to the payment schedule or in accordance with the provisions of the Contract of the Parties, the contractor is entitled to receive interest fees that are combined monthly for payments that are deferred by the end of the period. It can be known that the standard contract FIDIC Yellow Book (Design and Build) does not conflict with the legal system in force in Indonesia. Especially Construction Law Service (UUJK) Number 2 of 2017 and Presidential Regulation Number 54 of 2010, only need to make a few changes and adjustments to the situation and conditions of the regulations in force in Indonesia.

## COMPARISON OF FIDIC YELLOW BOOK ARRANGEMENT (DESIGN AND BUILD) FOR THE CONSTRUCTION SERVICE ACT BASED ON LATE PAYMENTS

FIDIC Yellow Book (Design and Build) standard is indeed better, clearer and more detailed than the Construction Services Law No. 2 of 2017 and Presidential Regulation Number 54 of 2010. Where the resulting comparison is that there are several FIDIC Yellow Book contract standards (Design and Build) that are not in the Construction Services Act Number 2 of 2017 and Presidential Regulation Number 54 of 2010, although the contract standard is considered very important, because if the contract standards and procedures are unclear and incomplete, it will lead to disputes so that later it could lead to different

<sup>14</sup>Nurul Listanto, Sarwono Hardjomuljadi.2019."Analysis of Factors Causing Late Payment of Contractors to Contractors in Multi-storey Building Projects"

**Table 2: Comparison of Regulations in FIDIC with the Construction Services Act based on Late Payments**

No	Type	rules and regulations FIDIC <i>Yellow Book (Design and Build)</i>	rules and regulations Indonesian construction services law
	<i>Delay Payment</i>	<p>If the Contractor does not receive payment in accordance with Clause 14.7 (payment), the contractor is entitled to receive a monthly combined interest fee for payments that are delayed during the late payment period. This period will be considered to commence on the payment date as stated in Sub-Clause 14.7 (payment), regardless of (in the case of sub-paragraph (b) the date of issuance of the Provisional Payment. Unless otherwise stated under special conditions, this interest fee is calculated in accordance with annual interest of three percent higher than the interest rate of the central bank in a country with a payment currency, and must be paid in that currency.</p> <p>The contractor is entitled to this payment without official notification and without prejudice to any rights or other settlement.</p>	<p>In the Construction Services Law Number 2 Year 2017 Paragraph 3 of the Construction Work Contract Article 47 paragraph 1 letter f, it is the payment method, contains provisions regarding the obligations of the Service User in making payments for the results of Construction Services, including guarantees for payment explaining the late payment terms. However, article 51 explains that "further provisions regarding construction work contracts as referred to in articles 46 through Article 50 are regulated by Government Regulation of the Republic of Indonesia Number 29 of 2000 concerning Implementation of Construction Services, it is Article 23 paragraph (1) concerning construction Contracts of Work as referred to in Article 20 paragraph (1) must contain at least a description of: (F) Payment Method which contains: (4) late payment penalty; With a detailed explanation, namely: Penalty for late payment is the cost of money (<i>cost of money</i>) which is calculated based on bank interest for the past days (<i>interest of delay payment</i>)</p>

interpretations. Standard contracts should have clear and detailed main points to avoid different interpretations for those who use them and minimize disputes.

Under the terms of the Contract the Parties cannot be avoided, if there is a late payment from the service user to the service provider, FIDIC *Yellow Book (Design and Build)* related to Late Payments. The construction industry is unique in that the service provider and the first costs to achieve certain work progress, after which the billing process is done so that healthy cash flow is a source of life for construction companies<sup>15</sup>. In the world of construction, late payments and unpaid construction contracts pose a great risk to the relationship between the User and the Service Provider, where payments are needed to pay for materials, wages for workers, subcontractors, preparations and other general costs required while working. With the condition Fidic Design and Build has accommodated the provisions related to Late Payments, where the definition of late payment can be interpreted as not meeting the target payment period with the actual payment conditions or it can be said that the payment term is in accordance with the payment terms in the contract agreed by both parties. Late payment for a project will result in negative cash flow for the company<sup>16</sup>.

