

PROFILING OF EXTENSION OF TIME CASES IN MALAYSIAN
CONSTRUCTION PROJECTS

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DEDICATION

This thesis is dedicated to my late brother, Muid Latif, for showing me that kindness, dedication, and perseverance will take you far and beyond in life.

(Al-Fatihah)

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ABSTRACT

In the construction industry, disputes commonly happen because of the elements of competitive nature, complexity, and comprehensive contractual requirements of the construction projects. Delay and over costing are widespread occurrences in the construction industry. The nature of construction delays is such that they do not arise because of a single event, but rather because of a series of events that occur over time during the construction process. To account for this possibility, a competent construction contract must include clauses relating to Extension of Time (EOT) which allows a construction project's completion date to be changed while protecting the client. However, according to the National Construction Contracts and Law Report 2018, EOT is the most common issue being disputed. The two objectives of this research are to develop a profile of EOT cases in Malaysian construction projects and to determine the commonalities between the issues contributing to the disputes regarding EOT in Malaysian construction projects. The purpose of this study is to help contractors and employers better grasp their legal rights in disputes relating to EOT. The methodology used in the study is qualitative research using legal case analysis to study the court cases collected from the LexisNexis database. Fifteen cases were identified to be relevant for the discussion of the time extension issues. The findings of this research are categorized into elements of a profile of cases. It was found that there was an uptrend in the number of cases from the year 2012 to 2022, an even distribution of parties involved in the dispute between Client-Main Contractor and Main Contractor-Subcontractor, the construction phase being the most common time of conflict in the disputes, and Main Contractor being the usual party to hold liability in the disputes. Apart from that, the commonalities between the disputes which become an obstacle in claiming for EOT are delay in the performance of work by the contractor, changes in working orders by the client, termination during the construction phase, prolongation, acceleration, and the contractor's lack of attention to requirements of EOT application. The importance of the findings is to facilitate the construction players to understand through the profile of cases, the common issues in granting EOTs, the disputes related to it, and, to facilitate the preparation of the risk management or assessment before going into a contract or before going into a dispute.

ABSTRAK

Dalam industri pembinaan, pertikaian biasanya berlaku kerana unsur-unsur sifat kompetitif, kerumitan, dan keperluan kontrak yang komprehensif bagi projek pembinaan. Kelewatan dan kos berlebihan adalah kejadian norma dalam industri pembinaan. Sifat kelewatan pembinaan adalah sedemikian rupa sehingga ia tidak timbul kerana satu peristiwa, sebaliknya kerana satu siri peristiwa yang berlaku dari semasa ke semasa dalam proses pembinaan. Untuk mengambil kira kemungkinan ini, kontrak pembinaan yang cekap mesti memasukkan klausa yang berkaitan dengan Lanjutan Masa (LM) yang membenarkan tarikh penyiapan projek pembinaan ditukar sambil melindungi klien. Menurut Laporan Kontrak dan Undang-undang Pembinaan Kebangsaan 2018, LM ialah isu yang paling biasa dipertikaikan. Dua objektif penyelidikan ini adalah untuk membangunkan profil kes LM dalam projek pembinaan Malaysia dan untuk menentukan persamaan antara isu yang menyumbang kepada pertikaian mengenai LM dalam projek pembinaan Malaysia. Tujuan kajian ini adalah untuk membantu kontraktor dan majikan memahami dengan lebih baik hak undang-undang mereka dalam pertikaian berkaitan LM. Metodologi yang digunakan dalam kajian adalah penyelidikan kualitatif menggunakan analisis kes undang-undang untuk mengkaji kes mahkamah yang dikumpul daripada pangkalan data LexisNexis. Lima belas kes dikenal pasti relevan untuk perbincangan isu lanjutan masa. Dapatan kajian ini dikategorikan kepada elemen profil kes. Hasil kajiannya, terdapat peningkatan dalam bilangan kes dari tahun 2012 hingga 2022, pengagihan sekata pihak yang terlibat dalam pertikaian antara Klien-Kontraktor Utama dan Kontraktor Utama-Subkontraktor, fasa pembinaan merupakan masa konflik yang paling biasa. dalam pertikaian, dan Kontraktor Utama menjadi pihak biasa yang memegang liabiliti dalam pertikaian. Selain itu, persamaan antara pertikaian yang menjadi penghalang dalam menuntut LM ialah kelewatan dalam pelaksanaan kerja oleh kontraktor, perubahan dalam perintah kerja oleh klien, penamatan semasa fasa pembinaan, pemanjangan, pecutan, dan kekurangan kontraktor. perhatian kepada keperluan aplikasi LM. Kepentingan penemuan adalah untuk memudahkan pemain pembinaan memahami melalui profil kes, isu biasa dalam pemberian LM, pertikaian yang berkaitan dengannya, dan, untuk memudahkan penyediaan pengurusan risiko atau penilaian sebelum memasuki kontrak atau sebelum berlaku pertikaian.

