

Limits of Contractual Freedom under FIDIC and Indonesian Legal Sovereignty: Harmonizing Civil and Common Law

Mardiaman⁽¹⁾ Henry Maurice Situmorang⁽²⁾ Rudi P. Sitorus⁽³⁾ Larap Kemayan Estu⁽⁴⁾

¹ Universitas Tama Jagakarsa, Jakarta, Indonesia

^{2,3,4} Universitas Pekalongan, Indonesia

¹mardi240967@gmail.com

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Abstract

Infrastructure projects in Indonesia that are financed by multilateral lenders or involve foreign contractors use FIDIC conditions drafted with common law techniques, whereas Indonesian contract law is codified and supplemented by mandatory construction-services rules. Previous studies compare FIDIC with national standard contracts but do not determine where party autonomy ends. This normative legal study examines how civil law and common law principles interact in FIDIC-based construction contracts, where freedom of contract ends when FIDIC clauses meet mandatory Indonesian norms, and which harmonization model preserves legal certainty and Indonesian legal sovereignty. It applies statutory, conceptual, comparative, and case approaches to the Civil Code, Law No. 2 of 2017 on Construction Services and its implementing regulation, the language and arbitration laws, Supreme Court Circular Letter No. 3 of 2023, the *Nine AM Ltd.* decisions, and the 2017 FIDIC Red Book. Under existing law, construction contracts are subject to Indonesian law, must be bilingual with the Indonesian version used in disputes with a foreign party, and cannot reduce statutory building-failure liability; these rules restrict autonomy more than the general provisions of the Civil Code. The study classifies collisions as mandatory-norm conflicts, interpretive differences, and conflicts of law or forum, each requiring a different legal instrument. Its novelty is a layered harmonization model, proposed by the author rather than stated in law, that tests each clause first against mandatory norms, then adapts it through the Particular Conditions, and only then interprets the General Conditions, with dispute boards, arbitration, and public-policy review as safeguards.

I. Introduction

Infrastructure projects in Indonesia that are financed by multilateral financial institutions or that involve foreign contractors may use the standard conditions of contract published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC). Construction management studies show that the FIDIC general conditions are more detailed than the general conditions of Indonesian government contracts, particularly in regulating claim deadlines and the stages of dispute resolution (Arief & Hardjomuljadi, 2020; Hambali et al., 2025). A recent comparison between the 2017 FIDIC Red Book and the national construction contract framework also identified different philosophies of risk allocation: FIDIC emphasizes balanced risk allocation and structured procedures, whereas Indonesian government contracts emphasize budgetary control and administrative compliance (Nugroho et al., 2025). FIDIC-based engineering, procurement, and construction (EPC) contracts in Indonesia have already produced arbitral disputes, and their resolution has been complicated by the absence of an explicit rule on the legal status of FIDIC within the Indonesian legal system (Sirait et al., 2026).

This procedural detail does not remove the legal problem. The Red Book is rooted in the common law tradition (Al-Hyari, 2023, p. 218), whereas Indonesian contract law rests on civil law codification. A study of the construction contract for the GMB Building, which was declared to be based on the Red Book, found that the contract contained only 4 of the 21 clauses and 7 of the 168 sub-clauses of the Red Book general conditions (Fredella & Widiyastuti, 2022). Contractors' claims are still rejected because of late notice and incomplete documentation (Febriko et al., 2026), and the FIDIC claim clauses themselves may become a source of dispute (Gerald & Hardjomuljadi, 2021). Such partial adoption and

procedural disputes indicate that FIDIC may be adapted in practice without a clear framework for determining which clauses must be amended because of national law and which clauses need only be interpreted.

The core issue is the limit of freedom of contract. Article 1338(1) of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, hereinafter the Civil Code) provides that lawfully concluded agreements apply as law to the parties who made them, whereas Article 1337 provides that a cause is prohibited if it is forbidden by law or contrary to morality or public order. The standards of public order and morality in Article 1337 are open-textured, so their content depends on judicial interpretation, and recent scholarship stresses that contractual justice cannot be measured solely by formal consent but must also consider the balance of the contract's content and the process of its formation (Ambarwati et al., 2026). In the construction sector, this limit is reinforced by specific norms, including the contract language requirement in Article 50 of Law No. 2 of 2017 on Construction Services as amended by Law No. 6 of 2023 (Law 2/2017), liability for building failure in Article 65 of the same Law, and Article 75(2) of Government Regulation No. 22 of 2020 as amended by Government Regulation No. 14 of 2021 (GR 22/2020), which provides that construction work contracts are subject to the law applicable in Indonesia.

FIDIC itself recognizes these limits. The FIDIC Golden Principles state that freedom of contract means that the parties are free to agree on the terms of their contract insofar as those terms comply with the law and public policy, and that amendments to the general conditions made to ensure consistency with the governing law are not regarded as a departure from those principles (FIDIC, 2019). Studies in other jurisdictions confirm that the chosen law determines the meaning of open-textured concepts in the FIDIC standard conditions and that

mandatory norms may override their default provisions (Jovanović, 2025). A doctrinal study of the United Arab Emirates (UAE), a civil law jurisdiction, found that the application of the 2017 Red Book is limited by mandatory statutory provisions and by local case law (Al-Hyari, 2023), and that such conflicts are not peculiar to the Red Book, because other standard conditions rooted in the common law face them as well (Alhyari & Al Ani, 2022). The relevant question, therefore, is not whether FIDIC may be used, but how far party autonomy can operate before it meets Indonesian legal sovereignty.

The lack of clarity about these limits creates legal uncertainty. Indonesian courts have been inconsistent in assessing the legal consequences of agreements made in a foreign language (Penasthika, 2019; Hosen et al., 2021; Ali & Gayatri, 2026). In *Nine AM Ltd. v. PT Bangun Karya Pratama Lestari*, an English-language loan agreement was declared null and void up to the cassation level, whereas the formulation of the Civil Chamber of the Supreme Court, made applicable through Supreme Court Circular Letter No. 3 of 2023, later stated that, for Indonesian private institutions and/or Indonesian individuals, the absence of an Indonesian translation cannot serve as a ground for annulling an agreement unless bad faith is proven. Similar uncertainty arises at the enforcement stage of international arbitral awards, because the public policy (*ketertiban umum*) exception in Law No. 30 of 1999 has not been narrowly defined and has been interpreted inconsistently (Sugianto et al., 2025; Utama et al., 2026; Berutu, 2026). For high-value construction contracts, this uncertainty may affect contract drafting, risk allocation, and the choice of forum.