Then in the provisions of the Regulation in the Law on construction services Number 2 of 2017 Paragraph

3 of the Construction Work Contract Article 47 paragraph 1 letter f, it is the payment method, contains provisions regarding the obligation of the Service User in making payments for the results of Construction Services, including Guarantees for payment, but in this article does not explain the existence of late payment provisions, but in article 51 it explains that in the provisions of the Regulations in the Law concerning construction services Number 2 Year 2017 Paragraph 3 of the Construction Contract of Work Article 47 paragraph 1 letter f, it is the payment method, contains provisions regarding the obligations of the Service User in making payments for the results of Construction Services, including Guarantees for payment, but in this article does not explain the existence of late payment provisions, but in article 51 it explains that. "Based on the provisions of non-doctrinal legal theory and the theory of law enforcement used in this paper".

The word fair closely related to the idea of equality, balance, make sense, or equilibrium, and comparable<sup>17</sup>. Etymologically, the word fair means affairs or cases in the middle, which means justice means not taking sides, or treating them equally with one another. But a fair attitude is not neutral but still also siding with truth or truth<sup>18</sup>.

Justice and law are vertical, meaning that justice is upheld by law, there is no justice that is not based on law and the law is enforced to create justice not just for

<sup>15</sup>Ramchanda et. al. 2014"

<sup>16</sup>Sutowijoyo, H and Pingit, S2010

<sup>17</sup>Asshidiqie, Jimly,2018. *Constitution of Social Justice*, Kompas, Jakarta, p.43.

<sup>18</sup>Dahlan, Abdul Aziz 1997. *Encyclopedia of Islamic Law*, Jakarta Ikhtiar Baru Van Hoeve. p.25

law. Justice and law are not horizontal in nature where law and justice each stand alone with the understanding of the law can be done without justice or vice versa<sup>19</sup>. The punishment given must be able to bring benefits, both to the person being punished and to the community, because the purpose of the law is not to misery but to create order and benefit for humans<sup>20</sup>.

Justice is the main virtue in social institutions, because truth in systems of thought, an elegant and economic theory, must be rejected or revised if it is not true, so is law and institutions, no matter how efficient and efficient it must be reformed or eliminated if it is unfair, in this writing the author uses the Theory of Justice from John Rawls.

According to Utrecht, legal certainty has two meanings, they are the first is the existence of general rules that make individuals know what actions may or may not be carried out, and secondly, in the form of legal guarantees for individuals from the arbitrariness of the government due to the existence of general rules that individuals can know what the state may charge or do to the individual. This legal certainty stems from juridical-dogmatic teachings based on the flow of thought positivism in the world of law which tends to view law as something autonomous that is independent, because for adherents of this school, the purpose of law is nothing but guaranteeing the realization of general law. The general nature of a law proves that it does not aim to bring about justice or expediency, but only for certainty<sup>21</sup>. The principle of legal certainty, mandates that business people and obey the law and obtain justice in the implementation of consumer and State protection guarantee legal certainty. Legal certainty in certain situations implies as follows<sup>22</sup>:

1. There are clear or consistent legal rules, consistent and easy to *accessible*, issued by the power of the state;
2. That the government apply these legal rules consistently and also submit to and comply with them;

3. That the majority of citizens in principle approve of the content and hence adjust their behavior to these rules;
4. That independent and impartial the judiciary consistently apply the rule of law when they settle legal disputes; and
5. That the court's decision is implemented concretely.

Certainty Normative Law is when a regulation is made and announced with certainty because the regulation regulates with certainty and logic<sup>23</sup>. According to "The International Commission of Jurists" principles that are considered important features of the state must be subject to law, the government respects individual rights, and a free and impartial trial<sup>24</sup>. According to the author it is agreed that legal certainty is very closely related to justice. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is implemented, that those who are entitled according to the law can obtain their rights and that decisions can be implemented<sup>25</sup>. The creation of legal certainty in laws and regulations requires requirements related to the internal structure of the legal norm itself<sup>26</sup>.

From the explanation above, the problem raised in this paper is the Comparison of construction laws regulated in FIDIC with construction laws governed by construction laws in Indonesia so that legal certainty is needed, namely clarity, does not lead to many interpretations, does not cause contradiction and can be implemented. The law must apply firmly in the community, containing openness. Without legal certainty, the law will lose its essence and cause, it cannot be made a law as a guide for human behavior<sup>27</sup>.

