

NATURE OF DELAY IN NOMINATED SUBCONTRACTING

MD. ASRUL NASID BIN MASROM

A dissertation submitted in fulfillment  
for the award of the degree of  
Master of Science in Construction Contract Management

Faculty of Built Environment  
Universiti Teknologi Malaysia

JUNE, 2007

## DEDICATION

Thanksgiving to Allah s.w.t, as with the consent awarded, I am able to finish this dissertation within the given time.

To my beloved mother, Asmah Binti Majid, “*you are my strength when I was weak*”, my siblings, my beloved friends...

and not forgetting to my late grandmother...*Tok Yah (mak)*  
my late grandfather...*Tok Mat (abah)*  
my late father..  
may Allah bless you...Amin.

## ACKNOWLEDGEMENT

First and foremost, I extend my highest gratitude to my supervisor of this dissertation, Dr.Nur Emma Mustaffa who has provided guidance, advice, support and thought in writing this dissertation.

Highest credit also goes to the coordinator of 'Dissertation', Assoc. Prof. Dr. Rosli b. Abdul Rashid, and other lecturers for the course of Master of Science (Construction Contract Management), for encouragement, guidance and critics.

I am also indebted to Sultan Iskandar Foundation (Yayasan Sultan Iskandar) for sponsoring my study. Not forgetting to my beloved mother, my siblings and my colleague for giving full support. Lastly , I would like to thank to my classmate and also others in giving me support and cooperation to complete this dissertation and also providing me essential information needed to fulfill my study requirements.

Thank you.

## **ABSTRACT**

Construction delay is a results of occurrence beyond the control of either the contractor or the employer. Delay can be categorized as excusable, non-excusable, compensable and concurrent. There are many causes that can contribute delay in construction. However, delay in nominated subcontracting are very seldom acknowledged and the ways to improve also seldom discussed. As a result, to identify the causes of delay on account of nominated subcontractor's work are often difficult. Thus, the objective of this study is to identify circumstances which are caused delay in nominated subcontractor's work and their implication to the main contractor. In Malaysia, most of the standard form of contract such as PWD203A, PAM 19988 and CIDB 2000 have provided grounds which gives entitlement for an extension of time to the main contractor in the event of delay on the part of the nominated subcontractor. The methodology that has been applied in this study is a detail analysis of ten (10) cases which have been selected through Malayan Law Journal. The results proved that there are several circumstances which caused delay in nominated subcontractor's work. Every causes have their own implication to the main contractor in terms of entitlement of extension of time as well as the liability of damages. This study concludes that, irregular payment is the prominent cause which contributed to delay in nominated subcontracting.

## ABSTRAK

Kelewatan di dalam pembinaan adalah disebabkan oleh kerana ia berlaku di luar kawalan samada daripada kontraktor ataupun majikan. Kelewatan boleh dikategorikan sebagai kelewatan dengan alasan, kelewatan tanpa alasan, kelewatan boleh dibayar gantirugi dan kelewatan serentak. Terdapat pelbagai punca yang menyumbang kelewatan di dalam pembinaan. Namun begitu, kelewatan di dalam kerja subkontraktor dinamakan yang perlahan adalah kurang diberi perhatian dan jarang dibincangkan. Akibatnya, kelewatan di dalam kerja subkontraktor dinamakan ini sukar untuk dikenalpasti puncanya. Oleh yang demikian, objektif utama kajian ini adalah untuk mengenalpasti keadaan-keadaan yang menyebabkan kelewatan di dalam kerja-kerja subkontraktor dinamakan serta implikasinya ke atas kontraktor utama. Di Malaysia, kebanyakan borang kontrak seperti PWD 203A, PAM 1998 dan CIDB 2000 ada menyediakan alasan-alasan yang boleh digunakan untuk melayakkan kontraktor utama mendapatkan masa tambahan akibat kelewatan dari pihak subkontraktor dinamakan. Kaedah yang digunakan untuk mencapai objektif kajian, adalah dengan menganalisa 10 kes yang telah diperolehi melalui Jurnal Undang-undang Malaya (*Malayan Law Journal*). Keputusan kajian ini membuktikan terdapat beberapa keadaan yang menyebabkan kelewatan di dalam kerja-kerja subkontrak dinamakan. Setiap punca mempunyai implikasinya yang tersendiri ke atas kontraktor utama terutamanya di dalam menentukan kelayakan ke atas tambahan tempoh masa pembinaan begitu juga dengan tanggungan ke atas gantirugi. Kajian ini menyifatkan pembayaran yang tidak mengikut jadual adalah punca utama yang menyumbang kelewatan di dalam kerja-kerja subkontraktor dinamakan.

