

**LEVEL OF UNDERSTANDING THE CONTRACT REQUIREMENTS OF
PWD 203A (Rev.2007) STANDARD FORM OF CONTRACT AMONG THE
CONSTRUCTION PROFESSIONAL**

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ABSTRACT

Construction contracts are usually made in writing and using one of the standard forms available. Standard Forms of contract have been used in the Malaysian construction industry as a means to expedite contractual and legal duties for the clients who wish to avoid expensive and complex legal endeavors to arrive at an agreement with their contractor. Various forms have been drafted by various professional bodies and organizations, both locally and internationally, to meet the demands of the local construction market for standard form. Problems arise when the standard form is drafted by legal people and will be implemented by technical background people that have little knowledge about the legal aspect. The legalese problem also takes place in the contract's issues, which may mislead the true meaning of the particular clause and cause the people not to understand at all. Not all people can understand the meaning of the contract forms. Construction contracts can be a complex subject if interpretation and administration of contract are not being handled properly. In relation to these, the objectives of the study are to determine the level of understanding of the contract requirements of Standard Form of contract among construction professionals. Generally, data is collected from structured interviews with selected parties in the construction area to know their extent of understanding of Standard Forms of contract. The secondary sources include books, articles, seminar papers, newspapers as well as information from electronic media databases on construction contract law. The scope of this research is to know the level of understanding of PWD 203A among construction professionals (Engineer, Quantity Surveyor and Contractor) who have had an experience in this field within five to ten years. The findings from the structured interview show the level of understanding of PWD 203A Standard Form of contract among construction professionals. As a conclusion with this research, by using "simple plain English", not too long sentences and not too many legal terms and phrases also can help the parties understand the contract they had entered. The study shows a medium level of understanding of PWD 203A Standard Form of contract among construction parties.

ABSTRAK

Kontrak pembinaan biasanya dibuat secara bertulis dan menggunakan satu borang seragam sahaja. Borang seragam kontrak telah digunakan dalam industri pembinaan Malaysia sebagai cara untuk mempercepatkan tugas kontrak dan undang-undang bagi pelanggan yang ingin berusaha mengelakkan undang-undang yang kompleks untuk mencapai perjanjian dengan kontraktor mereka. Pelbagai bentuk borang seragam telah digubal oleh pelbagai badan profesional dan organisasi dalam dan luar negara untuk memenuhi permintaan pasaran tempatan bagi borang seragam ini. Masalah timbul apabila borang seragam yang digubal oleh pihak yang berpengetahuan dalam bidang undang-undang dan perlaksanaannya pula oleh pihak yang berlatar-belakang teknikal yang mempunyai sedikit pengetahuan tentang aspek undang-undang ini. Masalah bahasa undang-undang juga berlaku dalam isu-isu kontrak, dimana bahasa undang-undang boleh mengelirukan maksud sebenar sesuatu fasal dan menyebabkan ramai pihak tidak memahami sama sekali. Tidak semua pihak dapat memahami makna borang kontrak. Kontrak pembinaan boleh menjadi satu isu yang kompleks sekiranya gagal dalam menterjemah kehendak kontrak dengan tepat. Sehubungan dengan ini, objektif kajian adalah untuk menentukan tahap pemahaman Borang seragam kontrak di kalangan profesional pembinaan. Secara amnya, data dikumpulkan melalui kaedah temubual berstruktur kepada pihak-pihak tertentu di dalam bidang pembinaan untuk mengetahui sejauh mana pemahaman mereka kepada Borang Seragam kontrak. Sumber sekunder pula termasuk buku, artikel, kertas seminar, akhbar serta maklumat daripada pangkalan data media elektronik. Lingkungan kajian ini pula adalah melibatkan pemilihan responden terdiri sebagai Jurukur Bahan, kontraktor dan Jurutera yang telah berpengalaman 5 hingga 10 tahun dalam industri pembinaan. Penemuan daripada soal selidik ini adalah untuk menentukan tahap pemahaman pihak-pihak dalam industri pembinaan terhadap Borang Seragam kontrak.. Sebagai kesimpulan, Dengan menggunakan Bahasa Inggeris yang mudah dan jelas, penggunaan ayat yang tidak panjang serta tidak menggunakan bahasa undang-undang akan membantu pihak yang dalam memasuki kontrak untuk lebih memahami kontrak diantara mereka. Kajian ini telah menunjukkan tahap kefahaman yang sederhana terhadap boring seragam kontrak diantara pihak-pihak dalam industry pembinaan ini.