## VARIATIONS IN CLASSIFICATION PROCEDURES (COMPARISON OF REGULATIONS BETWEEN FIDIC WITH THE CONSTRUCTION SERVICE ACT)

### Variation Procedure

PT. Jakarta MRT made the contract with Sumitomo *Mitsui Construction joint operation* with Hutama Karya

<sup>19</sup>Amran Suadi, *Opcit*, p. 108.

<sup>20</sup>*Ibid*.

<sup>21</sup>Riduan Syahrani, 19999. *Summary of the essence of legal science*, Citra Aditya, Bandung, p. 28.

<sup>22</sup>Jan M. Otto 2006. *as quoted by Sidharta*. p. 85.

<sup>23</sup>Cst Kansil, 2009. *Dictionary of Legal terms*, Gramedia Pustaka, Jakarta, p.385

<sup>24</sup>Jimly Asshiddiqie, 2011. *The idea of the Indonesian rule of law, the National legal agency*, Majalah hukum nasional, p.2

<sup>25</sup>Sudikno Mertokusumo, 2007, *Understanding the Law, an Introduction*, Liberty, Yogyakarta, p. 160.

<sup>26</sup>Manulang, Fernando M, 2007, *Law in Certainty*, Prakarsa, Bandung, p. 95.

<sup>27</sup>Tata Wijayanta, 2014. *The principles of legal certainty, justice and benefit in relation to the bankruptcy decision of the commercial court*, *Jurnal Dinamika Hukum*, Vol. 12, FH Unsoed, Purwokerto, p. 219.

**Table 3: Recapitulation of Work Added/Subtracted in CP 106 Rapid Transit Project**

No.	Description
1	Extension of Duct for VT-2 - CT at Bundaran HI Station
2	Additional Bored Pile Foundation Work for Cooling Tower at Bundaran HI Station
3	Bunderan HI, Additional Finishing and MEP for the Corridor toward Entrance 1
4	Implementation of the Updated Design Criteria from Dinas Bina Marga in Reinstatement of Sudirman Street, Part 2/2
5	Bunderan HI, Temporary road deck ay BL19 for CP107
6	Bunderan HI, Temporary road deck for Trans Jakarta access and STP
7	Utility Relocation Work for Ventilation Tower -1 at Bundaran HI Station
8	Design work for confirmation of location for VT, CT and Entrance
9	Bunderan HI, Fire shutter
10	Additional Elevator Shaft between Ground and Station Concourse at Dukuh Atas Station
11	Dukuh Atas, PLN Substation dismantling
12	Dukuh Atas, Fire shutter
13	Additional Maintenance and Grading Work for Soil Disposal Area
15	Seismic Hazard Assessment Work
16	Change quantity of duct due to change the VT location
17	Additional reinstatement for pedestrian South DKA
18	Asian Games and Asian Para Games Banners
19	Praying Room
20	New Trans Jakarta Bus Shelter
21	Provision of Additional Panels and kWh Meters in All Stations
22	Unification of Platform Floor Queuing Sticker CP106
23	Additional Work due to Station Sponsor Name for Passenger Information Display System (PIDS)

for package CP 106 (SMCC HK). *Contract agreement number*; there are significant deviations between the tender phase and the actual construction phase where the Project starts from 2013 to 2019, but in the construction implementation there are many obstacles in this construction phase where there are changes in the scope of work, where the authors based on their actual research apply a list of work which was less added to the CP 106 Mass Rapid Transit Underground Project:

According to the contract terms FIDIC *Yellow Book (Design and Build) article 13.2 Variation Procedure* it is understood that changes can be requested at any time either by the project owner's instructions and/or by the contractor's request to submit a change proposal and changes must occur before the submission of work is complete. The contractor must make changes unless the contractor declares it cannot implement due to difficulties in obtaining the goods/needed and/or requests from the project owner. Every change must be included:

1. Change in the amount of each part of the work included in the contract (but the change is not always a change).
2. Changes in the quality and other characteristics of each part of the work;
3. Changes in the level, position and/or dimensions of each part of the work. Negligence from work unless done by someone else;
4. Additional work, industrial machinery, materials or services needed for permanent work, including testing relating to completion, drilling wells and other testing and exploration work or;
5. Changes to the order or time of work execution.

