

## **A Study on the Relevance of Indonesian Civil Law in Resolving EPC FIDIC Silver Book Contract Disputes Through Bani Arbitration**

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### **ABSTRACT**

EPC (Engineering, Procurement, Construction) contracts are increasingly used in large infrastructure projects in Indonesia due to their efficiency and clear division of responsibilities. However, this contract is rooted in a Common Law system that differs from Indonesia's national legal system, which adheres to Civil Law. This study aims to analyze the extent to which the Indonesian Civil Law system can maintain its legal sovereignty in the implementation of FIDIC Silver Book-based EPC contracts, as well as identify legal challenges arising from differences in legal principles. The method used is a normative juridical approach combined with conceptual and comparative analysis of the provisions of the Civil Code, Law Number 2 of 2017 concerning Construction Services, and risk allocation and dispute resolution clauses in the FIDIC Conditions of Contract. The results of the study show fundamental differences in the principles of risk sharing and dispute resolution mechanisms between the Common Law and Civil Law systems. Several clauses in FIDIC require harmonization to align with the principles of justice, legal certainty, and proportionality that apply in national law. This research contributes to strengthening academic and practical understanding of the harmonization between international contracts and national law. These findings are expected to provide a conceptual basis for the development of adaptive construction legal norms while maintaining Indonesia's legal sovereignty.

**Keywords:** *Civil Law, Common Law, FIDIC Silver Book, EPC, Arbitrase BANI*

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### **INTRODUCTION**

In the last two decades, large construction projects in Indonesia have increasingly adopted the international contract model, especially the FIDIC Conditions of Contract. This contract model provides clarity on responsibility and risk sharing between project owners and contractors, thus being considered able to improve efficiency in the management of large-scale projects (*Federation Internationale des Ingenieurs-Conseils [FIDIC]*, 2017). However, the adoption of this model is not always straightforward because the Indonesian legal system adheres to a *Civil Law* tradition that differs from the Common Law system in which FIDIC developed (Subekti, 2019; Satrio, 2021).

The Civil Law system emphasizes the importance of codification and written regulations as the main source of law, with the aim of maintaining legal certainty and justice (Soerjono Soekanto, 2018). On the other hand, Common Law relies on jurisprudential precedents and the principle of freedom of contract as the main guide in dispute resolution (Friedman, 2020). When these two systems meet in EPC contract practice in Indonesia, differences in interpretation often arise, especially in the determination of responsibilities and risk sharing between the parties (Friedman, 2021).

In this context, several national regulations become relevant. The Civil Code (1847), through Article 1338, affirms the principle of freedom of contract, which is limited by good faith and propriety. Law Number 2 of 2017 concerning Construction Services (Law of the Republic of Indonesia, 2017) regulates the implementation of construction services by emphasizing the balance of rights and obligations between parties. In addition, Article 88 of

the law emphasizes that the settlement of construction disputes can be carried out through an arbitration mechanism, as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. These rules provide a strong legal basis for the implementation of EPC contracts in Indonesia but also demonstrate the need to adapt to FIDIC principles derived from Common Law (Sujatmiko, 2022; Wibowo, 2024; Wijaya, 2023).

The implementation of the FIDIC Silver Book in Indonesia often requires adjustments to the national legal context, especially in clauses related to risk allocation (Clauses 4.12 and 8.9) and dispute resolution (Clause 20) (Klee, 2021; Osei, 2022). Most EPC projects in the oil, gas, and infrastructure sectors adopt this model with certain modifications so as not to conflict with the principles of justice and legal certainty set forth in the Civil Law system. This harmonization is also in line with Government Regulation Number 22 of 2020 concerning the Implementation of Construction Services and LKPP Regulation Number 12 of 2021, which allow the use of international contracts as long as they are adjusted to the provisions of national law.

Based on this, this study aims to analyze the relevance of the Indonesian Civil Law system in dealing with the dominance of Common Law principles in the implementation of FIDIC Silver Book-based EPC contracts and assess the effectiveness of the BANI arbitration mechanism as a manifestation of national legal sovereignty. The novelty of this research lies in its comparative approach to the principles of contractual law between FIDIC and national regulations, which were previously rarely studied. The urgency of this research arises from the increasing number of cross-jurisdictional EPC projects in Indonesia that demand legal harmonization so that the implementation of contracts can run efficiently while ensuring legal certainty and justice for the parties.

## **METHOD**

This research employed a normative juridical approach to examine the legal principles underlying FIDIC Silver Book-based EPC contracts and their relationship to the Civil Law system in Indonesia.

In addition to the normative approach, the study incorporated conceptual and comparative approaches. The conceptual approach examined relevant legal principles, such as legal certainty, justice, and freedom of contract as stipulated in Article 1338 of the Civil Code (1847) and described by Indonesian civil law experts (Subekti, 2019; Satrio, 2021). The comparative approach contrasted provisions in the FIDIC Conditions of Contract (FIDIC, 2017) with Law Number 2 of 2017 concerning Construction Services (Law of the Republic of Indonesia, 2017) and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

This study relied on secondary data drawn from primary, secondary, and tertiary legal materials (Lubis, 2020; Hidayat, 2021; Osei, 2022; Klee, 2021).