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CHAPTER 1

INTRODUCTION

Construction projects are undertaken by many parties, all with their own goals and motivations which may not always be aligned. The alignment is normally pursued through a contract between parties to agreed goals. A contract is a voluntary agreement between two or more parties, and the purpose of a contract is to set out the rights, responsibilities, and liabilities of the parties. The contract allocates risk among the parties. Contracts may be formal and written, with fairly explicit described behaviors and understanding. Different groups of contracting parties, and also people within the same group, interpret contract clauses in different ways.

Construction contracts are usually made in writing, using one of the standard forms available.¹ The use of standard form provides many advantages, and although standard forms are not mandatory in practice their use should be encouraged in all possible circumstances. Clearly, the construction process as a whole has to become more efficient, and it is important that the standard form of contract be used intelligently to support this.²

¹ Ashworth, A. *Contractual Procedures in the Construction Industry*. London and New York: Longman, (1986), p. 8.

² Chow, Kok Fong. *Construction Industry Trends in The Asia-Pacific and Their Implications for Standard Forms of Contracts*. 1st International Conference on Asia-Pacific Construction Law. Kuala Lumpur:PWTC, June 1991.

Standard Form of contract is in a printed form and published by an authoritative body of the industry, which body is recognized by both parties. Historically, the initial set of Standard Forms was drafted by the various government agencies for works in the public sector. In Malaysia, the earlier version of PWD form was modeled on the RIBA Form of Contract 1931, later revision 1983 and the latest 2007. Due to progress of development projects, many other professional bodies published their own version of standard forms to suit the current development and modernisation and variation of procurement methods i.e. IEM was first published in 1989 and PAM in 1969 (Lian, Im and Kheng, 2000).

According to Nayagam and Pathmavathy (2005), “Standard Form construction contracts provide a basic legal framework identifying the rights, obligations and duties of the parties, establish of the powers and duties of the contract administrator”

The adversarial nature (Cheung et al., 2006; Cheung and Yiu, 2007) and inherent risks (El-Sayegh, 2008) of the construction industry contributes to the germination of construction disputes. Construction disputes are caused by many sources (Cheng et al., 2009). One of the main sources is poor understanding of contract documents. Interpretation error and misunderstanding of construction contracts can be traced to the illegibility of contract clauses (Broome and Hayes, 1997; Cutts, 2004; Styllis, 2005) and legalese (Cutts, 2004; Candlin et al., 2002), which results in disagreements between the contracting parties on their rights and responsibilities.

In Malaysia, the complexity of contract documents has influence the ways contracting involving parties in understands the contract documents. A study done by Mohamad and Zulkifli (2006) stated that the contractor has to be well verse in interpretation of condition and requirements of the contract due to the lack of the understanding in contract documentation.

In traditional contracts, contractual and flexibilities that are required in ever changing construction scenarios are not supported in order to face uncertainty and complexity. It is very often long and complex documents. Consequently, disagreement or disputes could arise regarding contractual obligations or expectation. When one party feels that the contractual obligation or expectation has not been met, the disputes may occur (Semple *et al*, 1994). Thus construction contract plays a crucial role in disputes resolution.

For instance, the survey done by Sambasivan and Yau (2006) found that the factor of mistakes and discrepancies in contract document is one of the causes of delay to project in Malaysia Construction industry.

An example of the issue of understanding occurred in the case of *Majlis Perbandaran Seremban vs Marapura Sdn Bhd*³. The case was a dispute on the arbitrator's rights and powers to order. In their arguments, the applicant contended that the arbitrator had erroneously interpreted clause 54 of the conditions of contract by concluding that only the contractor may refer disputes to arbitration and not the employer. The judge held that the wording of clause 54 was clear and unambiguous. Besides, the arbitrator's reasoning on his decision on the issues was sound, cogent and clear. The learned judge concluded that a wrong interpretation by the applicant eventually led to the dispute with the respondent. Therefore, the significance of this case is that the correct interpretation or understanding of contract clauses by the contracting parties is vital to avoid disputes since contract clauses are already clear and unambiguous.