In event the contractor may not make changes and/or modifications to the work, unless there are instructions or approval for changes from the project owner. With the provisions stipulated in the contract, it was agreed by the amendment clause, which is

**Table 4: Comparison of Regulations in FIDIC with the Construction Services Act based on Variations in Classification Procedures (Additional Underdeveloped Work)**

No	Type	rules and regulations <i>Yellow Book (Design and Build)</i>	rules and regulations Indonesian construction services law
1	Variation Procedure	<p>If the engineer requests a proposal, before ordering a variation, the contractor must respond in writing as soon as possible, either by giving reasons why the contractor cannot fulfill (if this happens) or by sending: Description of the proposal design and/or implementation that should be carried out and the planned implementation.</p> <p>Contractor's proposal for modification of the work plan required in accordance with the work plan and completion time.</p> <p>c) Contractor's proposal for contract price adjustment. Engineers must immediately accept proposals (based on sub-clause 13.2 Value Engineering or otherwise) responding with approval, rejection or response. The contractor is not allowed to slow down work while waiting for a response.</p> <p>Any instructions for implementing variations, provided that the costs are recorded, must be issued by the engineer to the contractor with proof of acceptance.</p> <p>After issuing instructions for implementing variations, the engineer must make the determination to agree on the contract price adjustment and payment schedule. This adjustment must include reasonable profits and must account for contractor proposals in accordance with Value Engineering, if any.</p>	<p>The articles of the Law on construction services do not specify in detail the variation procedures (lack of additional work).</p> <p>However, article 51 explains that "further provisions regarding construction work contracts as referred to in articles 46 through Article 50 are regulated by Government Regulation of the Republic of Indonesia Number 29 of 2000 concerning Implementation of Construction Services but there are no articles that discuss in detailing the Procedure for Variations (Add Work less) but if it is related to Presidential Regulation of the Republic of Indonesia Number 54 Year 2010 Concerning Procurement of Government Goods/Services which in the Eleventh Part of the Amendment of the First Paragraph Contract for Article 87 Contract</p> <p>in case there are differences between field condition at the time implementation, with technical drawing and/or specification specified in the contract documents, with the owner can make changes to the contract included:</p> <ul style="list-style-type: none"> <li>a. increase or decrease the volume of the work stated in the contract;</li> <li>b. increase and/or decrease the type of work;</li> <li>c. change the technical specifications of the job according to field needs; or</li> <li>d. change the implementation schedule.</li> </ul> <p>Work added as referred to in paragraph (1) is carried out with provisions:</p> <ul style="list-style-type: none"> <li>Not exceeding 10% (ten percent) of the price stated in the initial agreement / contract and;</li> <li>Budget availability. Owners are prohibited from transferring implementation main work under the contract, by doing subcontracting to other parties, except for part of the main work for specialist goods/owner.</li> </ul> <p>Violation of the provisions referred to in paragraph (3), Goods/services providers are subject to sanction in the form of fines shape and size in accordance with the provisions stipulated in the contract document.</p> <p>5) Changes to the contract caused by administrative problems, can done as long as both parties agree.</p>

intended if there is a change related to the work implementation. Resolution of problems with changes, the scope of the Mass Rapid Transit construction project is related to the use of the FIDIC Yellow Book (Design and Build) contract terms. In a contractual agreement, both parties agree with the clause regarding the resolution of the dispute. Although in this case a dispute did not arise.