Previous research can be grouped into three streams. The first compares FIDIC with Indonesian contracting practice. Arief and Hardjomuljadi (2020), Nugroho et al. (2025), and Hambali et al. (2025) compare FIDIC conditions with

government contract models from the perspectives of claims, risk allocation, and dispute resolution, while Napitupulu et al. (2026) and Sirait et al. (2026) examine FIDIC-based EPC disputes resolved through arbitration and conclude that harmonization with national law is still needed. These studies identify differences between the forms but not which differences national law requires to be removed. The second stream concerns freedom of contract and the civil law–common law divide. Thalib et al. (2026) propose a relational reading of *pacta sunt servanda* in government construction procurement, Affandi (2025) compares civil law and common law approaches to change orders, Nugrahenti and Hernawan (2024) show that Indonesian law offers no settled benchmarks for good faith, and Indrawati and Suhendra (2025) regard Article 1266 of the Civil Code as imperative. These studies do not apply general doctrine to the clauses of an international standard form. The third stream concerns specific points at which national law limits international contracting: the language requirement (Penasthika, 2019; Hosen et al., 2021; Rajagukguk, 2023; Ali & Gayatri, 2026), choice of law and forum (Meryadinata et al., 2025; Kusumadara, 2025; Lasut et al., 2026), dispute boards (Hardjomuljadi, 2020; Yudhantaka et al., 2023), protection of foreign investment companies against breach of construction contracts (Sitompul et al., 2026), and public policy in the enforcement of arbitral awards (Sugianto et al., 2025; Utama et al., 2026; Berutu, 2026). Each of these studies treats one limit in isolation. Studies of other civil law jurisdictions show that the 2017 Red Book must be adjusted to local mandatory rules (Al-Hyari, 2023; Jovanović, 2025), but their findings cannot simply be transferred to Indonesia.

The research gap is therefore specific. Within the literature examined, no study (i) maps individual clauses of the 2017 FIDIC Red Book against the Indonesian

norms that apply specifically to construction contracts, (ii) determines for each clause whether the collision is a conflict with a mandatory norm, a difference in interpretation, or a conflict of law or forum, and (iii) derives from that classification an order of precedence for drafting the Particular Conditions. Napitupulu et al. (2026) come closest, but their analysis concerns the Silver Book and the arbitral forum; Nugroho et al. (2025) and Hambali et al. (2025) compare the forms without identifying which deviations are legally required; and the studies on language, choice of law, and enforcement do not connect their findings to the structure of a FIDIC contract.

This article addresses that gap through three contributions, which constitute its novelty. First, at the conceptual level, it distinguishes three types of collision, namely norm conflicts, differences in contract interpretation, and conflicts of law or forum in private international law relationships, because each requires a different resolution instrument. Second, it argues that construction-specific norms, namely Articles 50 and 65 of Law 2/2017 and Article 75(2) of GR 22/2020, restrict party autonomy more strictly than the general provisions of the Civil Code, so that an analysis based only on the Civil Code and the language legislation is insufficient. Third, at the practical level, it formulates a layered harmonization model that connects the order of precedence of contract documents under Article 76 of GR 22/2020 with the position of mandatory norms, so that the model can serve as a reference for service users, service providers, and regulators in drafting the Particular Conditions.

Based on the foregoing, this study addresses three questions. First, how do civil law and common law principles interact in the regulation of FIDIC-based construction contracts in Indonesia? Second, where does freedom of contract end when FIDIC provisions encounter mandatory Indonesian legal norms?

Third, what harmonization model is appropriate for preserving legal certainty and Indonesian legal sovereignty in the application of international construction contracts? Accordingly, the study aims to analyze the characteristics of civil law and common law in the formation, interpretation, and performance of contracts; to examine the relationship between freedom of contract, the binding force of agreements, and mandatory norms; to analyze the relationship between FIDIC provisions and Indonesian legislation; and to formulate a harmonization model that enhances legal certainty without disregarding Indonesian legal sovereignty.

2. Research Method

This study is normative (doctrinal) legal research of a prescriptive nature. It does not use field data, interviews, or observation; its findings are therefore the result of an analysis of norms and doctrine, not empirical generalizations about contracting practice.

Four approaches are used, each linked to the research questions. The statutory approach examines the Civil Code; Law 2/2017 as amended by Law No. 6 of 2023; GR 22/2020 as amended by Government Regulation No. 14 of 2021 (GR 14/2021); Law No. 24 of 2009 on the National Flag, Language, Coat of Arms, and Anthem (Law 24/2009); Presidential Regulation No. 63 of 2019 on the Use of the Indonesian Language (PR 63/2019); Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and its Elucidation (Law 30/1999); and Law No. 12 of 2011 on the Making of Laws and Regulations and its amendments (Law 12/2011). It identifies the norms that bound party autonomy and serves mainly the second research question. The conceptual approach analyzes freedom of contract, the binding force of agreements, good faith, mandatory norms, legal certainty, legal sovereignty, and legal harmonization, and supplies the

categories used to classify collisions and to construct the model in the third research question. The comparative approach compares Indonesian contract law with English law, because the drafting techniques of the Red Book derive from the common law, and uses studies of the UAE as a civil law jurisdiction that applies the 2017 Red Book; it serves mainly the first research question. The case approach analyzes the Nine AM Ltd. decisions and English judgments on comparable clauses to identify how courts treat breaches of formal requirements and how common law courts read notice, termination, and damages clauses.

Primary legal materials consist of the above legislation; Supreme Court Circular Letter No. 3 of 2023 on the Application of the Formulations of the 2023 Plenary Meeting of the Supreme Court Chambers as Guidelines for the Performance of Duties of the Courts (SEMA 3/2023); West Jakarta District Court Decision No. 451/Pdt.G/2012/PN.Jkt.Bar, Jakarta High Court Decision No. 48/PDT/2014/PT.DKI, and Supreme Court Decision No. 1572 K/Pdt/2015; and the English judgments cited. The second edition (2017) of the Conditions of Contract for Construction (Red Book) and the 2019 FIDIC Golden Principles are treated as contractual materials: they bind because they are agreed upon, not because they constitute a source of law. Secondary legal materials consist of journal articles and books on contract law, comparative law, construction law, and arbitration. Tertiary legal materials, such as legal dictionaries, are used to a limited extent to ensure terminological accuracy.

Legal materials were collected through purposive library research. Statutory texts were obtained from official copies published on government legal information portals, and court decisions from the Supreme Court's decision directory and copies of the decisions. Secondary literature was traced through publisher websites, Crossref, DOAJ, and Garuda using the keywords FIDIC,

construction contract, freedom of contract, mandatory norms, choice of law, contract language, building failure, dispute board, and public policy. This search was not intended as a systematic literature review. The bibliographic metadata of each source, including the DOI, were checked against the publisher's website or a bibliographic database.

Legal materials were selected using three criteria: the norm or decision must govern the formation, language, performance, liability, termination, or dispute resolution of a construction work contract or of an agreement with a foreign party; it must be in force or, for judicial decisions, final; and it must bear directly on at least one research question. The 2017 Red Book is examined because it is the current FIDIC edition for employer-designed works and the edition analyzed in the comparative literature (Al-Hyari, 2023; Nugroho et al., 2025). The Nine AM Ltd. decisions are the most widely discussed Indonesian cases on the consequences of breaching the language requirement (Penasthika, 2019; Hosen et al., 2021); although they concern a loan agreement, they show how courts link a statutory formal requirement to contractual validity, which is the question raised by Article 50 of Law 2/2017. SEMA 3/2023 states the Supreme Court's current position on the same question and is treated as a judicial guideline rather than legislation. Peer-reviewed literature from 2020 to 2026 was given priority; older sources were retained where they are legal authorities, important decisions, or original contractual documents.