³ [2004] 5 MLJ 469.

In Malaysian environment, contract clarity is an undisputable necessity, whereby the quality of being expressed clearly is a must for contractual agreements. There are many reasons for this ⁴

- English is not the first language for Malaysians whose mother tongues are Malay, Chinese and Tamil. So, simplified language structure is important for better understanding of contracts (Styllis, 2005)
- The style of writing including the use of passive voice, repetition, too long sentences (more than 50 words), incorrect or too much use of 'shall', and many cross-references can be a barrier to achieving clarity in contract form (Styllis, 2005).

Besides, the legalese problem also takes place in the contract's issues, which may mislead the true meaning of the particular clause and cause the people not understand at all. Not all people can understand the meaning of the contract forms. Legalese often dumbfounding to the meaning or need of the contract condition (Martin, 1993). According to Broome and Hayes, 1997, plain English is more effective in delivering the message for constructing compare to those legal language or phrases.

In addition, the use of formal and technical language in legal documents upsets interpretation (Feinman, 2003). Legal drafters have done most damage by cloaking the mysteries of contracts with unusual language and technical legal terms (Cutts, 2004). The imperfections of legalese are chiefly due to the unnecessary length and complexity. Sometimes, there maybe more serious errors that go uncorrected (Hill, 2001) because the interpretation of the contract clause was not actually written or meant in the contract (Thomas et al., 1994). Legalese would cause the contracting parties to fail to appreciate the genuine contractual rights and obligations in a project

⁴ Rosli Mohamad Zin. *A case study into the language structure of construction standard form in Malaysia*. Department of Structure and Materials, Faculty of Civil Engineering, Universiti Teknologi Malaysia, Skudai 81310, Johor, Malaysia. International Journal of Project Management 28 (2010) 601–608

(Semple et al., 1994). In the end, it disturbs the working atmosphere of the project (Wang and Yang, 2005).

Consequently, legalese is a serious problem and could lead to incorrect interpretation. Semple *et al* (1994) maintained that in order to avoid construction disputes the understanding of the contractual terms and the meanings of the contract is crucial.

Construction contracts are written agreements signed by the contracting parties to define their relationships and obligations (Zaghloul and Hartman, 2003). The conditions of the contract are crucial to ensure that the parties abide by rules and regulations (Semple et al., 1994). The poor understanding of the construction contract may lead to construction disputes, as highlighted by a number of previous researches (Thomas et al., 1994; Semple et al., 1994; Broome and Hayes, 1997; Mohamad and Zulkifli, 2006). It is simply because the parties could not meet their contractual expectations (Harmon, 2003).

In conclusion, once the contracting parties understand and agree to the clauses stated in the contract, the parties would perceive the importance of their contractual obligations and rights as required in the contract.

1.1 Statement of Problem

Standard Forms of contract have been use in the Malaysian construction industry as a means to expedite contractual and legal duties for the clients who wish to avoid expensive and complex legal endeavor to arrive at an agreement with their contractor. Various forms have been drafted by various professional bodies and organization, both locally and internationally, to meet the demands of local construction market for standard form.⁵

Standard Form of contracts are generally written or commissioned by government agencies for use on the contract that they are sponsor, or by professional institute which takes it upon itself to represent its private sector clients by producing for adoption by its member practitioners.⁶ The standard form is drafted by the legal people and will be implementing by the technical background people that has a little knowledge about the legal aspect. The problems are do the technical background such as an architect, Quantity Surveyor, Engineer and etc understand the contract form requirement? Besides that, this research is to know the level of understanding standard form of contract among the construction parties. In fact, the understanding problems are caused by the legalese (Martin, 1993) and clarify of contract clause (Broome and Hayes, 1997), which has brought a lot of disagreement and disputes regarding the contractual obligations the construction practitioners. However, through better interpretation and understanding of the contract requirements, the disputes arose may be eliminated.