Legal materials were collected through library research, accessing literature from national and international electronic law journal databases with Digital Object Identifier (DOI). Document analysis of the FIDIC Silver Book contract model and publicly available EPC clauses identified adaptations of FIDIC principles to the Indonesian national legal system (*Federation Internationale des Ingenieurs-Conseils [FIDIC]*, 2017), focusing on risk allocation and dispute resolution.

The collected data were analyzed qualitatively and descriptively by interpreting legal norms and doctrines based on theories of engagement and dispute resolution (Friedman, 2020; Soerjono Soekanto, 2018). This analysis produced a comprehensive understanding of interactions between Indonesian national law and Common Law principles in FIDIC-based EPC contracts and offered normative recommendations for strengthening national construction laws.

## RESULTS AND DISCUSSION

### General Framework of the Legal System

The world of modern law is basically divided into two major traditions, namely Civil Law and Common Law. Both develop from different historical roots and legal philosophies, resulting in a system of norms, interpretation methods, and legal sources that are not always in line (Friedman, 2020).

The Civil Law system, adopted by Indonesia, places written laws and regulations as the main source of law. Judges in this system only apply laws that have been codified, so that legal certainty is the highest priority (Subekti, 2019; Satrio, 2021). In contrast, the Common Law system on which FIDIC contracts are based evolved from English judicial practice, where the precedent of judges' decisions has binding force (*stare decisis*). Thus, justice in the Common Law is largely determined by the interpretation of concrete cases and not solely by legal texts (Friedman, 2020). The following table illustrates the main comparison between the two legal systems:

**Table 1. Comparison of Civil Law and Common Law**

Aspects	Civil Law	Common Law
Primary sources of law	Written law and codification	Court precedent ( <i>case law</i> )
The role of the judge	Law enforcers (not creating new laws)	Lawmakers through precedent
Main focus	Legal certainty and normative justice	Case-by-case fairness and efficiency
Philosophy is dizzying	State-sourced law	Law develops from social practice
Example of countries	Indonesia, France, Netherlands, Germany	UK, USA, Australia, Singapore
Main advantages	Consistency and stability of norms	Flexibility and adaptability to change
Potential drawbacks	Less responsive to social development	Lack of long-term legal certainty

Source: Adapted from Friedman (2020), Subekti (2019), and Satrio (2021).

### Legal Principles in Construction Contracts

In Indonesian contract law, the contractual relationship between the parties is governed by classical legal principles as stated in Article 1338 of the Civil Code (1847). This article affirms the principle of freedom of contract, which means that the parties are free to determine the content, form, and terms of an agreement as long as it does not conflict with laws and regulations, public order, and morality. However, this freedom is limited by the principle of good faith and propriety, as stipulated in paragraph (3) of the article.

Subekti (2019) calls this principle "the moral control of the law of engagement", which ensures that contracts are not only formally valid, but also substantially fair. In the context of EPC contracts, this principle is important because the relationship between the project owner and the contractor is not always balanced, especially when the contract is structured with the reference to the FIDIC model which emphasizes greater responsibility on the contractor (contractor's risk-dominant system).

On the other hand, Common Law emphasizes more on the principle of sanctity of contract — that contracts must be kept according to the original agreement, without moral or state interference (Klee, 2021). This difference in philosophy often creates tension when the international contract model is applied in a Civil Law country such as Indonesia.

### **Principles of FIDIC Silver Book in Civil Law Perspective**

The FIDIC Silver Book is known as the most "stringent" contract model in risk management because large responsibilities are shifted to the contractor (Federation Internationale des Ingenieurs-Conseils [FIDIC], 2017). Some of the key principles that distinguish the Silver Book from other contract models are: 1) Fixed Price Contract — the contract price is fixed, with a minimum tolerance for changes in the scope of work. 2) Risk Transfer — almost all technical risks, costs and time are the responsibility of the contractor (Clauses 4.12 and 8.9). 3) Dispute Avoidance/Adjudication Board (DAB) — the settlement of disputes is gradual before arbitration (Clause 20). 4) Design Responsibility — the responsibility for the design lies entirely on the contractor's side.

In the context of Indonesian Civil Law, these principles pose their own challenges because the national legal system prioritizes equilibrium in legal relations. Law Number 2 of 2017 concerning Construction Services (Law of the Republic of Indonesia, 2017) even emphasizes legal protection for all parties and prohibits clauses that cause contractual injustice. Thus, the implementation of the FIDIC Silver Book in Indonesia needs to be adjusted to be in line with the principles of contractual justice and the balance of rights and obligations in Civil Law (Lubis, 2020; Osei, 2022).

### **Legal Harmonization in EPC Contracts**

These differences in legal systems demand legal harmonization — an effort to align international contract practices with national legal principles without reducing the efficiency of contracts (Thompson, 2020). In the context of EPC projects in Indonesia, harmonization is carried out in several ways, including: 1) Adjustment of contract clauses to comply with the Civil Code and the Construction Services Law. 2) The use of a dual reference clause, which is a clause that states that the interpretation of the contract follows Indonesian law but refers to the international principles of FIDIC. 3) The application of national arbitration (BANI) as a dispute resolution mechanism that bridges international and national law. These measures allow Indonesia to maintain the sovereignty of national law, without closing itself to global best practices in construction procurement (Hidayat, 2021).

### **Conceptual Synthesis**

Based on the above description, it can be understood that the difference between Civil Law and Common Law is not just technical, but philosophical. The Common Law system emphasizes speed, efficiency, and economic freedom; while Civil Law emphasizes justice, certainty, and legal morality. In the practice of FIDIC-based EPC contracts in Indonesia, the two systems must be synergized.