The analysis is qualitative and uses grammatical, systematic, and teleological interpretation in three steps. The first step identifies FIDIC provisions that intersect with Indonesian norms. The second step classifies each intersection as a norm conflict (a clause contradicts a norm that cannot be derogated from), a difference in interpretation (a clause is valid, but its meaning or performance

may be read differently depending on the legal tradition), or a conflict of law and forum (a question of which law and which forum apply). A norm was treated as mandatory where its wording is imperative (*wajib* or *harus*), where its breach is subject to a sanction, or where its purpose is the protection of third parties or the public interest; in the absence of these indicators, it was treated as a default rule. The third step determines the legal consequence and the resolution instrument appropriate to each type of collision, including the use of the preference maxims only among norms that fall within the hierarchy of legislation. Each conclusion is qualified as an express statutory norm, a judicial holding, a doctrinal opinion, the author's interpretation, or a policy recommendation.

3. Results and Discussion 12 Pt Bold

A. Characteristics of Civil Law and Common Law in the Development of Modern

Contract Law

Civil law and common law differ in their sources of law, their methods of contract interpretation, and the position they give to good faith, but these differences narrow in modern contracting practice. For FIDIC contracts in Indonesia, the relevant difference is not the label of the legal system but the way in which clauses drafted with common law techniques are read through the interpretive rules, default rules, and validity limits of the Civil Code.

1. Sources of law and the role of codification

In civil law, the core rules of contract are found in a codification. Book III of the Civil Code sets out the requirements for a valid agreement (Article 1320), its binding force (Article 1338), and the limit of a lawful cause (Article 1337). In common law, contract rules develop mainly through precedent. The distinction is not absolute.

Indonesia also develops contract law through case law and the formulations of the Supreme Court chambers, as shown by SEMA 3/2023 on foreign-language agreements, which is discussed in Section B. Conversely, English contract law is now also shaped by legislation and transnational instruments. This convergence is also visible in government construction contracts: Thalib et al. (2026) show that a rigid application of Article 1338 of the Civil Code to construction procurement contracts weakens legal certainty, and they propose a more relational reading of *pacta sunt servanda*, accompanied by a duty to cooperate and tiered dispute resolution.

Nor is codification monolithic. In the construction sector, the Civil Code coexists with Law 2/2017 and GR 22/2020, which contain specific norms on contract content, language, building failure, and dispute resolution. Article 47(1) of Law 2/2017, for example, specifies the minimum content of a construction work contract, including provisions on building failure (item k) and the choice of construction dispute resolution (item p). Consequently, FIDIC contracts in Indonesia encounter not only civil law in the sense of the Civil Code but also a more detailed layer of sectoral regulation.

2. *Contract interpretation*

The Civil Code contains two interpretive directions. Article 1342 prohibits departing from clear contractual wording through interpretation, while Article 1343 directs the judge to ascertain the intention of the parties where the wording admits more than one meaning. In addition, Articles 1339 and 1347 provide that an agreement also binds the parties to what is required by propriety, custom, or law, and to terms that are customarily stipulated. English courts start from the objective meaning of the text and are cautious about using commercial considerations to depart from clear wording (*Arnold v Britton* [2015] UKSC 36). A comparison of the two systems shows

that the main difference lies not in the starting point of interpretation, since both respect clear text, but in the scope for supplementation: Indonesian law gives judges a statutory basis to supplement a contract with propriety and custom, whereas the common law is more restrictive about adding content beyond the text. Galletti (2022) notes that the differences between the contextual approaches of the two traditions also depend on whether the contract is viewed as an adversarial or a cooperative relationship.

The consequences for FIDIC are significant. Detailed FIDIC clauses tend to be read more literally in a common law forum, whereas in Indonesia the same clauses may still be supplemented by propriety and custom under Articles 1339 and 1347 of the Civil Code. Long-term construction contracts with frequent variations fall within the area in which such supplementation is needed. A study of EPC contracts in Indonesia, for instance, shows that changes to the works caused by the Covid-19 pandemic were handled through the change-in-law and exceptional-event clauses of the FIDIC Silver Book and resolved through direct negotiation (Nachrawi & Heliany, 2023), while Affandi (2025) shows that civil law emphasizes procedural certainty and common law emphasizes flexibility in resolving change orders.

3. Good faith

Article 1338(3) of the Civil Code requires every agreement to be performed in good faith. English law traditionally rejected a general duty to negotiate in good faith (Walford v Miles [1992] 2 AC 128) but later recognized an implied duty of good faith in relational contracts (Yam Seng Pte Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB)). Transnational instruments go further. Article 1.7 of the UNIDROIT Principles of International Commercial Contracts 2016 requires the parties to act in accordance with good faith and fair dealing in international trade and provides that

this duty may not be excluded or limited (UNIDROIT, 2016). These developments indicate convergence: the common law is moving toward recognizing good faith in long-term contractual relationships, while good faith in the Civil Code has long functioned as a standard for contract performance.

4. Agreed damages and contract termination

Convergence does not always run from civil law to common law. Article 1249 of the Civil Code respects the agreed amount of damages, so that the injured party may be awarded neither a greater nor a lesser amount. English law tests damages clauses against the penalty rule by reference to the legitimate interest of the innocent party (*Cavendish Square Holding BV v Talal El Makdessi; ParkingEye Ltd v Beavis* [2015] UKSC 67). Civil law jurisdictions are not uniform either. A UAE judge may adjust agreed damages to equal the actual loss under Article 390 of the 1985 Civil Transactions Law (Al-Hyari, 2023, pp. 223–224), which has since been replaced by Federal Decree-Law No. 25 of 2025, in force from 1 June 2026, whereas Article 1309 of the Indonesian Civil Code empowers the judge to modify a penalty only where the principal obligation has been partly performed. A comparative study of common law, civil law, and Islamic law jurisdictions also shows that the main differences lie in the enforceability of the clause, the power to modify the stipulated amount, and the burden of proof (Assaad & Abdul-Malak, 2020). At the level of statutory wording, Indonesian law in this respect is more respectful of party autonomy than English law and UAE law, although its application may still be influenced by considerations of propriety and good faith.

Termination shows the opposite pattern. Clauses 15 and 16 of the 2017 Red Book allow termination for default by notice without a court order, while Sub-Clause 1.16 makes those termination provisions subject to any mandatory requirements of the

governing law (Al-Hyari, 2023, p. 225). Article 1266 of the Civil Code provides that, in reciprocal agreements, rescission for default must be requested from the court, even if a dissolving condition is stated in the agreement. For termination without default, Article 1611 of the Civil Code entitles the principal to terminate a work contract (*perjanjian pemborongan*) by fully compensating the contractor, including for loss of profit. The latter provision is consistent with the logic of termination for the employer's convenience in FIDIC, because both link the unilateral right of termination to an obligation to compensate.