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LIST OF ABBREVIATIONS

CIDB	-	Construction Industry Development Board
COVID19	-	Coronavirus Disease
CIPAA	-	Construction Industry Payment & Adjudication Act 2012
EOT	-	Extension of Time
GDP	-	Gross Domestic Product
LD	-	Liquidated Damages
MCO	-	Movement Control Order
MLJ	-	Malayan Law Journal
PAM	-	Pertubuhan Arkitek Malaysia
PWD	-	Public Works Department
SO	-	Superintendent Officer
UTM	-	Universiti Teknologi Malaysia
WHO	-	World Health Organization

CHAPTER 1

INTRODUCTION

1.1 Background of the Research

The Construction Industry is one of the important sectors that contributes to the economic growth in Malaysia. The industry itself accounted for 5.2% of the Gross Domestic Product (GDP) with the value of construction work contracted at RM29.5 billion in the year 2022 (DOSM, 2022). The large volume and complexity of projects in Malaysia's construction sector offer significant challenges while also providing countless opportunities for construction players. Construction works in Malaysia are divided into several subsectors which are Residential Buildings, Civil Engineering, Non-Residential Buildings, and Special Trades Activities, while 60.70% of the share of the total value of construction work is held by the private sector, and the remaining 39.30% is held by the public sector.

In Malaysia, a successful construction project is defined as one that is completed on schedule, on budget, and in accordance with the project stakeholders' requirements. In addition, benefits to contractors, functioning, the absence of claims, court proceedings, and "fit for purpose" for the user have all been used as indicators of project success. Despite this, around 70% of construction projects are delayed owing to a variety of factors (Nahiyan *et al.*, 2019).

Delay is the period during which some aspects of a building are delayed or not completed due to unforeseen events. It is common knowledge that undertakings rarely go according to plan. Delays and over costing are widespread occurrences in the construction industry around the world, according to academics. Projects lag behind their planned timetables and exceed their budgets for a variety of causes, both internal and external (Abdul Rahman *et al.*, 2015). According to Nahiyah *et al.* (2019), it is highly rare for a project to be completed within the assigned timetable, despite the adequate planning done to complete the project within the allocated timeframe. The nature of construction delays is such that they do not arise as a result of a single event, but rather as a result of a series of events that occur over time during the construction process.

Delays in construction projects pose an impact on multiple critical parties, such as the architect, engineers, contractors, or even the client. To account for this possibility, a competent construction contract must include clauses relating to Extension of Time (EOT). The Extension of Time (EOT) clause allows a construction project's completion date to be changed if necessary, while simultaneously protecting the client (PropertyGuru, 2022). Extension of Time (EOT) is also defined by The Society of Construction Law in the Delay and Disruption Protocol 2nd Edition as an additional time granted to the Contractor to provide an extended contractual period or date by which work must be finished or should be completed, and to relieve it of obligation for losses incurred as a result of the delay (SCL, 2017).