⁵ Kwang, Q.W. Adequacy of Quality Provisional in Standard Forms of Local and Internatioanl Construction Vntract. UNIMAS E-Journal of Civil Engineering, Vol.1 issue 1/August 2009

⁶ Nigel M Robinson. Construction Law in Singapore and Malaysia. Butterworths Asia.1996. p17

1.2 Research Objectives

The objective of the research is to determine the level of understanding the contract requirements of PWD 203A (Rev. 2007) Standard Form of contract among the construction professional.

1.3 Scope of Research

The scope of this research will cover the following areas:-

- a) Only construction cases will be discussed in the research.
- b) This research study on the current contract practice in Malaysia
- c) Structured interview involve the profession of Engineer, Contractor and Quantity Surveyor with experienced within five (5) to ten (10) years in ` construction industry to know their level of understanding of PWD 203A (Rev. 2007)

1.4 Significance of Research

This research is very important to know the level of understanding of Standard form of contract among the construction parties. This information is important to know either all the construction parties fully understand the contract form or not.

Furthermore, this research can give the information to client about the importance to understanding of standard form of contract in construction industry. It is to ensure any disputes among the construction parties.

1.5 Research Method

A systematic process of conducting this research had been organised in order to achieve the objective of the study. There are a few stages in completing the research that will be followed, which involve identifying the issue, literature review, data collection, data analysis, conclusion and suggestion.

1.5.1 Stage 1- Identifying the issue

The issue of the study arises from the intensive reading of articles, journals and newspaper cutting from the UTM library. Discussion with lecturers and friends also had been done to get an idea of the research topic. From the issue, the objectives of the study have been identified. This study is carried out to determine the level of understanding the contract requirement of Standard Form of contract among the construction professional.

1.5.2 Stage 2- Literature review

After the issue and objectives of the study have been identified, literature review regarding to the study field will be collected to give more understanding about the topic in order to achieve the objectives of the study. Information and data is collected from the books, journals, research papers, reports, newspaper and internet.

| | Types of Data | Methods |
|------------------|---|----------------------|
| Library research | <ul style="list-style-type: none"> ▪ Standard Form of General ▪ Merits and Demerit of Standard Form of Contract ▪ Understanding the Contract requirement of Standard Forms | Books, Journal, |
| Field Research | <ul style="list-style-type: none"> ▪ Determine the level of understanding the contract requirement of Standard Form of contract | Structured Interview |

Table 1.1: Data for literature Review

1.5.3 Stage 3- Data collection

After identifying all the background of study and relevant issues through literature review, the data will collect through the structured interview. All respondents are well respected in various fields of specialization. The following is just a brief account of the professionals of their various background and professional affliction and they have an experience for this field within 5 to 10 years. There were ten (10) persons of professional appointed as expert will help in the structures interview.

1.5.4 Stage 4- Data analysis

After the data have been collected, the analysis will be conducted to determine the level of understanding the contract requirement of standard form contract among the construction parties. The pie chart, bar graph and table will be created. The level of understanding of standard form contract will be measured.

1.5.5 Stage 5- Conclusion and recommendations

After the discussions have been made from previous stage, then the conclusion will be made from the analysis. After presenting the research findings, further study will be suggested. It also involves the process of review the whole process of the study to identify whether the objective of the study have been achieved.