From the table above, it can be seen that the fundamental difference between the FIDIC Yellow Book

and the Construction Services Law No. 2 of 2017. Provisions for Procedure Variations must be explained in detail and clearly. in contract. After that, the procedure for implementing it is determined, for example, after there is a written order/written authorization, after the order can be given within a certain time and budget allocation for alternative payment procedures outside the initial contract. In addition, he also regulates provisions regarding additional types of work of the same type contained in the contract but cannot be carried out in the same

manner and conditions. In the provisions of the FIDIC Yellow Book related to Variation Procedures, detailed provisions on the scope of work are added less/variation procedures. Remove for Parties, so it is clearly the responsibility of the parties if there are differences in the field at the construction stage. The cause of procedure variation is due to differences in interpretation between tenders and implementation, differences in data or changes in the construction phase so that it can cause variations in procedure changes, so that this variation procedure can accommodate the costs and time spent by the contractor outside the initial contract. FIDIC Design and Construction based on General Conditions of Contract, article 13 variations and adjustments, Article 13.7: that the contract must be completed in accordance with the addition or reduction of costs due to legal changes. Then Article 13.8: that price adjustment provisions may be needed if the Service Provider is deemed inappropriate to bear the risk of rising costs due to inflation.

Interestingly, the provisions of the Construction Services Law Number 2 Year 2017 do not regulate in detail the Variation Procedure (Work Add Less) even though as is known in construction service business activities these two things almost always occur and are almost impossible to avoid. It is not detailed in detail the provisions of the Variation Procedure (Work Add Less) detailed in the Construction Services Act No. 2 of 2017, however Article 51 explains that "further provisions regarding construction work contracts as referred to in articles 46 through Article 50 are regulated with the Republic of Indonesia Government Regulation No. 29 of 2000 concerning the Implementation of Construction Services but there is no article that discusses in detail the Variation Procedure (Work Add Less) but if it is related to the Republic of Indonesia Presidential Regulation No. 54 of 2010 concerning Procurement of Government Goods/Services that at Eleventh Section Implementation of the First Paragraph Contract Amendment to Contract Article 87, but this arrangement becomes a problem in the implementation of design and build contracts where in accordance with President Regulation 54/2010 article 51 that in a lump sum contract there should be no price adjustments and added work. Based on the description of FIDIC Yellow Book Provisions (Design and Construction), the provisions of the Law on Construction Services Number 2 of 2017 concerning Variation Procedures (additional work) do not explain the details in a legal

entity, but must first be related to Government Regulation of the Republic of Indonesia Number 29 Year 2000 concerning the Implementation of Construction Services and is also associated with Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Procurement of Government Goods/Services so that it is in accordance with the non-doctrinal legal theory and the theory of law enforcement used in writing.

Understanding of the Legal System According to Sri Soemantri<sup>28</sup> in the Indonesian general dictionary, the system has three meanings. Understanding the system that best fits this topic is the meaning of the first system. The meaning of the first system is a group of parts (tools and so on) that work together to do something; for example: the nervous system in the body; government system and others. Van de Poel in Winardi<sup>29</sup> defines a system as a set of elements among which there is a relationship. Often in the literature, additional words can be found which elements are directed towards the achievement of certain general objectives. Understanding the Legal System comes from two words, including the system and the law that both can stand alone and have their own meaning. The system comes from the Latin *systema* and the Greek *systema* too, the system can mean as a whole or a combination of the whole. While law cannot be interpreted with certainty as in exact science, because in legal science, law is very complex and there are different points of view and problems to be studied, so that each expert provides a different understanding of understanding the law itself. The following are the Laws are all rules that contain moral considerations, aimed at human behavior in society, and serve as guidelines for state authorities in carrying out their duties. The Indonesian Nation Uses Mixed Legal Systems, it is the Indonesian Nation uses a mixed legal system between the European Continent, Customary Law, Religious Law especially Islamic Sharia Law, and does not rule out the Anglo-Saxon legal system. When you first hear the term Continental European Law that we have in mind must be the countries located on the European Continent. However, it turns out that despite being on the Asian Continent, the Indonesian Nation also adheres to the Continental European legal system as one of its legal systems. This happened because the

<sup>28</sup>Soemantri, Sri,1992. *Indonesian Constitutional Law Compilation*. Bandung: Alumni, p. 32

<sup>29</sup>Winardi, 1989. *Introduction to Systems Theory and Systems Analysis*. Mandar Maju, Bandung.

Indonesian Nation had been colonized by the Dutch for 350 years which was none other than the Netherlands which was one of the main supporters of the Continental European legal system. And during the Dutch colonial period adopted the principle of conformity, which meant that the legal system of the Dutch East Indies (Indonesia) ran in harmony with the Dutch legal system. Thus, *mutatis mutandis* Continental European legal system has been applied to the Indonesian Nation.