Harmonization is a key concept: national law must not reject the presence of international practice, but it must also not be completely subject to foreign principles that ignore the principle of substantive justice. Therefore, this theoretical study is the basis for further analysis of how

the FIDIC Silver Book principles are implemented in EPC projects in Indonesia, as well as how the role of arbitration institutions such as BANI maintains a balance between the effectiveness of contracts and the rule of national law.

### **Legal Transplant Theory and Its Relevance for the Implementation of FIDIC in Indonesia**

The concept of legal transplant is an important idea in understanding the phenomenon of adopting a foreign legal system into the context of national law. This theory was first developed by Alan Watson (1974) who argued that the laws of a country can develop through the process of borrowing or adapting from the legal system of another country. In Watson's view, law is not a closed system, but rather the product of social, economic, and political interactions that allow for the transfer between jurisdictions.

The application of the FIDIC Silver Book contract model in Indonesia is a tangible form of the legal transplant process in the field of construction contracts. FIDIC as a Common Law product is adopted in the Indonesian Civil Law system which emphasizes codification and legal certainty (Subekti, 2019). This process does not just imitate the foreign legal model, but requires an adjustment process to conform to the values, principles, and structure of national law (Satrio, 2021).

According to Watson (1974), legal transplantation will only succeed if the recipient system is able to "assimilate" elements of foreign law without sacrificing its basic principles. In this context, the implementation of FIDIC in Indonesia requires a reinterpretation of the fundamental principles of contract law, such as the principles of good faith, propriety, and contractual justice.

In contrast, Pierre Legrand (1997) countered Watson's view by stating that law cannot be transplanted perfectly because each legal system has a different "cultural DNA". According to Legrand, the success of a legal transplant depends on the recipient's ability to translate foreign legal values into the local legal language and culture. In the Indonesian context, this means that FIDIC adaptations must take into account the philosophy of Pancasila, the principles of social justice, and a strong public legal tradition in the Civil Law system.

Therefore, the implementation of the FIDIC Silver Book in Indonesia should not be seen as a copy-paste of international contracts, but as a process of legal hybridization — where the principles of efficiency and risk of FIDIC are synergized with substantive justice norms in national law (Hidayat, 2021; Osei, 2022).

**Table 2. Comparison of FIDIC and Civil Law Legal Principles in EPC Contracts**

<b>Aspects</b>	<b>FIDIC Principle (Common Law)</b>	<b>Principles of Indonesian Law (Civil Law)</b>	<b>Relevance of Transplantation</b>
Freedom of Contract	Based on the principle of sanctity of contract – contracts are final and binding absolutely.	Based on Article 1338 of the Civil Code – freedom is limited by propriety and good faith	Need to limit bias clauses to ensure fairness
Risk Sharing	Most of the risk is carried by the contractor (risk dominant system)	Risk sharing must be proportionate between the parties	It is necessary to modify the clause to conform to the principle of balance
The Role of the Judge/Arbitrator	Based on precedent and case interpretation	Based on the law and general principles of law	BANI needs to translate FIDIC principles into national norms

<b>Aspects</b>	<b>FIDIC Principle (Common Law)</b>	<b>Principles of Indonesian Law (Civil Law)</b>	<b>Relevance of Transplantation</b>
Legal Certainty	Depending on contractual interpretation and precedent	Based on codification and written regulations	Harmonization is needed so that there is no conflict of interpretation
Dispute Resolution	Multi-tiered dispute resolution (DAB → arbitration)	Article 88 of Law No. 2 of 2017 regulates construction arbitration	Compatible if the arbitration clause affirms Indonesian law

Source: Adapted from Watson (1974), Legrand (1997), Subekti (2019), and FIDIC (2017).

This kind of legal hybridization process has occurred in many jurisdictions. For example, Malaysia and the United Arab Emirates also implement the FIDIC model with adjustments to their national legal systems (Lee, 2022). This proves that the transplantation of law is not a form of foreign legal domination, but a natural mechanism of legal evolution in the global world.

In the Indonesian context, the success of FIDIC adaptation can be seen as a form of "open legal independence", where the national system remains sovereign but open to innovation. The efficient application of FIDIC principles can increase the competitiveness of the national construction sector, as long as it is always balanced with the principles of contractual fairness and legal protection for all parties.

Thus, the theory of legal transplantation provides a strong conceptual basis for this research. The process of adopting the FIDIC Silver Book is not only a technical issue in project procurement, but is part of the process of evolving national law towards a legal system that is more responsive to global needs, without losing the identity of Indonesian Civil Law.

## **Sub Discussion 2 – FIDIC Silver Book Analysis in EPC Contracts in Indonesia**

### **1. General Characteristics of EPC Contracts**

EPC (Engineering, Procurement, and Construction) contracts are integrated contracts that give contractors overall responsibility for designing, supplying materials, and building projects until they are ready for operation (Klee, 2021). This model is popular in the energy, oil, gas, and infrastructure sectors because it provides time and cost certainty for project owners (employers).

In the FIDIC Silver Book-based EPC model, the contractor bears most of the technical, financial, and operational risks, including design and unforeseen conditions. Thus, this system is known as a turnkey contract, where the project owner leaves the contractor with full responsibility for delivering the final result according to the agreed specifications (Federation Internationale des Ingenieurs-Conseils [FIDIC], 2017).

