

Klausula Unforeseeable Difficulties dalam Penerapan Kontrak Engineering, Procurement and Construction dengan Standar Kontrak FIDIC Conditions of Contract for EPC/Turnkey Projects First Edition 1999 (Studi Pada Proyek Kereta Cepat Jakarta - Bandung) = Unforeseeable Difficulties in the Implementation of Engineering, Procurement and Construction Contracts with Contract Standards FIDIC Conditions of Contract for EPC/Turnkey Projects First Edition 1999 (Study on the Jakarta - Bandung High Speed Rail Project)

Fikriya Afifiana Faizah, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=9999920554821&lokasi=lokal>

Abstrak

Tesis ini membahas mengenai pengaturan Kontrak Engineering, Procurement and Construction (EPC) secara internasional dan dalam hukum nasional serta membahas mengenai penerapan klausula kontrak EPC khususnya Unforeseeable Difficulties yang menggunakan Standar Kontrak FIDIC Conditions of Contract for EPC/Turnkey Projects First Edition 1999 (FIDIC Silver Book) dengan studi pada pelaksanaan Kontrak EPC Proyek Kereta Cepat Jakarta - Bandung (KCJB). Penelitian ini merupakan penelitian normatif atau doktrinal dan sosiolegal dengan menggunakan pendekatan perundang - undangan, pendekatan konseptual dan pendekatan kasus. Hasil penelitian menyimpulkan bahwa kontrak konstruksi yang melibatkan unsur asing merupakan bagian dari kontrak internasional. Berdasarkan sifatnya Kontrak EPC dengan standar kontrak dari FIDIC Silver Book bersifat Soft-law atau perjanjian internasional yang bersifat tidak mengikat (rekomendatif), dengan bentuk kontrak standar atau model kontrak (model contracts) yang diakui oleh asosiasi dan dijadikan acuan bagi kontrak - kontrak lainnya. Kontrak EPC sudah termuat didalam Undang - Undang No. 02 Tahun 2017 tentang Jasa Konstruksi namun belum diatur secara detail dan spesifik. Pelaksanaan penerapan Kontrak EPC pada Proyek KCJB selain tunduk pada Undang - Undang Jasa Konstruksi juga tunduk pada peraturan sektoral lainnya. Secara teori tujuan penggunaan kontrak EPC yakni kontraktor dapat memberikan kepastian dari kontrak yang disepakati baik harga, waktu penyelesaian dan mutu atau performa kontrak tidak berubah, namun berdasarkan fakta yang diperoleh dilapangan dari hasil wawancara pelaksanaan kontrak EPC pada Proyek KCJB mengalami keterlambatan sehingga kontrak EPC akan diperpanjang. Selain itu banyak terdapat perubahan klausula kontrak dari standar FIDIC Silver Book yang disepakati para pihak dalam Proyek KCJB salah satunya mengenai Unforeseeable Difficulties. Sesuai dengan prinsip asas proporsionalitas dalam kontrak diperlukannya peran ahli hukum yang berkompeten (lawyer, legal consultant) agar pada saat perancangan kontrak terhindar dari risiko hukum (legal risk) dikarenakan keseluruhan proses bisnis melibatkan hukum dari awal hingga akhir.

.....This thesis discusses the arrangement of Engineering, Procurement and Construction (EPC) Contracts internationally and in national law and discusses the application of EPC contract clauses, especially Unforeseeable Difficulties using the FIDIC Contract Standards Conditions of Contract for EPC/Turnkey Projects First Edition 1999 (FIDIC Silver Book) with a study on the implementation of the EPC Contract for the Jakarta - Bandung Fast Train (KCJB) Project. This research is a normative or doctrinal and sociolegal research using a statutory approach, a conceptual approach and a case approach. The results of the study conclude that construction contracts involving foreign elements are part of international contracts.

Based on its nature, EPC contracts with contract standards from the FIDIC Silver Book are Soft-law or non-binding international agreements (recommendation), in the form of standard contracts or model contracts (model contracts) that are recognized by associations and are used as references for other contracts. The EPC contract is already contained in Law No. 02 of 2017 concerning Construction Services but has not been regulated in detail and specifically. The implementation of the implementation of the EPC Contract on the KCJB Project, being subject to the Construction Services Law and also subject to other sectoral regulations. Theoretically, the purpose of using the EPC contract is that the contractor can provide certainty of the agreed contract both price, completion time and quality or contract performance does not change, but based on facts obtained in the field from the results of interviews on the implementation of the EPC contract on the KCJB Project, there is a delay so that the EPC contract will be extended. In addition, there are many changes to the contract clauses contract on the KCJB Project from the FIDIC Silver Book standard which have been agreed upon by the parties, one of which is regarding Unforeseeable Difficulties. In accordance with the principle of proportionality in contracts, it is necessary to have a competent legal expert (lawyer, legal consultant) in order to avoid legal risk when drafting a contract because the entire business process involves law from beginning to end.