1.6 Research Methodology Flow

The research methodology of this study is shown in Figure 1.1

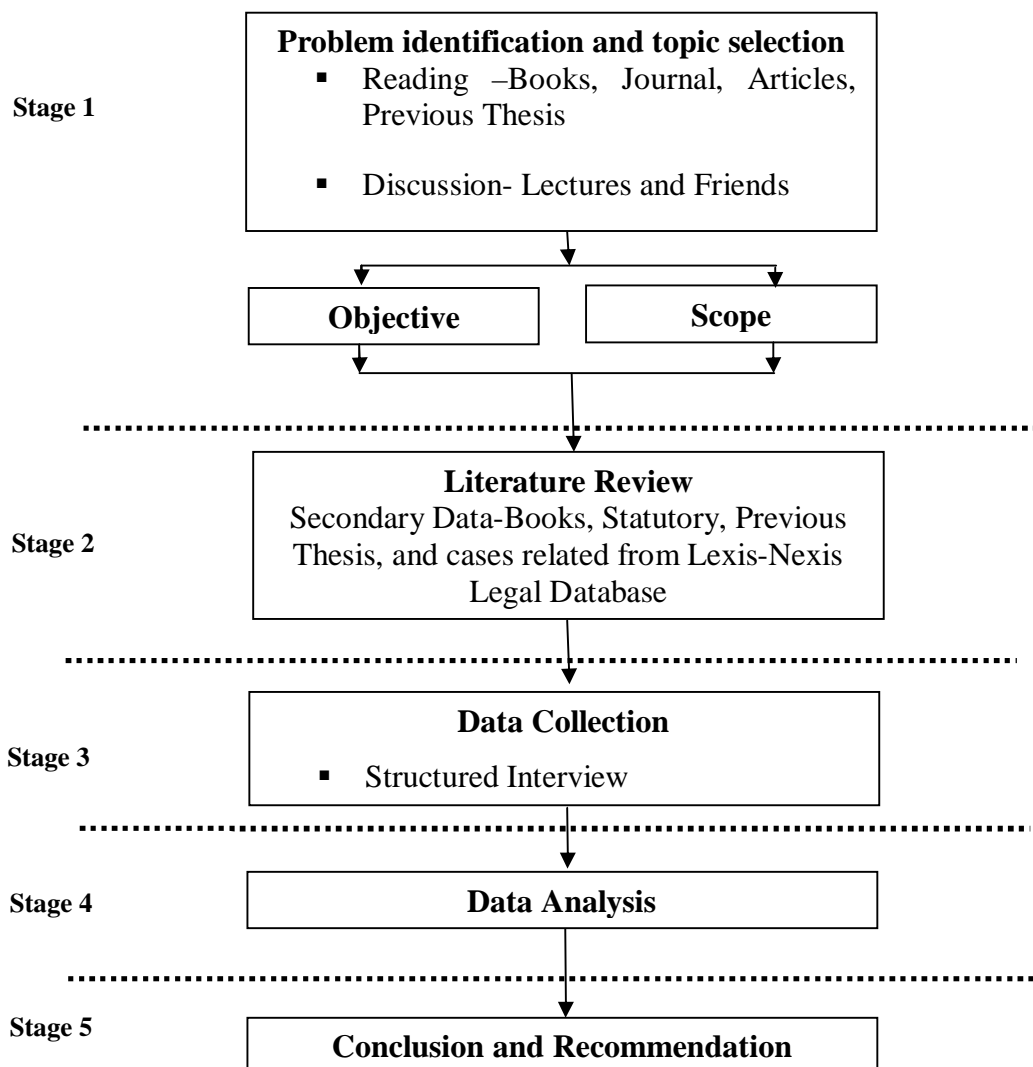


Figure 1.1: Flow chart of research methodology

1.7 Organization of Research

The dissertation consists of five chapters. The brief descriptions of each chapter are as follows:

Chapter 1: Introduction

This chapter presents the overall content of the whole project writing. It introduces the subject matter, the problems that are purported to solve. The objective is specified with an appropriate research method to achieve them.

Chapter 2: The Standard Form of Contract

This chapter with the overview the standard Form of contract. It is include the merit and demerit of standard form of contract.

Chapter 3: The understanding in construction contract.

This chapter will focus on the understanding the contract requirement and the terms in construction contract.

Chapter 4: Results and Analysis

This chapter analyzes the results from structure interview among the construction parties about their understanding of standard form of contract.

Chapter 5: Conclusions and Recommendation

This chapter presents the conclusions for the overall dissertation.

1.8 Conclusion

Contract is an ongoing process. It is a delusion that a perfect standard form of contract can ever be achieved. In this chapter, background of the study was discussed in detailed. The natures of using the standard form of contract in construction industry were illustrated. Aim and objective were defined in this chapter.

The next chapter will focus on the discussion about the Standard Form of contract in construction Industry. It will be cover on the purpose and the merit and demerit of standard form of contract.

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