Although the legal experts have not agreed on the definition of legal science, but from the various opinions that have been put forward it can be concluded that the law has four elements, namely:

1. It contains rules or conditions in the form of written or not.
2. These rules or conditions govern people's lives, and
3. The availability of sanctions for offenders.

If the four elements are strung together, then the law can be defined as "all written and unwritten rules and provisions that have material that governs the interests of the community, and if a violation occurs then legal sanctions will be imposed on violators". The purpose of law is something that the law wants to achieve, including justice and legal certainty (legal protection). The aim of maintaining public order is achieved by protecting the interests of the community equally. Implementation of this legal objective can be done in a country based on law. To achieve its goals, the law must be upheld. In this case, the law is considered a good law (despite the fact that there are also bad laws). If we talk about law enforcement, then that means we have to discuss the legal system.

Legal System Theory According to Lawrence Meir Friedman, a legal sociologist from Stanford University, there are four main elements of the legal system: Legal Structure, Legal Structure, Legal Culture and Legal Impact. According to Lawrence Meir Friedman, the success or failure of law enforcement depends on: Legal Substance, Legal Structure/Legal Institutions and Legal Culture.. First, the substance of the law is a substantial system that determines whether the law can be applied or not. Substance also means products produced by people in the legal system that include decisions they make, new rules they make. The substance also includes the living law), not only the rules that exist in law books. Second: Legal

Structure/Legal Institution: In Lawrence Meir Friedman's theory this is called a Structural system that determines whether law can be implemented properly or not. Legal structure based on Law no. 8 of 1981 includes; starting from the Police, Attorney General's Office, Court and Criminal Implementation Agency Third: Legal Culture: Legal culture according to Lawrence Meir Friedman (2001: 8) is a human attitude toward law and the legal-belief system, values, thoughts, and expectations. Legal culture is an atmosphere of social thought and social power that determines how law is used, avoided, or abused. Legal culture is closely related to public legal awareness

The relationship between the three elements of the legal system itself is powerless, such as mechanical work. The structure is like a machine, the substance is what is done and produced by a machine, whereas the legal culture is anything or anyone who decides to turn on and turn off the engine and decides how the machine is used. Related to the legal system in Indonesia, we can use Friedman's Theory as a benchmark in measuring the process of law enforcement in Indonesia.

## CONCLUSION AND RECOMMENDATION

1. FIDIC Design and Build has accommodated provisions related to Late Payment, whereas the construction services Law has not clearly stipulated the delay in payment, especially to pay for materials, wages for workers, subcontractors, preparation and other general costs required during the work.
2. The terms of the FIDIC Yellow Book contract (design and build) explain that the variation procedure is described in detail and clearly in a contract, whereas the construction service law does not clearly regulate it, for example after a written order/written approval, after an order is issued, within a certain time and budget allocation for payment of variation procedures (Job Add Less) outside the initial contract. Apart from that, it also regulates the provisions regarding an underpaid work of the same type as that stated in the contract but which cannot be carried out in the same manner and conditions.
3. Based on Presidential Regulation 54/2010 article 51, the lump sum contract is not allowed to adjust prices and additional jobs. In fact, in a construction service business these two things,

including price adjustments and additional work, almost always occur and are almost impossible to avoid. Indeed, the detailed provisions of the Variation Procedure (Job Add Less) are not in detail. So that Article 51 of Presidential Regulation N0. 54 of 2010 needs to be reviewed again and must be adjusted to the practice in the field for its regulation.

4. The Indonesian government needs to make amendments to the Constricting Services Law, especially in relation to Late Payment Arrangements and Variation Procedure Arrangements because this is very necessary considering the complexity of problems that occur in the construction world in Indonesia.
5. The government must also make changes to Article 51 of Presidential Regulation No. 54 of 2010 concerning lump sum contracts, there is no price adjustment and additional work because these provisions cannot be applied in the field for construction projects in Indonesia.