If a delay becomes apparent and is attributable to a justifiable cause, the Extension of Time (EOT) provision allows for the construction period to be extended. When the cause is not the contractors' fault and all reasonable precautions to avoid the cause have been taken, an extension is authorized. Furthermore, the clause absolves the contractor of any duty for liquidated damages incurred as a result of the setbacks (Terence, 2021).

1.2 Problem Statement

In the construction industry, disputes commonly happen because of the elements of competitive nature, complexity, and comprehensive contractual requirements of the construction projects. According to the National Construction Contracts and Law Report 2018, Extension of Time (EOT) is the most common issue being disputed, while the valuation of final account and variations come later, followed by defective works' issue and Loss and Expense (L&E) claims. The disputes involved mostly between the client and the main contractor, and between the main contractor and the sub-contractor. Also, disputes are reported to occur usually during the period of the construction stage (NBS, 2018).

CIDB Construction Law Report 2020 summarized that there are 1,602 construction cases registered across all levels of court in Malaysia. The number of cases disposed of in 2020 is 1,388 construction cases. Although there is no further detailed summary on the type of disputes of the construction cases in Malaysia by the Malaysian Judiciary, the construction disputes are actively being brought to the courts every year, indicating that there are a lot of issues that remain unsolved by the construction parties which lead to the need for dispute resolution method to be pursued (CIDB, 2021a).

Construction project delays are a troubling but controllable issue. Delays in construction projects have become unavoidable and a global issue, becoming one of the construction industry's hurdles. Extension of Time (EOT) in construction projects is the result of a delay in the progress of the work, which has an impact on the project's cost and timeline. As a result, the general causes of Extension of Time (EOT) must be studied through the lens of construction delays.

Client-related delays are the most common reason for time extensions. Client-related delays are caused by four main flaws on the client's part: failure to meet his contractual obligations, making changes to the work required under the construction

contract, interfering with the contractor's responsibilities, and failing to coordinate the activities of separate contractors. The client's contractual obligations generally include providing the project location, approvals, funds, designs, and contract administration, while particular roles vary by contract.

Apart from that, numerous causes might cause construction projects to be delayed, including contractor errors, incompetence, and management inefficiencies. Clients and designers are typically unaware of the contractor's issues until a substantial schedule slippage develops. All these delays can be avoided if the contractor works efficiently and meticulously to the contract's specifications. The contractor is expected to take all necessary steps to guarantee that the project is finished effectively. There is no provision in the contract for providing an extension of time if the contractor does not take such actions to avoid delay. The contractor bears the risk of such delays, and if they occur, the contractor may be held liable for payment or allow the customer to deduct liquidated damages. On a more serious level, the client could be given the authority to decide on the contractor's employment status under the contract.

On the other hand, most delays in the design and construction process that are not caused by the client, consultants, contractors, suppliers, or any other party are beyond the control of any of the parties. Weather delays, labor disputes, unforeseen calamities, Force Majeure, and unexpected construction delays are among the reasons for the delays. Even with contingency time added, work delays still occur. In the event of a delay, an Extension of Time (EOT) will be allowed, but only on the condition that any subsequent losses and additional expenses be met by the primary contractors (Abdul Rahman *et al.*, 2015; Yusuwan *et al.*, 2021).

1.3 Research Question

The above problem statements lead to the following research question as stated below:

- 1.3.1 What are the commonalities between the issues contributing to the disputes regarding the Extension of Time (EOT) in Malaysian construction projects?

1.4 Objective of the Study

The objective of this research is as follows:

- 1.4.1 To develop a profile of Extension of Time (EOT) cases in Malaysian construction projects.
- 1.4.2 To determine the commonalities between the issues contributing to the disputes regarding the Extension of Time (EOT) in Malaysian construction projects.

1.5 Scope of the Study

The identified scope of this study is as follows: -

- 1.5.1 Construction cases in Malayan Law Journal on LexisNexis database.
- 1.5.2 Cases related to the Malaysian construction industry between the year 2012-2022.