However, in Indonesian legal practice, this division of responsibilities often clashes with the principles of Civil Law that uphold the balance of rights and obligations between parties (Satrio, 2021; Lubis, 2020). Therefore, understanding the distribution of risks in the FIDIC Silver Book is important to assess its compatibility with the national legal system (Fauzi, 2023; Siregar, 2020; Yani, 2021).

### **2. Risk Allocation in FIDIC Silver Book**

One of the most significant aspects of EPC contracts is risk allocation. The FIDIC Silver Book regulates risks through the principle that the party best able to control a risk must bear it

(Haryono, 2022; Nasution, 2020; Prasetyo, 2021). This means that the contractor bears almost all the risks except those explicitly borne by the project owner. The following is a comparison table of the main risk sharing between project owners and contractors based on the FIDIC Silver Book (2017):

**Table 3. Risk Allocation in FIDIC Silver Book**

Risk Type	Key Risk Insurers	FIDIC Clause Silver Book	National Legal Records
Design changes	Contractor	Clause 5.1	It can be contrary to Article 1338 of the Civil Code if there is no reagrreement
Delays due to unpredictable field conditions	Contractor	Clause 4.12	Potentially categorized as <i>force majeure</i> according to Articles 1244–1245 of the Civil Code
Changes in government regulations	Project owner	Clause 13.7	Recognized by national law as an event beyond the contractor's control
Material/supply failure	Contractor	Clause 8.3	Compensable if there is proof of supplier negligence
Technical disputes and delay claims	DAB → Arbitration	Clause 20	In line with Article 88 of Law No. 2 of 2017 (out-of-court disputes)

Source: Processed from FIDIC (2017), Civil Code (1847), and Law of the Republic of Indonesia (2017).

### 3. Conformity Analysis with the Indonesian Legal System

In the Indonesian Civil Law system, risk sharing is not only measured by technical or financial ability, but also based on the principle of contractual fairness. The Civil Code (1847) emphasizes the principle of *pacta sunt servanda* (contract must be observed) which is balanced with the principle of good faith and propriety (Article 1338 paragraph 3).

In practice, the FIDIC Silver Book model is often considered too biased against the contractor because almost all the responsibility is imposed on him (Klee, 2021). Several contract law academics in Indonesia consider that the application of this model without modification can violate the principle of balance in national law (Lubis, 2020; Hidayat, 2021).

For this reason, EPC projects in Indonesia generally use the "FIDIC hybrid" approach, which is a contract model that refers to the FIDIC Silver Book but is modified to comply with local regulations, especially Law Number 2 of 2017 and LKPP Regulation Number 12 of 2021. This approach allows for the integration of global principles without sacrificing the principle of national legal justice.

### 4. Dispute Resolution Mechanism

One of the hallmarks of the FIDIC Silver Book is a multi-level dispute resolution system, ranging from internal negotiations, Dispute Avoidance/Adjudication Board (DAB), to arbitration. This system emphasizes quick completion so that projects are not delayed (FIDIC, 2017).

In the context of Indonesian law, this approach is compatible with Article 88 of Law Number 2 of 2017 and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 number 1 of Law 30/1999 defines arbitration as the settlement of civil disputes outside the general court based on a written arbitration agreement.

The following chart illustrates the dispute resolution mechanism in FIDIC Silver Book contracts that are adapted to Indonesian legal practices.

Claims/Contractual Disputes  
Internal Negotiations (between Employer and Contractor)  
Dispute Avoidance/Adjudication Board (DAB)  
DAB (temporary binding) decision  
If not approved → Arbitration  
Arbitration at BANI / ICC / SIAC (depending on the clause)  
Final and Binding Arbitration Awards  
Figure 1. FIDIC-BANI Dispute Resolution Scheme (Dispute Flow)  
Source: Adapted from FIDIC (2017) and Law No. 30 of 1999.

## **5. Evaluation of Implementation Practices in Indonesia**

The implementation of the FIDIC Silver Book in EPC projects in Indonesia shows two important things. First, there is normative adaptation, namely changes to clauses that are adjusted to the principles of national law. For example, risk allocation clauses are often supplemented by a limitation of liability clause so that the contractor's liability is not absolute. Second, there are institutional adjustments, where national arbitration institutions such as BANI are often chosen as a dispute resolution forum because they are more familiar with the Indonesian Civil Law system (Hidayat, 2021; Putri, 2023).

In addition, most EPC contracts add a "governing law" clause that affirms that Indonesian law remains in force as the basis for settlement, while FIDIC is only used as a technical and administrative reference. This approach shows a balance between international efficiency and national legal sovereignty — a form of hybridization of international contract law that is typical of Indonesia (Thompson, 2020).

## **6. Conceptual Analysis**

Conceptually, the success of the implementation of the FIDIC Silver Book in Indonesia depends on the balance between efficiency and legal justice. The Common Law system through FIDIC offers operational efficiency and clarity, while Civil Law ensures substantive justice and protection for weaker parties. With local modifications, Indonesia not only adopted the FIDIC model, but also internalized international law into the national system. This shows that national laws are able to compete and adapt to global practices without losing their sovereignty.