## TABLE OF CONTENTS

CHAPTER	TITLE	PAGE
	<b>Title</b>	<b>i</b>
	<b>Declaration</b>	<b>ii</b>
	<b>Dedication</b>	<b>iii</b>
	<b>Acknowledgement</b>	<b>iv</b>
	<b>Abstract</b>	<b>v</b>
	<b>Abstrak</b>	<b>vi</b>
	<b>Table of Contents</b>	<b>vii</b>
	<b>List of Cases</b>	<b>xi</b>
	<b>List of Table</b>	<b>xv</b>
	<b>List of Figures</b>	<b>xvi</b>
	<b>List of Abbreviations</b>	<b>xvii</b>
<b>1</b>	<b>INTRODUCTION</b>	
	1.1 Background Study	1
	1.2 Problem Statement	3
	1.3 Objectives of the Study	6
	1.4 Scope of the Study	7
	1.5 Significance of the Study	7
	1.6 Research Methodology	8
	1.6.1 Stage 1: Identifying The Research Issue	8
	1.6.2 Stage 2: Literature Review	9
	1.6.3 Stage 3: Data Collection	9

1.6.4	Stage 4: Research Analysis	10
1.6.5	Stage 5: Conclusion and Recommendation	10

## **2 DELAY IN CONSTRUCTION PROJECT**

2.1	Introduction	12
2.2	Time is of The Essence	13
2.3	Contract Commencement and Completion Date(s)	15
2.3.1	Substantial Completion	20
2.4	Definition of Project Delay	21
2.5	The Nature of Delay Claims	24
2.6	Causes of Delay	25
2.6.1	Owner-Caused Delay	26
2.6.2	Designer-Caused Delay	27
2.6.3	Contractor-Caused Delay	28
2.6.4	Subcontractor Delay	29
2.6.5	Delay Not Caused by Parties to the Design and Construction Stage	30
2.7	Type of Delay	33
2.7.1	Excusable Delays	34
2.7.2	Non-Excusable Delays	35
2.7.3	Compensable Delays	36
2.7.4	Concurrent Delays	37
2.8	Extension of Time (EOT)	39
2.9	Liquidated Ascertained Damages (LAD)	42
2.10	Summary	43

## **3 SUBCONTRACT DELAYS**

3.1	Introduction	44
3.2	Nature of subcontracting	45
3.2.1	Assignment	46
3.2.2	Domestic Subcontract	47
3.2.3	Nominated Subcontract	48

3.3	Relationship of the Parties in Construction	49
3.3.1	Main Contractor	51
3.3.2	Nominated Subcontractor	52
3.3.3	Domestic Subcontractor	53
3.4	Relationship between Employer and Subcontractor	53
3.5	Relationship between the Main Contractor and Subcontractor	56
3.6	Provision under Subcontractor Form in relation to the Nominated Subcontractor	57
3.6.1	Delay and Extension of Time	58
3.6.2	Relevant Events in Standard Form of Contract	59
3.6.3	Breach of Contract	65
3.6.4	Damages for Non Completion	66
3.7	Nature of Delay in Nominated Subcontracting Work	67
3.8	Circumstances Contributes to Delay in Nominated Subcontractor's Works	71
3.8.1	Late Instructions	71
3.8.2	Delay in Delivery of Materials and Goods by The Employer	73
3.8.3	Late Payment	74
3.8.4	Changes Out of Scope of Work	76
3.8.5	Delay in Giving Possession of Site	77
3.8.6	Suspension of Works	78
3.8.7	Main Contractor Fails to Provide and Erect Facilities	79
3.8.8	Interference by The Main Contractor	80
3.8.9	Negligence by The Nominated Subcontractor	80
3.8.10	Delay to Rectify Damages	81
3.8.11	Default by The Main Contractor	83
3.9	Summary	84