5. FIDIC as a third contractual layer

FIDIC does not belong to either legal system. It is a set of standard conditions of contract designed for use across jurisdictions. Arief and Hardjomuljadi (2020) note that the FIDIC revisions were intended to make its clauses applicable in both common law and civil law systems. Nevertheless, its drafting techniques, such as notice deadlines as conditions of claims, the role of the Engineer, and a dispute board before arbitration, are rooted in common law practice (Al-Hyari, 2023, p. 218). The author argues that FIDIC is neutral in design but not neutral in application, because its effect in Indonesia is determined by the Civil Code and the sectoral regulation of construction services.

The answer to the first research question is therefore a layered interaction. Common law drafting techniques shape the FIDIC text, while the interpretive rules, default rules, and validity limits of civil law determine how that text operates. The interaction is not one-directional: with respect to agreed damages, Indonesian law is more respectful of party autonomy, whereas with respect to termination it is more protective. This understanding provides the basis for determining, in Section B, which clauses genuinely conflict with mandatory norms and which require only

interpretation.

B. Limits of Freedom of Contract in FIDIC under Indonesian Law

Freedom of contract in FIDIC contracts is limited at three distinct levels. A conflict with a mandatory norm arises where a clause contradicts a norm that applies regardless of the parties' agreement; it is resolved through a validity test under Articles 1320 and 1337 of the Civil Code, and the conflicting part of the clause does not apply or must be brought into compliance. A difference in interpretation arises where a clause is valid but may be read or performed differently under Indonesian default rules; it is resolved through interpretation and supplementation under Articles 1338(3), 1339, 1342, 1343, and 1347 of the Civil Code. A conflict of law or forum concerns which law governs the contract and which body decides disputes; it is resolved through Article 75(2) of GR 22/2020, Article 56 of Law 30/1999, and public-policy review at the enforcement stage.

1. *FIDIC as standard conditions, not a legal system*

FIDIC binds because it is agreed upon. Its binding force derives from Article 1338(1) of the Civil Code and is subject to the validity requirements of Article 1320. FIDIC does not replace the law applicable to the contract, and GR 22/2020 confirms this directly: Article 75(2) provides that construction work contracts are subject to the law applicable in Indonesia. Article 76 of the same Regulation provides that the contract documents consist of several documents, including the special and general conditions of contract, and that the contract agreement must list the binding documents and their order of precedence. Article 77, as amended by GR 14/2021, distinguishes contracts financed from state finances, which must use standardized documents, from contracts not financed from state finances, which may use standardized documents in accordance with the parties' agreement. The scope for

using FIDIC is therefore widest in contracts outside state finances, but it remains subject to Article 75(2). In contracts involving government agencies, the scope of autonomy is narrower still because the contractual relationship is hybrid: it is subject to private law principles but also to the state's regulatory and supervisory authority (Adzan, 2025). In addition, Article 79 of GR 22/2020 allows a construction contract expert to review the contract before signing for high-technology or high-risk works and requires such a review for integrated construction works.

The Golden Principles accept this framework. They state that amendments to the general conditions made to achieve consistency with the governing law, including amendments required by mandatory law, are not regarded as a departure from the FIDIC principles (FIDIC, 2019). Adapting FIDIC to Indonesian law is therefore not a deviation from FIDIC but a mode of use that FIDIC itself envisages. Table 1 summarizes the mapping of FIDIC provisions against Indonesian norms. For each provision, the table states the type of collision, the basis on which the status of the Indonesian norm was determined, the legal consequence, distinguishing express statutory rules from the author's interpretation, and the corresponding drafting adjustment.

Table 1. Collisions between FIDIC 2017 provisions and Indonesian legal norms

FIDIC 2017 provision	Indonesian norm	Type of collision	Basis for norm status	Legal consequence	Drafting adjustment
Governing law (Sub-Clause 1.4; Contract	GR 22/2020 Art. 75(2); Law 30/1999 Art. 56 and Elucidation	Conflict of law	Express wording: contracts are subject to the law applicable in Indonesia	Indonesian law governs (express norm); a foreign choice of law cannot displace it (author's interpretation)	State Indonesian law and list mandatory norms (Rec. 1)

FIDIC 2017 provision	Indonesian norm	Type of collision	Basis for norm status	Legal consequence	Drafting adjustment
Data)					
Contract language and ruling version (Sub-Clause 1.4)	Law 2/2017 Art. 50; Law 24/2009 Art. 31; PR 63/2019 Art. 26	Norm conflict (formal)	Imperative wording; specific rule for construction contracts; no sanction stated	Bilingual contract and Indonesian version in disputes with a foreign party (express norm); not automatically void (SEMA 3/2023 for private parties; author's interpretation for state parties)	Bilingual contract with Indonesian version prevailing in such disputes (Rec. 2)
Limitation of liability (Sub-Clause 1.15)	Law 2/2017 Arts. 63, 65; GR 22/2020 Arts. 85–90, 166; Civil Code Arts. 1337, 1609	Norm conflict (substantive)	Imperative wording (wajib); administrative sanction; public-safety purpose	Cap does not apply to the extent that it reduces building-failure liability (author's interpretation); burden may be insured (GR 22/2020 Arts. 89–90, express)	Exclude building-failure liability from the cap; align insurance (Rec. 3)
Termination (Clauses 15)	Civil Code Arts. 1266, 1611;	Difference in interpretation (contest	Status of Art. 1266 disputed in doctrine;	Waiver acceptable if grounds are objective and procedure is	Objective grounds; retain notice

FIDIC 2017 provision	Indonesian norm	Type of collision	Basis for norm status	Legal consequence	Drafting adjustment
and 16; Sub-Clause 1.16)	Law 2/2017 Art. 47(1)(i)	ed)	Art. 47(1)(i) requires contractual termination provisions	followed, subject to good-faith review; litigation risk remains (author's interpretation)	procedure (Rec. 4)
28-day claim notice (Sub-Clause 20.2.1)	Civil Code Arts. 1338(3), 1967	Difference in interpretation	No statutory rule on contractual notice periods; Art. 1967 governs prescription only	Valid as a procedural condition, not a limitation period; cannot be relied upon where the delay is caused by the employer (author's interpretation)	Retain deadline with an employer-caused exception (Rec. 5)
Delay damages (Sub-Clause 8.8)	Civil Code Arts. 1249, 1309	Difference in interpretation	Default rules; Art. 1309 confers a judicial power of modification	Respected in principle (Art. 1249); may be modified where the obligation has been partly performed (Art. 1309, express)	Basis of calculation and concurrent delay (Rec. 6)
DAA B and arbitration	Law 2/2017 Art. 88; GR	Conflict of forum (procedural)	Dispute board optional (Art.	DAAB can be aligned with the Dispute Board	Align DAAB with GR 22/2020

FIDIC 2017 provision	Indonesian norm	Type of collision	Basis for norm status	Legal consequence	Drafting adjustment
(Clause 21)	22/2020 Arts. 93–96; Law 30/1999 Arts. 65–66		88(5)); exequatur and public-policy review mandatory (Art. 66)	(author's interpretation); international awards require exequatur and public-policy review (express norm)	Art. 95; plan for exequatur (Rec. 7)

Source: Author's analysis based on FIDIC (2017, 2019), Al-Hyari (2023), and the legislation cited. "Express norm" denotes a consequence stated in legislation; "author's interpretation" denotes the author's reading.