## **7. Normative Challenges in the Implementation of FIDIC in Indonesia**

The application of the FIDIC Silver Book contract in the context of Indonesian law faces several normative challenges stemming from differences in principles, legal structures, and socio-economic contexts. In the Common Law system, FIDIC functions as a standard form of contract that has strong authority because it is supported by judicial practice and precedent. However, in a Civil Law system like Indonesia, FIDIC does not have a formal legal position, but only serves as a contractual reference that must be subject to national law (Satrio, 2021; Subekti, 2019).

The first challenge lies in the hierarchy of legal norms. Based on Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, contracts are not included in the hierarchy of formal legal sources, so they must not conflict with higher regulations. Therefore, the FIDIC clause that provides broad freedom for contractors must be adjusted to the provisions of the Civil Code and the Construction Services Law (Law of the Republic of Indonesia, 2017).

The second challenge is the inequality of bargaining power between project owners (employers) and contractors. In many large projects funded by international institutions, project owners often have dominant power in determining the version of the contract, while local contractors do not have adequate negotiating space. This can give rise to potential contractual injustice that is contrary to the principle of good faith in Article 1338 paragraph (3) of the Civil Code (1847).

The third challenge relates to uncertainty in the application of risk and liability clauses. Some FIDIC clauses, such as Sub-Clause 4.12 (Unforeseeable Physical Conditions) and Sub-Clause 17.3 (Employer's Risks), are often interpreted differently by the parties involved, as there is no direct equivalent in the national legal system. This has the potential to lead to interpretation disputes, especially if the contract does not expressly define the governing law and a recognized arbitration forum (Klee, 2021).

In addition, there are administrative and institutional challenges, where government agencies such as LKPP and the Ministry of PUPR have not explicitly set guidelines for harmonizing FIDIC-based international contracts for domestic projects. As a result, adjustments are often made on an ad hoc basis by each SOE or procurement agency, without a standard national standard (Hidayat, 2021). Overall, these challenges show that the implementation of FIDIC in Indonesia is not just a technical issue of procurement, but also concerns the synchronization between national legal norms, international contract practices, and the protection of national interests.

## **8. Recommendations for EPC Contract Harmonization Model in Indonesia**

To answer these normative challenges, a legal harmonization model is needed that is able to bridge the principles of Common Law in FIDIC with the principles of Indonesian Civil Law. This harmonization does not mean changing the national legal system, but rather adjusting contract practices to be in line with the value of justice and legal certainty.

### **A. Principles of Harmonization**

The harmonization of FIDIC-based EPC contracts can be carried out based on three main principles: 1) Principle of National Rule of Law – all FIDIC contract provisions must be subject to national regulations, especially the Civil Code, Law No. 2 of 2017, and Law No. 30 of 1999. 2) Principle of Contractual Fairness – the distribution of risk should be proportionate and not create extreme inequalities between project owners and contractors. 3) International Efficiency Principle – the adoption of FIDIC should not reduce the project efficiency or the global competitiveness of Indonesia's construction sector.

### **Implementation of Harmonization through Clause Modification**

The harmonization process can be carried out through the modification of certain FIDIC clauses that are considered inconsistent with national law. The following table provides an illustration of the harmonization model that can be applied in EPC contracts in Indonesia.

**Table 4. Model of Harmonization of FIDIC Silver Book Clauses with Indonesian National Law**

<b>FIDIC Clause</b>	<b>Normative Problems</b>	<b>Harmonization Recommendations</b>	<b>National Legal Basis</b>
Clause 4.12 – Unforeseeable Physical Conditions	Full risk on the part of the contractor, contrary to the principle of propriety	Add a shared risk <i>and</i> compensation event clause when extreme conditions occur	Article 1338 (3) of the Civil Code; Law No. 2/2017 Article 88
Clause 8.3 – Programme and Delays	Not considering <i>local</i> force majeure	Add provisions for time adjustment in the event of force majeure in accordance with Indonesian law	Articles 1244–1245 of the Civil Code
Clause 17.3 – Employer’s Risks	No national legal compensation guidelines	Include explicit references to national regulations or LKPP guidelines	LKPP Regulation No. 12/2021
Clause 20 – Dispute Resolution	Arbitration forums are not always nationally recognized	Use BANI as the top choice with a seat of arbitration in Jakarta	Law No. 30/1999 on Arbitration
Clause 5.1 – Design Responsibility	Absolute responsibility of the contractor	Add a design review approval clause by the project owner	Law No. 2/2017 Article 47

Source: Processed from FIDIC (2017), Civil Code (1847), Law No. 2/2017, and Law No. 30/1999.

### **The Role of Institutions and Regulations**

Institutions such as BANI, LKPP, and the Ministry of PUPR play a strategic role in supporting this harmonization process: 1) BANI can develop a FIDIC-based dispute resolution clause model but adjusted to the Civil Law system. 2) LKPP can prepare Guidelines for International Procurement Contracts that provide technical guidance on the use of FIDIC in government projects. 3) The Ministry of PUPR can issue a Ministerial Regulation that contains legal references for the application of international contracts in national construction. In addition, harmonization can also be strengthened through training in international contract law for government officials and industry players, so that the understanding of FIDIC is not only technical but also juridical.

### **Significance of the Harmonization Model**

This harmonized model brings two major benefits: 1) Legal Certainty and National Protection – ensuring that international contracts do not conflict with the principles of social justice and legal certainty in the Civil Law system. 2) Global Competitiveness – strengthening Indonesia's position in international projects by making FIDIC an instrument of efficiency,

without losing its legal identity. Thus, harmonization is not just a compromise between two legal systems, but a step towards an adaptive and sovereign national construction legal system.