4	<b>COMMON CIRCUMSTANCES CAUSING DELAY IN NOMINATED SUBCONTRACTING</b>	
	4.1 Introduction	85
	4.2 Analysis of Cases	86
	4.2.1 Number of Cases Within Time Frame	86
	4.2.2 Type of Nominated Subcontractor According to Specialisation	88
	4.2.3 Causes of Delay	90
	4.3 Circumstances Causing Delay in Nominated Subcontracting	91
	4.3.1 Circumstances No.1	92
	4.3.2 Circumstances No.2	97
	4.3.3 Circumstances No.3	100
	4.3.4 Circumstances No.4	104
	4.3.5 Circumstances No.5	108
	4.3.6 Circumstances No.6	111
5	<b>CONCLUSION AND RECOMMENDATIONS</b>	
	5.1 Introduction	115
	5.2 Summary of Research Findings	115
	5.3 Problems Occurred When Conducting This Study	120
	5.4 Further Studies	120
	5.3 Conclusion	121
	<b>REFERENCES</b>	122

## LIST OF CASES

<b>CASE</b>	<b>PAGE</b>
<i>Alliance (Malaya) Engineering Co. Sd. Bhd. v. San Development Sdn. Bhd.</i> (1974) 2 MLJ 94	75,93
<i>Antara Elektrik Sdn.Bhd. v. Bell &amp; Order Bhd</i> (2002) 3 MLJ 321	75,96
<i>Behzadi v. Shaftsbury Hotels Ltd</i> (1992) Ch 1	15
<i>Carr v. JA Berriman Pty Ltd</i> (1953) 89 CLR 327	97,102
<i>Chandler Brothers Ltd v. Boswell</i> (1936) 3AII ER 179	56
<i>Clydebank Engineering &amp; Shipbuilding Co. v. Castaneda and Others</i> (1905) AC 6	43
<i>Croudace Ltd. v London Borough of Lambeth</i> (1986) 33 BLR 25	74
<i>CSK Electrical Co. Bhd. V. Regional Construction Sdn. Bhd.</i> (1987) 2 MLJ 76	75,112
<i>CSK Electrical Co. Bhd. V. Regional Construction Sdn. Bhd.</i> (1987) 2 MLJ 763	79
<i>Davies &amp; Co.Shipfitters Ltd. v. William Old Ltd</i> (1969) 67 LGR 395	48
<i>DEC Electric, Inc. v. Raphael Construction Corp</i> (1989) 538 So. 2d 963, 964	75
<i>Dodd v. Churton</i> (1897) 1 Qb 562	110
<i>Dunlop Pneumatic Tyre Co. Lt v. New Garage Motor Co. Ltd.</i> (1915) AC 79	42
<i>Engineering Construction (PTE) Ltd v. Ohbayashi – Guni Ltd.</i> (1986) 1 MLJ 21	75,96,98

<i>Engineering Construction (PTE) Ltd v. Ohbayashi –Gumi Ltd</i> (1986) 1 MLJ 218	83
<i>Equitable Debenture Assets Corporation Ltd v. Morgan Branch Roberts and Ors.</i> (1984) 2 CLD 10-01	81
<i>Freeman &amp; Son v. Hensler</i> (1900), 64 JP 200	100,103
<i>Freeman v. Hensler</i> (1900) 64 JP 260	18
<i>Geary, Walker &amp; Co Ltd v. W Lawrence &amp; Sons Ltd</i> (1906)	57
<i>Gilbert Ash (Nothern) Ltd v Modern Engineering (Bristol) Ltd</i> (1973) 3 All ER 195	57
<i>GLC v. Cleveland Bridge and Engineering Co Ltd</i> (1984) 34 BLR 50	18
<i>Glenlion Construction Ltd v. Guinness Trust</i> (1987) 39 BLR 89	73
<i>Glenlion Construction Ltd. V. The Guinness Trust</i> (1987) 39 BLR 89	28
<i>H. Fairweather &amp; Co. Ltd. v. London Borough of Wandsworth</i> (1987) 39 BLR 106	29
<i>Hampton v. Glamogan County Council</i> (1917) A.C 17	54
<i>Harbutt’s Plasticine Co. Ltd. v. Wayne Tank &amp; Pump C. Ltd.</i> (1970)	66
<i>Helstan Securities Ltd. v. Hertfordshire County Council</i> (1978) 3 All ER 262, Messrs Renhold	46
<i>Henry Boot Construction (UK) Ltd v. Malmaison Hotel (Manchester) Ltd</i> (1999) 70 CLR 32	39,40
<i>Hoening v Isaacs</i> (1952) 2 All ER 176	19
<i>Holme v.Guppy</i> (1838) 2 M & w 387	110
<i>Hong Kong Fir Shipping Co. Ltd v. Kawsaki Kisen Kaisha Ltd</i> (1962)	66
<i>J.M. Hill v London Borough of Camden</i> (1980) 18 BLR 31	78
<i>Jurong Engineering Ltd v. Paccon Building Technology Pte. Ltd</i> (1999) 3 SLR 667 (CA)	56
<i>Kitsons Sheet Metal Ltd v. Matthew Hall Mechanical and Electrical Engineers Ltd</i> (1989) 47 BLR 82	18
<i>Lebaupin v. Crispin</i> (1920) 2 KB 714	34,63