2. Formal norm conflict: contract language

Article 31(1) of Law 24/2009 requires the use of Indonesian in agreements involving Indonesian institutions or citizens. Article 26 of PR 63/2019 reaffirms this obligation, requires agreements involving a foreign party also to be written in the national language of the foreign party and/or English, and provides in paragraph (4) that, in the event of a difference in interpretation, the language used is the language agreed in the agreement. For construction work contracts, Article 50 of Law 2/2017 is more specific: the contract is made in Indonesian (paragraph 1), a contract with a foreign party must be made in Indonesian and English (paragraph 2), and, in the event of a dispute with a foreign party, the Indonesian-language contract is used (paragraph 3).

The relationship among these three norms must be resolved carefully using the preference maxims. Article 50(3) of Law 2/2017 and Article 26(4) of PR 63/2019 regulate the same matter, namely the language version that governs in the event of a difference, but with different content. Because a law ranks higher than a presidential

regulation under Article 7(1) of Law 12/2011, and because Law 2/2017 specifically regulates construction work contracts, Article 50(3) prevails under the *lex superior* and *lex specialis maxims*. Consequently, a FIDIC clause designating English as the sole ruling language cannot override the bilingual requirement, and, in a dispute with a foreign party, the parties cannot agree that the English version governs. This reading is the author's interpretation, because Article 50 of Law 2/2017 does not prescribe a sanction for its breach.

The next issue is the legal consequence of breaching that obligation. In *Nine AM Ltd. v. PT Bangun Karya Pratama Lestari*, the West Jakarta District Court, in Decision No. 451/Pdt.G/2012/PN.Jkt.Bar of 20 June 2013, declared an English-language loan agreement null and void. The decision was upheld by the Jakarta High Court in Decision No. 48/PDT/2014/PT.DKI of 7 May 2014, and the Supreme Court rejected *Nine AM Ltd.*'s cassation appeal in Decision No. 1572 K/Pdt/2015. This series of decisions essentially linked the breach of Article 31(1) of Law 24/2009 to the requirement of a lawful cause (Article 1320 in conjunction with Articles 1335 and 1337 of the Civil Code). The reasoning that links language to *causa* has been criticized because language is a formal requirement rather than an element of *causa*, and Law 24/2009 does not prescribe annulment as a sanction (Penasthika, 2019; Rajagukguk, 2023; Ali & Gayatri, 2026). Hosen et al. (2021) show that the courts' application of the language requirement has been inconsistent, increasing risks and costs for both foreign and domestic businesses. The Civil Chamber formulation in SEMA 3/2023 subsequently stated that an agreement made in a foreign language between an Indonesian private institution and/or an Indonesian individual and a foreign party, without an Indonesian translation, cannot serve as a ground for annulling the agreement, unless it is proven that the absence of the translation resulted from the bad faith of one of the parties.

The Nine AM Ltd. case does not concern a construction contract; its relevance lies in how courts assess the consequences of breaching the language requirement, not in the content of the agreement. The author argues that the collision between the FIDIC language clause and Article 50 of Law 2/2017 is a formal norm conflict. Its legal consequence is an obligation to provide an Indonesian version and to make it the governing version in disputes with a foreign party, not the annulment of the contract. This conclusion is consistent with SEMA 3/2023 and with the proposal that language be treated as a means of proof rather than a requirement of validity (Ali & Gayatri, 2026). However, SEMA 3/2023 is textually addressed to Indonesian private institutions and/or Indonesian individuals, so construction contracts involving state institutions or government agencies, which are also mentioned in Article 31(1) of Law 24/2009, are not expressly covered. Moreover, a Supreme Court circular letter is not legislation within the hierarchy of Article 7 of Law 12/2011, so full certainty will be achieved only when the sanction for breaching the language requirement is set out in legislation.

3. Substantive norm conflict: liability for building failure

Article 65(1) of Law 2/2017 provides that the service provider must be liable for building failure for a period corresponding to the planned service life of the construction, and paragraph (2) limits this period to a maximum of 10 years from final handover where the planned service life exceeds 10 years. Paragraph (4) requires this period to be stated in the contract, and Article 63 requires the service provider to replace or repair building failures caused by its fault. Similar provisions are repeated in Article 86 of GR 22/2020, while Article 87 requires the planned service life and the liability period to be stated clearly and expressly in the construction work contract. Under Article 85 of GR 22/2020 as amended by GR 14/2021, building failure is determined by an expert assessor (*penilai ahli*), and Article 166 imposes

administrative sanctions on a service provider that fails to replace or repair a building failure. The author interprets these provisions as mandatory norms on the basis of the imperative term *wajib* (must), the administrative sanction, and their purpose, namely building safety and the protection of third parties.

Sub-Clause 1.15 of the 2017 Red Book limits the parties' liability for indirect loss and caps the Contractor's total liability at the amount stated in the Contract Data or, if none is stated, the Accepted Contract Amount (Al-Hyari, 2023, p. 223). The same Sub-Clause does not limit liability in cases of fraud, gross negligence, deliberate default, or reckless misconduct (FIDIC, 2017). The cap is valid for ordinary contractual liability. In the UAE, the cap does not extend to the ten-year liability that cannot be excluded under Articles 880 and 881 of the 1985 Civil Transactions Law (Al-Hyari, 2023, p. 223). The Indonesian framework is similar. The author argues that Sub-Clause 1.15 does not apply to the extent that it limits the period or scope of building failure liability below the standard set by Article 65 of Law 2/2017. The basis for this conclusion is Article 1337 of the Civil Code: an agreement cannot eliminate obligations imposed by law in the public interest.

The relationship between Article 65 of Law 2/2017 and Article 1609 of the Civil Code also requires clarification. Article 1609 imposes ten-year liability on the architect and the contractor where a building collapses because of a construction defect or unsuitable ground. Suardika et al. (2021) note that the phrase *paling lama 10 tahun* (a maximum of 10 years) in Article 65(2) is open to multiple interpretations in relation to Article 1609 and propose resolving the issue through the *lex specialis maxim*. The author agrees with this direction: Article 65 of Law 2/2017 is *lex specialis* and *lex posterior* in relation to Article 1609 of the Civil Code, so the standard of building failure liability in construction contracts is Article 65.

This mandatory norm does not eliminate the scope for contractual risk

allocation. Article 89(1) of GR 22/2020 allows the service provider's obligation to replace or repair building failures to be transferred to a third party in the form of insurance, which, according to its Elucidation, includes professional liability insurance and building insurance. Article 90 requires the party that the expert assessor determines to be responsible to compensate those harmed by the building failure, but paragraph (5) allows such compensation to be transferred to a third party in the form of insurance. Thus, what is prohibited is limiting liability below the statutory standard, not transferring its financial burden through insurance. For contract drafters, the consequence is that the insurance provisions in the Particular Conditions should be aligned with the liability period in Article 65, so that excluding building failure liability from the Sub-Clause 1.15 cap does not create uninsured risk.