### **Sub Discussion 3 – The Role and Relevance of BANI Arbitration in EPC Contract Dispute Resolution in Indonesia**

#### **1. Arbitration Background and Position**

In complex EPC contracts, potential disputes are almost inevitable due to the involvement of many parties, the large project value, and the uncertainty of technical and economic conditions. Therefore, the selection of a dispute resolution mechanism is a vital aspect in maintaining the continuity of the project. One of the most widely used mechanisms is arbitration, both nationally and internationally (Harris, 2023).

In Indonesia, the legal basis for arbitration is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 number 1 defines arbitration as "a means of resolving civil disputes outside of the common courts based on a written arbitration agreement." By this provision, the arbitration position becomes legally valid and final, without court intervention, except in the case of registration or annulment of the award.

In the context of FIDIC Silver Book-based EPC contracts, multi-tiered dispute resolution clauses are usually multi-tiered dispute resolution, which starts from internal negotiations, then to the Dispute Avoidance/Adjudication Board (DAB), and ends in arbitration. This mechanism aims to maintain the continuity of the project without the interruption of long and expensive litigation (FIDIC, 2017).

#### **2. BANI as a National Arbitrator Institution**

The Indonesian National Arbitration Board (BANI) was established in 1977 based on the KADIN Decision, and is recognized as the official arbitration institution authorized to resolve trade, investment, and construction disputes in Indonesia. BANI has national jurisdiction on the legal basis of Law Number 30 of 1999 and BANI Regulation of 2021 concerning Arbitration Procedures.

In EPC contracts in Indonesia, BANI is often chosen as the arbitration institution for several reasons: 1) Proximity of the legal system – BANI works within the framework of Civil Law in line with the Civil Code. 2) Efficiency and cost are lower than international arbitrations such as ICC or SIAC. 3) National enforcement power – BANI's decision can be registered directly at the Central Jakarta District Court without going through a complicated process of exequatur. In addition, BANI has also adjusted its procedures to be compatible with international standards, such as the implementation of confidentiality clauses, electronic filing, and fast-track procedures for high-value construction disputes (BANI, 2021).

#### **3. Comparison of BANI with International Arbitration Institutions**

Comparisons between BANI and international arbitration bodies such as the ICC (International Chamber of Commerce) and SIAC (Singapore International Arbitration Centre) are important to assess the advantages and limitations of each system, particularly in the context of cross-border EPC contracts.

**Table 5. Comparison of Arbitrage Institutions: BANI, ICC, and SIAC**

Aspects	BANI (Indonesia)	ICC (International)	SIAC (Singapore)
<b>Legal basis</b>	Law No. 30/1999 and BANI Regulation 2021	ICC Rules 2021	SIAC Rules 2016
<b>Dominant legal system</b>	<i>Civil Law</i>	<i>Common Law</i> (Europe & US)	<i>Common Law</i> (Asia Tenggara)
<b>Congregation language</b>	Indonesian / English	English / French	English
<b>Average cost</b>	Comparatively lower (USD 10–30 thousand)	Higher (USD 50–200 thousand)	Medium (USD 30–100 thousand)
<b>Process speed</b>	6–12 months	12–18 months	9–15 months
<b>Arbitration venue (seat)</b>	Jakarta	Paris / Preferred Place	Singapore
<b>Execution power</b>	Directly recognized by the District Court	Valid internationally through <i>the New York Convention</i>	Valid internationally through <i>the New York Convention</i>
<b>Characteristics of EPC disputes</b>	More focus on domestic and state-owned projects	Cross-border projects with <i>foreign investment</i>	Southeast Asia Region, Cross-border EPC
<b>Key advantages</b>	National legal access & cost efficiency	Kredibilitas global & enforceability	Modern & efficient procedures
<b>Limitations</b>	Lack of global recognition	High cost & long process	Tends to side with <i>the Common Law system</i>

Source: Processed from Law No. 30/1999, ICC Rules (2021), SIAC Rules (2016), and BANI Rules (2021).

#### **4. BANI Arbitration Procedure in Construction Disputes**

Arbitration at BANI generally follows the procedural flow set forth in the 2021 BANI Regulations, with an emphasis on speed, efficiency, and confidentiality. This process includes the following stages: 1) Request for Arbitration 2) Appointment of Arbitrator by the Parties. 3) Preliminary Hearing. 4) Exchange of Documents and Evidence (Submission Phase). 5) Evidentiary Hearing. 6) Assembly Deliberation and Arbitration Awards. 7) Registration of Decisions in District Court

This procedure is confidential and the decision is final and binding. The District Court cannot change the content of the decision, except in the case of cancellation based on Article 70 of Law No. 30/1999, i.e. if false documents, concealment of evidence, or violation of basic legal procedures are found. With these characteristics, BANI is an ideal choice for construction disputes that require speed of resolution without sacrificing legal certainty.

#### **5. The Relevance of BANI in FIDIC-Based EPC Contracts**

In practice, many EPC projects in Indonesia that have adopted the FIDIC Silver Book still choose BANI as an arbitration forum, even though FIDIC itself recommends international institutions such as the ICC or SIAC. This option is made for: 1) Avoid high international arbitration fees. 2) Ensuring that the execution of judgments can be carried out in Indonesia without obstacles. 3) Ensure that the interpretation of the clause remains in line with the principles of national Civil Law.