<i>Levy v. Assicurazioni Generali</i> (1940) 2 All ER 437	64
<i>Lightweight Concrete Sdn.Bhd. v. Nirwana Indah Sdn.Bhd.</i> (1999) 5 MLJ 351	73,105
<i>London Borough of Hounslow v. Twickenham Garden Developments Ltd.</i> (1970) 7 BLR 81	102
<i>Maryon v. Carter</i> (1830) 4 C & P 295	63
<i>Miller v. London County Council</i> (1934), 151 LT 425	14,26,43
<i>Mitsui Construction Co. v. The Attorney General of Hong Kong</i> (1986) CLJ 134	77
<i>Multiplex Constructions Pty Ltd v. Abragust Pty Ltd</i> (1992)	36
<i>Neodox Ltd v Swinton and Pendlebury Borough Council</i> (1958) 5 BLR 34	37,72
<i>Nokes v. Doncaster Amalgamated Collieries Ltd</i> (1940) A.A 1014 (H.L)	46
<i>North West Metropolitan Regional Hospital Board v. TA Bickerton &amp; Sons Ltd.</i> (1970) 1 All ER 1039	52
<i>Peak Construction (Liverpool) Ltd. v. Mcknney Foundations Ltd.</i> (1970)	15,27,40
<i>Penang Development Corporation v. Teoh Eng Huat</i> (1992) 1 MLJ 749	63
<i>Percy Bilton Ltd V. Greater London Council</i> (1982), 20 BLR 1	27,29
<i>Pigott Construction Co. Ltd. v. W.J. Gowe Ltd</i> (1961) 27 DLR (2d) 258	113
<i>Pritchett, etc., Co. Ltd. v. Currie</i> (1916) 2 Ch 515 C.A	54
<i>Roberts v Bury Commissioners</i> (1870) LR 5 CP 310	111
<i>Robinson v Harmon</i> (1848) 1 Exch 850 at 855	107
<i>Ryoden (M) Sdn.Bhd. v. Syarikat Pembinaan Yeoh Tiong Lay Sdn.Bhd.</i> (1992) 1 MLJ 33	54,94
<i>Shanklin Pier Ltd. v. Detel Products</i> (1951) 2 K.B 854.	55
<i>Shen Yuan Pai v. Dato' Wee Hood Teck &amp; Ors</i> (1976) 1 MLJ 16	72,108
<i>Smith and Montgomery v. Johnson Bros Co.Ltd.</i> (1954) 1 DLR 392	47

<i>Surrey Health Borough Council v. Lovell Construction</i> (1990) 48 BLR 108	64
<i>Teoh Kee Keong v. Tambun Mining Co. Ltd.</i> (1968) 1 MLJ 39	107
<i>Tham Cheow Toh v. Associated Metal Smelters Ltd.</i> (1972) 1 MLJ 171	107
<i>Thamesa Designs Sdn.Bhd v. Kuching Hotels Sdn.Bhd. &amp; 3 Ors.</i> (1993) 2 AMR 2083	40,78,101
<i>The Queen in Right of Canada v Walter Cabott Construction</i> <i>Ltd</i> (1975) 21 BLR 42	102
<i>Wallis v. Robinson</i> (1862) 130 RR 841	54
<i>Watson v Auburn Iron Works</i> (1974) 318 NE 2d 508	96
<i>Wells v. Army &amp; Navy Co-operative Society</i> (1902)86 LT 764	110
<i>Westminster City Council v. Jarvis &amp; Sons Ltd</i> (1970) 7 BLR 64	1,19,68,70
<i>Woh Hup (Pte) Ltd &amp; Anor v. Turner (East Asia) Pte Ltd.</i> (1987) 1 MLJ 443	99
<i>Young &amp; Marteen Ltd v. . Mcmanus Childs Ltd</i> (1969) 1 AC 454	82