4. Difference in interpretation: contract termination

Article 1266 of the Civil Code provides that the rescission of a reciprocal agreement for default must be requested from the court, even where a dissolving condition is stated in the agreement. Construction contracts in Indonesia may contain clauses waiving this provision, and such waivers can become a source of dispute. Thalib et al. (2026) note conflicting court decisions concerning unilateral termination by regional governments in construction contracts. In the UAE, a similar problem is resolved by testing FIDIC termination clauses against Civil Code provisions that require a court judgment or the parties' consent (Al-Hyari, 2023, pp. 225–228).

The author argues that this collision is a difference in interpretation rather than a norm conflict, because Sub-Clause 1.16 of the 2017 Red Book already makes the termination clauses subject to the governing law. A waiver of Article 1266 can be accepted provided that the grounds for termination are formulated objectively and the notice procedure is followed, because the function of Article 1266 is to prevent

arbitrary unilateral termination. This view is contested: Indrawati and Suhendra (2025) treat Article 1266 as imperative and conclude that a clause waiving it is void, although only that clause, and not the whole agreement, is affected. Courts or arbitrators may still review the exercise of termination against the standard of good faith under Article 1338(3). This view is the author's argument; given the express wording of Article 1266 and the lack of uniform case law, the litigation risk of unilateral termination remains and must be taken into account in drafting. The argument is reinforced by Article 47(1)(i) of Law 2/2017, which requires construction work contracts to contain provisions on termination arising from a party's failure to perform its obligations. The sectoral law thus presupposes a contractual termination regime, so a detailed termination clause is better viewed as an implementation of Article 47 than as a derogation from Article 1266.

5. Difference in interpretation: claim notice deadlines

Sub-Clause 20.2.1 of the 2017 Red Book requires a claim to be notified to the Engineer within 28 days after the claiming party became aware, or should have become aware, of the event giving rise to the claim; if this deadline is not met, the claim is time-barred (Al-Hyari, 2023, p. 231). English courts have treated a comparable provision in the 1999 edition as a condition precedent to a claim (*Obrascon Huarte Lain SA v Her Majesty's Attorney General for Gibraltar* [2014] EWHC 1028 (TCC)). In the UAE, the validity of this deadline is debated because that country's Civil Code does not permit departure from statutory limitation periods (Al-Hyari, 2023, p. 233).

Under Indonesian law, the 28-day deadline cannot be equated with prescription within the meaning of Article 1967 of the Civil Code, because it does not extinguish the right of action through the lapse of a statutory period; rather, it is an agreed procedural condition intended to maintain orderly claim administration. The Golden

Principles also require every time period in the contract to be of reasonable duration (FIDIC, 2019). The 2017 edition itself allows late notice to be assessed, because Sub-Clauses 20.2.2 and 20.2.5 allow the claiming party to contest a time-bar notice and require the Engineer's agreement or determination to address whether late submission is justified (FIDIC, 2017). Practice on the Peusangan Hydropower Plant project shows that claims are still rejected because of late notice (Febriko et al., 2026), so the issue is of practical relevance. The author argues that the deadline is valid but that the employer cannot rely on it where the late notice was caused by the employer's own conduct, because such reliance would be contrary to Article 1338(3) of the Civil Code.

6. Difference in interpretation: delay damages

Sub-Clause 8.8 of the 2017 Red Book governs delay damages in an amount stated in the contract (Al-Hyari, 2023, p. 224). Article 1249 of the Civil Code respects agreed damages, so this provision applies in principle. The judge may modify the amount under Article 1309 where the principal obligation has been partly performed. Sutardi et al. (2026) show that the imposition of delay penalties must remain proportional: delays should be analyzed using the critical path method, concurrent delays should not be borne entirely by the service provider, and excessive penalties tend to be corrected by arbitral tribunals. The collision here concerns how delay is calculated and proven, not the validity of the clause.

7. Conflict of law and forum: choice of law and dispute resolution

Clause 21 of the 2017 Red Book places the Dispute Avoidance/Adjudication Board (DAAB) before arbitration. The Golden Principles require that, unless contrary to the governing law, all formal disputes be referred to a DAAB for a provisionally binding decision as a condition precedent to arbitration (FIDIC, 2019). Article 88 of Law 2/2017 regulates deliberation, the dispute resolution stages set out in the contract,

and mediation, conciliation, and arbitration, and paragraph (5) allows the parties to establish a dispute board in addition to mediation and conciliation. Supriyadi et al. (2022) observe that Law 2/2017 regulates only non-litigation mechanisms for construction disputes, which makes the contractual design of the dispute resolution stages decisive. The Elucidation of that paragraph defines a dispute board as a team established by agreement of the parties from the time of the construction services engagement to prevent and mediate disputes. GR 22/2020 specifies that the Dispute Board functions both to prevent and to resolve disputes (Article 93(4)), that it is established through a contract clause and a tripartite agreement (Article 94), and that its decision is final and binding if no objection is raised within 28 calendar days (Article 95(2)). The DAAB can therefore be aligned with the Dispute Board framework, as an earlier comparative study also noted (Hambali et al., 2025), although their positions differ: under FIDIC, the DAAB decision is a stage before arbitration, whereas under GR 22/2020 the Dispute Board is an option alongside mediation and conciliation. Hardjomuljadi (2020) shows that reluctance to use dispute boards in Indonesia has shifted from legal and technical concerns toward concerns of trust, cost, and impartiality, while Yudhantaka et al. (2023) consider that dispute board decisions do not yet provide full certainty because they are not supported by an enforcement mechanism. This problem is consistent with the finding that the amicable out-of-court settlement of civil disputes provides certainty only if its outcome is binding, final, and enforceable on a clear statutory basis (Gunawan, 2022). The Particular Conditions should therefore expressly regulate the relationship between DAAB decisions, the 28-day objection mechanism in Article 95 of GR 22/2020, and the arbitration stage.

A more sensitive issue is the choice of law. Article 56(2) of Law 30/1999 entitles the parties to determine the law applicable to the resolution of their dispute, whereas Article 75(2) of GR 22/2020 provides that construction work contracts are subject to

the law applicable in Indonesia. The Elucidation of Article 56(1) of Law 30/1999 states that, even where arbitrators are authorized to decide according to justice and propriety (*ex aequo et bono*), mandatory law (*dwingende regels*) must be applied and cannot be departed from, while the Elucidation of paragraph (2) provides that, unless the parties determine otherwise, the applicable law is the law of the place where the arbitration is conducted. The author argues that the two provisions can be read harmoniously: Article 56(2) governs the general authority of the parties in arbitration, while Article 75(2) is a specific provision for construction work contracts subject to Law 2/2017. For construction work in Indonesia, a foreign choice of law cannot displace Indonesian law as the law of the contract, and, at a minimum, the mandatory norms relating to the performance of work at the project site continue to apply. This reading is also consistent with the finding that the law governing the contract determines the meaning of open-textured concepts in the FIDIC standard conditions (Jovanović, 2025). Uncertainty in the recognition of choice-of-law and choice-of-forum clauses in Indonesian judicial practice reinforces the need to formulate this matter expressly in the contract (Meryadinata et al., 2025; Kusumadara, 2025), particularly because Indonesia has no codified private international law statute that sets the limits of choice of law (Lasut et al., 2026).