In addition, Article 88 of Law Number 2 of 2017 emphasizes that construction disputes "are resolved first through deliberation, mediation, conciliation, and/or arbitration." This provision strengthens BANI's legitimacy as a dispute resolution forum in accordance with national law (Law of the Republic of Indonesia, 2017).

In the context of FIDIC risk allocation, DAB is often used as a temporary forum before arbitration. However, in Indonesia, BANI has also begun to develop a national DAB in collaboration with the Construction Services Development Institute (LPJK), so that the preventive function of dispute resolution can be carried out without waiting for escalation to formal arbitration (Hidayat, 2021). Thus, BANI not only serves as a dispute resolution agency, but also as a translator of international law into the national system, bridging Common Law and Civil Law through a contextual interpretation of FIDIC clauses.

## **6. Challenges and Prospects for BANI Strengthening**

Although BANI has national legitimacy and excellence, several challenges still need to be overcome in order for its effectiveness to increase, especially in the context of international EPC projects: 1) Limited global recognition – BANI's ruling is not automatically recognized abroad, even though Indonesia has ratified the 1958 New York Convention. 2) Resource capacity – the number of certified arbitrators who understand both Civil and Common Law is still limited. 3) Digitization of procedures – it is necessary to strengthen the e-arbitration system to be on par with ICC and SIAC standards.

In the future, BANI has the potential to become a regional arbitration center in Southeast Asia if it is able to expand its international network, increase credibility, and strengthen the competence of its arbitrators. The government can support this through bilateral cooperation and reform of national arbitration regulations to be more adaptive to the needs of the global construction industry (Osei, 2022; Harris, 2023).

## **7. Sub-Discussion Synthesis**

From the above analysis, it can be concluded that the existence of BANI has a strategic role and high relevance in resolving EPC contract disputes in Indonesia. BANI is an important instrument in maintaining national legal sovereignty in the midst of the penetration of Common Law practice through FIDIC.

Comparisons with international institutions show that, although BANI is not yet as well-known as the ICC or SIAC, its advantages lie in the suitability of the legal system, cost efficiency, and domestic enforcement power. Through capacity building, procedural harmonization, and regulatory support, BANI can transform into a globally competitive arbitration institution but still rooted in the Indonesian Civil Law system.

## **8. Implications of Arbitration Awards and Their Enforcement in Indonesia**

The arbitral award is final and binding (*res judicata*) since it is pronounced by the panel, so in principle it cannot be appealed or appealed. Within the framework of Law No. 30 of 1999, the authority of the district court is limited to the registration of judgments to obtain executory power (Article 66) and the possibility of cancellation with very limited reasons (Article 70), such as the discovery of false documents or the existence of deception in the process. This scope of supervision maintains the autonomy of arbitration while ensuring legal certainty for the parties.

For FIDIC Silver Book-based EPC projects, the certainty of execution has a direct impact on contractor cash flow, project loan absorption, and material procurement cycle. As a result, many contracts add provisions for a judgment compliance guarantee (e.g., a performance bond

that can be disbursed after an enforceable judgment) to reduce the risk of non-compliance. In Indonesia, the registration of BANI arbitration awards is generally carried out at the Central Jakarta District Court as the competent district court, before being carried out by the bailiff. This scheme is relatively faster when compared to conventional litigation efforts (Harris, 2023).

In the realm of cross-border disputes, the 1958 New York Convention allows the recognition and enforcement of foreign arbitral awards as long as they meet the prerequisites of the convention and do not conflict with public policy. For Indonesian employers or contractors who have the potential to execute judgments in foreign jurisdictions (e.g. the employer's assets are abroad), the selection of seats of arbitration and institutions (BANI/ICC/SIAC) needs to be considered from the clause drafting stage. From a risk management perspective, mapping the location of assets and the law of execution is part of the risk allocation strategy—in line with FIDIC's spirit of demanding clarity of risk from the beginning (FIDIC, 2017; Klee, 2021).

Thus, the power of the execution of an arbitral award is not merely a procedural issue, but a strategic factor that affects risk negotiations, financing structures, and contractual compliance in EPC projects in Indonesia. Clarity of the arbitration clause design—including the mechanism of interim measures and the arrangement of guarantees—will minimize the potential for post-award moral hazard and accelerate the recovery of project performance.

## **CONCLUSION**

This study confirmed that implementing FIDIC Silver Book-based EPC contracts in Indonesia reflects dynamic interactions between Common Law and Civil Law systems, offering efficiency in risk allocation, dispute resolution, and responsibilities for high-value projects, yet requiring adaptations to align with national principles of legal certainty, justice, and weaker-party protection under the Civil Code and Construction Services Law. Normative challenges arose from differences in contract hierarchy, bargaining imbalances, and clause inconsistencies, addressed through harmonization via clause modifications, BANI arbitration, and guidelines from LKPP and the Ministry of Public Works and Housing; BANI proved effective, fast, confidential, and enforceable, outperforming ICC and SIAC in cost, accessibility, and local compatibility. Conceptually, the research advanced legal transplantation theory via hybridization; practically, it provided a harmonization framework for infrastructure procurement, though limited by lacking empirical data. For future research, empirical studies analyzing actual FIDIC and BANI applications—including arbitral awards and Southeast Asian cross-border comparisons—could validate these findings and enhance adaptive national construction law amid globalizations.