## REFERENCES

- Asshiddiqie, Jimly, 2018. *Constitution of Social Justice*, Kompas, Jakarta.
- Adriansyah Billy, Danurdara Kantya Pratita, Hidayat Arif, (2016), Comparison of the Conformity of Rights and Obligations of National Contracts and International Contracts against Fidic Standards in Construction Projects, *Jurnal Karya Teknik Sipil*, Volume 5, No. 2 Hal. 253 – 261, Retrieved from <https://media.neliti.com/media/publications/105518-ID-perbandingan-kesesuaian-hak-dan-kewajiba.pdf>
- Barkatullah, Abdul Halim. 2008. *Consumer Protection Law*. Bandung: Nusa Media,
- Cst Kansil, 2009. *Dictionary of Legal terms*, Gramedia Pustaka, Jakarta,
- Dahlan, Abdul Aziz 1997. *Encyclopedia of Islamic Law*, Jakarta Ikhtiar Baru Van Hoeve.
- Ervianto. Ulfram 2005. *Construction Project Management*. Andi offset, Yogyakarta
- John Rawls, 2011. *A Theory of Justice*, Yogyakarta
- J. J. H. Briggink 1996. *Reflections on Law*, PT. Citra Adytia Bakti, Bandung
- Jimly Asshiddiqie, 2011. The idea of the Indonesian rule of law, the National legal agency, *Majalah hukum nasional*,
- Kantaprawira, Rusadi 1988. *The Indonesian Political System An Introductory Model*. Sinar Baru, Bandung.
- Mertokusumo, Sudikno *Understanding the Law*, Liberty, Yogyakarta.
- Mariam Daus Badruzaman, KUHP Book III of Bond Law with Explanations, Alumni Bandung
- Manulang, Fernando M, 2007, *Law in Certainty*, Prakarsa, Bandung,
- Nurul Listanto, Sarwono Hardjomuljadi.2019." Analysis of Factors Causing Late Payment of Contractors to Contractors in Multi-storey Building Projects"
- Riduan Syahrani, 1999. *Summary of the essence of legal science*, Citra Aditya, Bandung,
- Simpson. Laurence P. 1995. A contract is an agreement between two persons consisting of promises which the law will enforce, or the performance of a whic the law in some way recognizes as a duty". Simpson, Laurence P. *Contract*, 2nd edition, West Publishing Co, St. Paul Minnesota,
- Subekti,2008. *Legal agreement*, Intermasa. Jakarta.
- Salim H.S., S.H., 2011. *Contract Law Theory and Contract Formulation Techniques*, Sinar Grafika Offset, Jakarta.
- Suherman, SH, LLM, Development of Pacta Sunt Servanda Principles in Long-Term Contracts, Google scholar, <http://repository.upnvj.ac.id/61831/1/b20.pdf>
- Salim H.S, 2005. Development of Innominaate Contract Law in Indonesia, Sinar Grafika, Jakarta,
- Sudikno Mertokusumo, 2007, *Understanding the Law, An Introduction*, Liberty, Yogyakarta,
- Soemantri, Sri,1992. *Indonesian Constitutional Law Compilation*. Bandung: Alumni
- Tata Wijayanta, 2014. The principles of legal certainty, justice and benefit in relation to the bankruptcy decision of the commercial court, *Jurnal Dinamika Hukum*, Vol. 12, FH Unsoed, Purwokerto.
- Winardi, 1989. *Introduction to Systems Theory and Systems Analysis*. Mandar Maju, Bandung.
- Widiyawati, Cicik, 2020, *Jurnal Education and Development* Vol. 8 No. 1, Comparison of Construction Work Contract Arrangements Based on FIDIC General Conditions of Contract For Work in Civil Engineering Construction with the Construction Services Law Regarding Responsibility for Quality Defects, Retrieved From <http://journal.ipts.ac.id/index.php/ED/article/view/1509/687>.

Received on 13-08-2020

Accepted on 28-11-2020

Published on 14-12-2020

DOI: <https://doi.org/10.6000/1929-4409.2020.09.192>

© 2020 Suherman and Mayangsari; Licensee Lifescience Global.

This is an open access article licensed under the terms of the Creative Commons Attribution Non-Commercial License (<http://creativecommons.org/licenses/by-nc/3.0/>) which permits unrestricted, non-commercial use, distribution and reproduction in any medium, provided the work is properly cited.