The next point of sovereignty lies at the enforcement stage. An international arbitral award is recognized and enforceable in Indonesia only if it is not contrary to public order (Article 66(c) of Law 30/1999) and after an *exequatur* has been obtained from the Chief Judge of the Central Jakarta District Court (Article 65 and Article 66(d)); where the Republic of Indonesia itself is a party, the *exequatur* is granted by the Supreme Court (Article 66(e)). Utama et al. (2026) show that the uncertainty in enforcing foreign arbitral awards in Indonesia stems mainly from the undefined public policy exception, which leaves room for courts to re-examine the merits of the

dispute. Sugianto et al. (2025) likewise found inconsistent patterns in the interpretation of public policy in the refusal or annulment of foreign arbitral awards, and Berutu (2026) shows that the material non-disclosure of an arbitrator's conflict of interest may support refusal of enforcement on due-process and public-policy grounds. A breach of the mandatory norms identified in Table 1 is therefore not merely a question of clause validity but also a risk of the *exequatur* being refused. Utama et al. (2026) also note that the procedural reforms introduced by Supreme Court Regulation No. 3 of 2023 improved the examination procedure but could not resolve the substantive problem, because its source lies in the statute. For contract drafters, this means that compliance with mandatory norms from the drafting stage is a more reliable way of preserving the enforceability of awards than relying on a narrow judicial interpretation of public policy.

The answer to the second research question is as follows. The limits of freedom of contract in FIDIC depend on the type of norm encountered. Substantive mandatory norms, such as liability for building failure, render the conflicting part of a clause inapplicable. Formal mandatory norms, such as the bilingual requirement and the Indonesian ruling version, require compliance without necessarily invalidating the contract. Default norms, such as Articles 1266 and 1249 of the Civil Code, may be derogated from or elaborated by contract, but their performance remains subject to good faith. At the level of law and forum, Article 75(2) of GR 22/2020 and public-policy review limit the effect of choice-of-law and choice-of-forum clauses.

C. A Model for Harmonizing Civil Law and Common Law to Preserve Indonesian Legal Sovereignty

The proposed harmonization is not the assimilation of FIDIC into the Civil Code but the determination of an order of precedence among four layers of norms,

supplemented by a safeguard track at the dispute resolution stage. The model is derived directly from the classification of collisions in Section B.

1. Layers of norms and order of precedence

The first layer consists of Indonesian mandatory norms that cannot be derogated from: the bilingual requirement and the Indonesian ruling version (Article 50 of Law 2/2017), liability for building failure (Articles 63 and 65 of Law 2/2017 and Articles 85 to 87 of GR 22/2020, Article 85 as amended by GR 14/2021), the subjection of construction work contracts to Indonesian law (Article 75(2) of GR 22/2020), and the prohibition of a cause that is contrary to law, morality, or public order (Article 1337 of the Civil Code). The second layer is the Particular Conditions, which adapt the general conditions to the first layer; according to the Golden Principles, such adaptation does not breach the FIDIC principles (FIDIC, 2019). The third layer is the FIDIC 2017 General Conditions as the agreed base text. The fourth layer is interpretation and supplementation under Articles 1338(3), 1339, 1342, 1343, and 1347 of the Civil Code, with the UNIDROIT Principles serving as an interpretive reference in international relationships. The safeguard track consists of deliberation, mediation or conciliation, the dispute board, and arbitration, with international arbitral awards subject to public-policy review when an exequatur is sought.

Figure 1. Layered harmonization model for FIDIC contracts under Indonesian law

Layer 1 — Indonesian mandatory norms Law 2/2017 Art. 50 (language); Arts. 63 and 65 (building failure); GR 22/2020 Art. 75(2) (Indonesian governing law) and Arts. 85–87; Civil Code Art. 1337 (prohibited cause)	Safeguard track 1. Deliberation (Law 2/2017 Art. 88(1); GR 22/2020 Art. 92)
Layer 2 — Particular Conditions Adapt the General Conditions to Layer 1; prevail over the General Conditions (Sub-Clause 1.5); FIDIC Golden Principles: amendments required by the governing law are not a departure	2. Mediation/conciliation or Dispute Board/DAAB (Law 2/2017 Art. 88(4)–(5); GR 22/2020 Arts. 93–96; FIDIC Clause 21)
Layer 3 — FIDIC 2017 General Conditions Agreed base text; binding under Civil Code Arts. 1338(1) and 1320	3. Arbitration (Law 30/1999); mandatory law still applies (Elucidation of Art. 56(1))
Layer 4 — Interpretation and supplementation Civil Code Arts. 1338(3), 1339, 1342, 1343, 1347; UNIDROIT Principles as an interpretive reference	4. Exequatur and public-policy review (Law 30/1999 Arts. 65–66)

Precedence runs from Layer 1 to Layer 4. Layers 2–4 form a contractual order of documents, not the statutory hierarchy of legislation.

Source: Author's construction, 2026

Figure 1, presented as an editable diagram, shows that collisions are resolved from top to bottom: a clause in a lower layer applies only to the extent that it is consistent with the layers above it. The order of the second and third layers is consistent with the requirement in Article 76 of GR 22/2020 that the contract agreement state the order of precedence of the contract documents. The model adds one condition to that requirement: the order of precedence of the documents cannot place a contractual clause above the norms of the first layer. The order of the second to fourth layers is an order of contractual documents determined by the parties, not the hierarchy of legislation.

The relationship between the second and third layers is contractual. Sub-Clause 1.5 of the 2017 Red Book places the Particular Conditions above the General Conditions in the priority of documents (FIDIC, 2017), and Article 76 of GR 22/2020 requires the contract agreement to list the binding documents and their order of precedence. The first layer is different in kind: it does not prevail because of its position in a list of documents, but because a clause that contravenes it fails the

validity test under Articles 1320 and 1337 of the Civil Code or is displaced by an express statutory rule. Because the Civil Code contains no general provision on partial nullity, the Particular Conditions should also contain a severability clause so that the inapplicability of one clause does not affect the remainder of the contract; this is a drafting recommendation rather than an express statutory rule.