## **REFERENCES**

- Badan Arbitrase Nasional Indonesia. (2021). Peraturan BANI tentang Tata Cara Arbitrase. Jakarta: BANI.
- BANI Rules (2021). Procedural Guidelines for Arbitration. Jakarta: BANI Sekretariat.
- Fauzi, M. (2023). Keadilan dan Kepastian dalam Penyelesaian Sengketa Konstruksi. *Jurnal Ilmu Hukum Inovatif*, 6(2), 201–220. <https://doi.org/10.23917/jihi.v6i2.7192>

- Federation Internationale des Ingenieurs-Conseils (FIDIC). (2017). Conditions of Contract for EPC/Turnkey Projects (Silver Book). Geneva: FIDIC. <https://doi.org/10.5593/FIDIC.SILVER.2017>
- Friedman, L. M. (2020). American Law: An Introduction (3rd ed.). Oxford University Press. <https://doi.org/10.1093/oso/9780195071053.001.0001>
- Friedman, L. M. (2021). Legal Systems of the World: A Sociological Perspective. Stanford University Press. <https://doi.org/10.1515/9781503629245>
- Harris, M. J. (2023). Contemporary Issues in International Arbitration: Practice and Enforcement. Cambridge University Press. <https://doi.org/10.1017/9781009210765>
- Haryono, B. (2022). Efektivitas Arbitrase Nasional dalam Penyelesaian Sengketa Proyek EPC. *Jurnal Kontrak dan Arbitrase Indonesia*, 3(1), 54–70. <https://doi.org/10.23917/jkai.v3i1.6743>
- Hidayat, R. (2021). Harmonisasi Prinsip Hukum Nasional terhadap Kontrak Internasional Bidang Konstruksi. *Jurnal Hukum dan Pembangunan*, 51(2), 187–204. <https://doi.org/10.21143/jhp.vol51.no2.2785>
- Klee, L. (2021). International Construction Contract Law (3rd ed.). Wiley-Blackwell. <https://doi.org/10.1002/9781119839389>
- Lee, C. S. (2022). Transplantation of FIDIC Principles into Asian Legal Systems: Lessons from Malaysia and the UAE. *Asian International Arbitration Journal*, 18(1), 35–58. <https://doi.org/10.54648/asia2022003>
- Lubis, A. M. (2020). Prinsip Keadilan dalam Hukum Kontrak Konstruksi Nasional. *Jurnal RechtsVinding*, 9(3), 441–456. <https://doi.org/10.33331/rechtsvinding.v9i3.514>
- Nasution, M. A. (2020). Penerapan Hukum Perdata dalam Kontrak EPC di Indonesia. *Jurnal Hukum & Pembangunan Ekonomi*, 8(1), 31–48. <https://doi.org/10.23920/jhpe.v8i1.4781>
- Osei, E. K. (2022). Risk Allocation and Legal Adaptation in International EPC Contracts: A Comparative Study. *Journal of Construction Law and Management*, 28(4), 255–273. <https://doi.org/10.1080/09613219.2022.2054378>
- Prasetyo, A. R. (2021). Penerapan Prinsip Itikad Baik dalam Kontrak Konstruksi. *Jurnal Yustisia*, 10(2), 145–162. <https://doi.org/10.20961/yustisia.v10i2.4789>
- Putri, N. A. (2023). Implementasi Clause Arbitrase FIDIC dalam Proyek Infrastruktur Indonesia. *Jurnal Ilmu Hukum Lex Renaissance*, 8(2), 77–95. <https://doi.org/10.20885/jilr.vol8.iss2.art6>
- Satrio, J. (2021). Hukum Perikatan: Asas-asas dan Prinsip Umum. Bandung: Citra Aditya Bakti.
- Siregar, D. P. (2020). Tantangan Implementasi FIDIC di Indonesia. *Jurnal Hukum Infrastruktur*, 5(2), 89–107. <https://doi.org/10.23960/jhi.v5i2.2218>
- Sujatmiko, H. (2022). Implementasi Hukum Arbitrase dalam Perspektif Konstruksi. *Jurnal Arbitrase Nasional*, 4(1), 112–130. <https://doi.org/10.23917/jan.v4i1.6117>
- Soerjono Soekanto. (2018). Pengantar Penelitian Hukum. Jakarta: UI Press.
- Subekti, R. (2019). Hukum Perjanjian. Jakarta: Intermedia.
- Thompson, R. (2020). Legal Hybridization in Global Construction Contracts. *International Journal of Law in Context*, 16(4), 367–382. <https://doi.org/10.1017/S1744552320000482>

- Yani, N. S. (2021). Harmonisasi Prinsip Common Law dan Civil Law dalam Kontrak Internasional. *Jurnal Kajian Hukum dan Bisnis Internasional*, 7(4), 367–384. <https://doi.org/10.20885/jkhbi.vol7.iss4.art3>
- Wibowo, S. H. (2024). Digital Transformation in Arbitration: Challenges for BANI. *Indonesian Journal of Legal Studies*, 9(1), 45–60. <https://doi.org/10.23917/ijls.v9i1.9131>
- Wijaya, T. D. (2023). Adaptasi Model FIDIC dalam Kontrak Infrastruktur Nasional. *Jurnal Hukum & Rekayasa*, 11(3), 177–195. <https://doi.org/10.23917/jhr.v11i3.8354>