**LIST OF TABLES**

<b>TABLE NO.</b>	<b>TITLE</b>	<b>PAGE</b>
Table 3.1	Comparison of Grounds for Granting Extension of Time in Different Standard Forms of Contract	62
Table 4.1	Number of Cases Dealing With The Period of Time	87
Table 4.2	Number of Cases Dealing With Types of Nominated Subcontractor	89
Table 4.3	Causes of Delay	90
Table 5.1	Analysis For Circumstances Which Causes Delay In Nominated Subcontractor's Work and Their Implication to The Main Contractor	116
Table 5.2	Analysis For Circumstances Which Causes Delay In Nominated Subcontractor's Work and Their Implication to The Main Contractor	117

**LIST OF FIGURES**

<b>FIGURE NO.</b>	<b>TITLE</b>	<b>PAGE</b>
Figure 1.1	Research Methodology	11
Figure 2.1	The Relationship Between Cost and Construction Duration	24
Figure 2.2	Causes of Delay	32
Figure 3.1	Contractual Relationships of the Parties	50
Figure 3.2	Relationship Arising From a Subcontract	55
Figure 3.3	Delay on the Part of Nominated Subcontractor	69
Figure 3.4	Delay Caused by Nominated Subcontractor	67
Figure 4.1	Number of Cases Dealing With The Period of Time	88
Figure 4.2	Number of Cases Dealing With Type of Nominated Subcontractor	89
Figure 4.3	Causes of Delay	91

**LIST OF ABBREVIATIONS**

CIDB	Construction Industry Development Board
PWD	Public Work Department
JCT	Joint Contract Tribunal
PAM	Persatuan Arkitek Malaysia
RIBA	Royal Institute of British Architects
SO	Superintending Officer
EOT	Extension of Time
LAD	Liquidated Ascertained Damages



## CHAPTER 1

### INTRODUCTION

#### 1.1 Background Study

Construction industry is a series of different specialist in contributing to the work at different times, different skills, work for different organization and sometimes different geographical locations.<sup>1</sup> However, the parties including clients, designers, contractors and suppliers share the same goals of minimizing costs and duration to deliver the projects.<sup>2</sup>

Furthermore, every construction project has a defined goal or objective, specific tasks, defined time including beginning and end, defined deliverables and resources being consumed. To complete any projects successfully, many tasks need to be accomplished by the project team for instance, the owner must define the requirements, the designer needs to translate the requirements into contract document and the construction

---

<sup>1</sup> Murdoch, J. and Hughes, W. (2000). *Construction Contracts-Law and Management*, 3<sup>rd</sup> ed., Spon Press, London.

<sup>2</sup> H.A. Rahman (2006). Mitigation of Delaying During Commissioning of Construction Project Using Knowledge Management- Contractor's Perception, *Quantity Surveying National Convention*. 137-150

professionals need to organize and manage the physical construction in accordance with the contract document.<sup>3</sup>

Besides, project schedules are useful and essential to the successful coordination of the project. Eggleston<sup>4</sup> stipulates that, most construction contracts specify performance time in achieving completion of the whole of the works. On top of that, time may be fixed either by reference to specified dates or by reference to a construction period and it is essential that precise completion date can be established.

Sundra Rajoo<sup>5</sup> is of the view, a contractor's obligation is to carry out and complete the works accordance to the contract. Furthermore, the contractor's legal obligation is to complete the project by the date for completion or within the date for completion.<sup>6</sup>

Wright<sup>7</sup> however, asserts that finishing a project on schedule is a difficult task to accomplish in the uncertain, complex, multiparty and dynamic environment of construction. Most of projects are eventually completed more or less to specification but seldom on time and within budget. Thus, many of these problematic situations are either beyond control and often lead to delay.<sup>8</sup>

## 1.2 Problem Statement

---

<sup>3</sup> Levy, S.M. (1994). *Project Management in Construction*, 2<sup>nd</sup> ed., McGraw-Hill Inc. USA.