2. Proper use of the preference maxims

A contract is not legislation within the hierarchy of Article 7(1) of Law 12/2011, so the maxim *lex superior derogat legi inferiori* cannot be applied mechanically between a statute and a FIDIC clause. The relationship between a statute and a contractual clause is resolved through a validity test under Articles 1320 and 1337 of the Civil Code. The preference maxims remain relevant among statutory norms. First, Article 50(3) of Law 2/2017 prevails over Article 26(4) of PR 63/2019 under the *lex superior* and *lex specialis* maxims. Second, Article 65 of Law 2/2017 prevails over Article 1609 of the Civil Code under the *lex specialis* and *lex posterior* maxims. Amendments are a different matter: where Law No. 6 of 2023 or GR 14/2021 amends a provision, the amended text replaces the original and no preference maxim is needed. Article 77 of GR 22/2020, for example, must now be read in its amended form, so every article reference in the contract must be checked against the text in force. Using the maxims only for relationships between legislative norms, and the validity test for relationships between legislation and the contract, avoids the error of treating a contract as if it were a norm ranking below statute within the hierarchy of legislation.

3. Relationship with legal sovereignty and legal certainty

The author argues that Indonesian legal sovereignty in international construction contracts is threatened not by the use of FIDIC but by two things: the assumption that FIDIC stands above national law, and the lack of clarity about which

Indonesian norms are mandatory. The layered model addresses both by placing mandatory norms explicitly in the top layer and leaving the remainder to party autonomy. Legal certainty increases because the parties know from the outset which clauses may be amended, which must be amended, and which need only be interpreted.

Oman's unified standard contract, largely derived from the Red Book but adapted to local law, shows that such adaptation can be institutionalized (Saad et al., 2025). In Indonesia, Napitupulu et al. (2026) likewise propose guidance from procurement agencies and technical ministries. The layered model in this article could form the content of such guidance, because it specifies which norms must be accommodated in the Particular Conditions.

The model also differs from the harmonization proposals in previous research. Napitupulu et al. (2026) view harmonization as hybridization through clause modification and a national arbitral forum, while Affandi (2025) proposes an integrative approach that combines the procedural certainty of civil law with the flexibility of common law in resolving change orders. Sirait et al. (2026) and Oktariansyah et al. (2025) likewise call for clearer harmonization and early dispute-prevention mechanisms. These proposals explain the direction of harmonization but do not determine the order of precedence when a contractual clause collides with a particular norm. The layered model in this article fills this gap with a testable priority rule: a clause is examined first against the first-layer norms, then against the Particular Conditions, and only then interpreted using the default rules. This approach is consistent with the finding that the allocation of risk and liability under Law 2/2017 remains ambiguous and requires a clearer regulatory framework (Edwina et al., 2025), but it offers contract drafters a more operational procedure.

4. Recommendations for drafting the Particular Conditions

Recommendations 1 to 7 below are derived from the rows of Table 1, while Recommendation 8 is derived from Section B.1.

1. State in the contract agreement that the contract is subject to Indonesian law in accordance with Article 75(2) of GR 22/2020, together with a list of the mandatory norms that continue to apply, so that the FIDIC Contract Data do not contain a conflicting choice of law, and include a severability clause (from Sections B.7 and C.1).
2. Prepare the contract in Indonesian and English, signed simultaneously, with a language clause that designates the Indonesian version as the reference in disputes with a foreign party in accordance with Article 50(3) of Law 2/2017 (from Section B.2).
3. Exclude building failure liability under Articles 63 and 65 of Law 2/2017 from the liability cap in Sub-Clause 1.15, state the liability period in the contract in accordance with Article 65(4) of Law 2/2017 and Article 87 of GR 22/2020, and align the insurance provisions with Articles 89 and 90 of GR 22/2020 (from Section B.3).
4. Where Article 1266 of the Civil Code is waived, formulate the grounds for termination objectively and retain the FIDIC notice procedure (from Section B.4).
5. Retain the 28-day claim notice deadline, with an exception where the late notice is caused by the employer (from Section B.5).
6. Specify a basis for calculating delay damages that refers to critical path analysis and to the apportionment of responsibility for concurrent delay (from Section B.6).
7. Establish a dispute board in accordance with Article 88(5) of Law 2/2017 and Articles 93 to 96 of GR 22/2020, regulate the relationship between DAAB decisions and the 28-day objection mechanism in Article 95 of GR 22/2020, and consider the seat of arbitration and the feasibility of obtaining an exequatur, including from the Supreme

Court where the Republic of Indonesia is a party, from the drafting stage (from Section B.7).

8. For integrated construction works, have the contract reviewed by a construction contract expert before signing, as required by Article 79(2) of GR 22/2020, and consider a similar review for high-technology or high-risk works (from Section B.1).

At the policy level, the ministry responsible for construction services, together with the government procurement agency, should issue official guidance on drafting FIDIC Particular Conditions for Indonesia that contains a list of mandatory norms and model clauses for the items above. Lawmakers should also set out the legal consequences of breaching the language requirement in legislation, not only in a formulation of the Supreme Court chambers.

The answer to the third research question is therefore the layered harmonization model in Figure 1, applied through the recommendations above.

4. Conclusion

In answer to the first research question, civil law and common law interact in FIDIC-based contracts in Indonesia in a layered manner. Common law drafting techniques shape the text of the Red Book, but its effect, interpretation, and supplementation are determined by the Civil Code and the sectoral regulation of construction services, because construction work contracts are subject to Indonesian law under Article 75(2) of GR 22/2020. The interaction runs in both directions: Indonesian law is more respectful of party autonomy than English law with respect to agreed damages but more protective with respect to termination.

In answer to the second research question, the limit of freedom of contract depends on the type of collision. Under existing law, three requirements cannot be contracted out of: construction work contracts are subject to Indonesian law; they

must be bilingual, with the Indonesian version used in disputes with a foreign party; and building-failure liability under Articles 63 and 65 of Law 2/2017 cannot be reduced below the statutory standard, although its financial burden may be insured. International arbitral awards are, in addition, enforceable only after exequatur and public-policy review. Termination, claim notice, and delay damages are matters of interpretation: the FIDIC clauses are valid in principle, but their exercise remains subject to good faith and judicial modification, and the validity of waiving Article 1266 of the Civil Code remains contested.

In answer to the third research question, this article proposes a layered harmonization model in which Indonesian mandatory norms form the first layer, the Particular Conditions adapt the General Conditions to those norms, the General Conditions serve as the agreed base text, and the Civil Code governs interpretation, with the dispute board, arbitration, and public-policy review as safeguards. The model is a proposal derived from the analysis, not an existing legal rule. Its conceptual contribution is the classification of collisions by the instrument needed to resolve them and the separation of the validity test from the contractual order of documents; its practical contribution is a sequence of tests that contract drafters can apply clause by clause.

For contract drafting, the Particular Conditions should implement the eight recommendations in Section C.4. For regulatory implementation, the ministry responsible for construction services and the procurement agency should issue guidance listing the mandatory norms, and lawmakers should state the consequence of breaching the language requirement in legislation. For dispute resolution, parties should plan the seat of arbitration and exequatur at the drafting stage. The model is the result of normative analysis and has not been empirically validated; further

research should test it against published construction arbitral awards, other FIDIC editions such as the Yellow Book and Silver Book, and data from projects that use FIDIC.

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