1.6 Significance of the Study

The purpose of this study is to raise awareness among the employers and the contractors about the grounds for claiming Extension of Time (EOT) in construction projects and the issues therein. The findings of this study can also help the contractors

and the employers better grasp their legal positions in cases involving Extension of Time (EOT).

Furthermore, this study is critical as a foundational reference for people working in the construction sector, particularly contract administrators. As a result, this study may contribute to the improvement of contracting parties' awareness by disclosing some facts and knowledge about their rights.

1.7 Research Methodology

Research methodology is required to help carry out and achieve the study objectives. There are five stages to the research methodology procedure:

1.7.1 Phase 1: Preparation of Research Proposal

Initially, the research focused on a wide range of reading and comprehension of the concepts involved. To identify the problem, researchers used a variety of resources, including published journals, articles, and prior research papers, as well as electronic resources like the World Wide Web and online databases from the Universiti Teknologi Malaysia library's website.

1.7.2 Phase 2: Literature Review – Background Study

Following the identification of the study issue and purpose, the literature review is the second stage of the research process. This stage will entail the gathering of documents derived from secondary data. Secondary data was gathered from a variety of sources, including books, journals, research papers, and newspapers. Indeed, in this stage of the literature review, the published 10 reported court cases are the most useful. It's critical to assess the

current state of knowledge in the area of Extension of Time (EOT), including background, definition, techniques, and pertinent events.

1.7.3 Phase 3: Data Collection and Research Design

The methodology used in the development of this report, which spelled out the stages of the research study from inception to completion, is the third stage of the research process. The topics in this study were examined using a variety of case laws. As a result, data was gathered from the Malayan Law Journal (MLJ), which was accessed through the university's online library database, Lexis-Nexis. The data for this study was gathered from a variety of sources, including journals, articles, books, and websites.

There are two sorts of data required for this study. The first is primary data, which may be found in the Malayan Law Journal and other law journals contained in the UTM Online Database, e-Journals & e-Books, and primarily in the LexisNexis Legal Database. The second sort of data is secondary data, which was acquired from journals, articles, seminar papers, and books, and contains reports on construction project Extension of Time (EOT) available from an online database.

1.7.4 Phase 4: Data Analysis and Interpretation

Data analysis is the fourth stage of the research process. Data analysis, interpretation, and data organization are all part of this stage. This step involves processing and converting the acquired data into information that can be used in the research. The purpose of this research is to determine the concerns around the disputes relating to the Extension of Time (EOT) in construction. To meet all of the objectives, this chapter will offer data analysis and findings from the research.

1.7.5 Phase 5: Conclusion and Suggestions

The research concludes with conclusions and recommendations. At this point, the entire research process will be examined in order to determine whether the research goal has been met. The findings will be able to demonstrate the research's outcome. A conclusion will be drawn in accordance with the research goals.

1.8 Organization of the Research

This research covers 5 chapters as per the following: -

1.8.1 Chapter 1: Introduction

This chapter introduces the focus of the research. A brief background of the construction delay and Extension of Time (EOT) is discussed in this chapter. The objective of the study, scope, limitations, significance, and methodology of this research is outlined.

1.8.2 Chapter 2: Literature Review

The second chapter of this research would state the definition and terminologies, backgrounds, and concepts, as well as the existing legal provisions relating to Extension of Time (EOT) and its issues.

1.8.3 Chapter 3: Profiling

The third chapter explains the methodology used to profile the cases collected in order to bring them forward for discussion.

1.8.4 Chapter 4: Data Collection and Analysis

The fourth chapter highlights the grounds of the cases collected, analysis of the cases, and issues identified.

1.8.5 Chapter 5: Conclusion and Recommendation

In the final chapter, conclusions will be made based on the discussions and analysis. Recommendations for the construction practice and further research will be brought to light.

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