<sup>4</sup> Eggleston, B. (1997). *Liquidated Damages and Extension of Time*. 2<sup>nd</sup> ed. Oxford: Blackwell Science Ltd.

<sup>5</sup> Rajoo, S. (1999). *The Malaysian Standard Form of Building Contract (The PAM 1998 Form)*, Malayan Law Journal, Malaysia.

<sup>6</sup> M.S.M. Danuri (2006). Delay Claims and Damages, *Proceedings of the 2006 One Day Seminar on Mitigation of Delay in Construction Projects*. November 23, University of Malaya

<sup>7</sup> Wright, J.N. (1997). *Time and Budget: The Twin Imperatives of a Project Sponsor*. International Journal of Project Management. 15(3): 181-186

<sup>8</sup> H.A. Rahman (2001). Critical Factors for Mitigation of Delay in Construction, *Conference paper of National Conference of Construction Industry Development*. Johor Bahru

Many construction projects suffer from delay. Failure to finish either within the original planned time and budget or both, ultimately results in a delay. In addition to that, construction projects involve more variables and uncertainties than in the product line also increases the probability of delay.<sup>9</sup>

Therefore, disputes involving delayed of construction project are widespread in the construction industry.<sup>10</sup> Datuk Seri Mohd Effendi Norwawi has noted that delays in government projects have become crucial problems which need to be solved immediately.<sup>11</sup> Furthermore, National House Buyer Associated<sup>12</sup> highlight that the complaints statistics regarding late delivery and liquidated ascertained damages (LAD) in year 2002 is 13%, and 14% in year 2005. Besides, abandoned projects had increased from 19% in 2002 to 23% in 2005.

Recently, the “blame game” over the long-delayed of Sultanah Bahiyah Hospital in Alor Setar continues between the parties involved. This project failed to be completed on time in December 2003 and due to that the cost incurred to RM565 million for the four-year delay. Nevertheless, there is nobody who wants to take the blame over this problem. In fact, the parties still unable to identify the causes constitute to the four-year delay of the hospital.<sup>13</sup>

How delay can occur in construction project? There are many ways that a construction project can be delayed. In short, all parties to the design and construction

---

<sup>9</sup> H.A.Rahman (2001). Experiences in Handling Project Delays In Construction, *National Construction Industry Development Conference*.1-15

<sup>10</sup> Smith, Curie & Hancock (2001). *Common Sense Construction Law- A Practical Guide for the Construction Profesional*, John Wiley & Sons, Canada

<sup>11</sup> F.N.Karim , *Incompetent Contractors, Delays, Cost Overruns, Failed Projects: Lesson Learnt*. News Straits Times, February 5, 2007.

<sup>12</sup> Complaints Statistics, News Sunday Times, February 11, 2007

<sup>13</sup> R.Abdullah . *Delay of Sultanah Bahiyah Hospital Project*, News Straits Times, March 8, 2007

process can delay the project. Delay may be the result of their direct action or of their failure to act especially if they have duty to act in the circumstances.<sup>14</sup>

Nevertheless, unexpected events may happen during the life of the construction project and can affect construction time necessary for completion of the work. For instance, force majeure, negligence, discrepancies and so forth, may occur on the construction project to increase the time of performance of the overall project or affect any given activity and most common causes differ under different project.<sup>15</sup>

Based on Sundra Rajoo's views<sup>16</sup>, it shows that delaying circumstances can be of three types namely delay caused by Contractor, delay caused by the natural events and delay caused by Employer or his agent. Besides, delay caused by nominated sub-contractor or supplier also disturb of the progress of the works.<sup>17</sup>

In addition to that, it has been highlighted in several studies on causes of delay and one of them shows that delays in subcontractor's work has been ranked at no. 25 out of 73 causes.<sup>18</sup> According to a study on contractor's responses of the significance of factors causing delays in building projects, it has been asserted that delay in subcontractor's work has been ranked at no. 11 out of 20.<sup>19</sup> Further to this, study on delay factor in relation to subcontractors also proven that it falls at ranking no. 9 out of 28.<sup>20</sup> Another study proves that, by basing on the overall ranking of the 44 factors, delay in

---

<sup>14</sup> Bramble, B.B, Callhan, M.T. (1992). *Construction Delay Claims*, 2<sup>nd</sup> ed., John Wiley & Sons, New York.

<sup>15</sup> Fong, L.C. (2004). *The Malaysian PWD Form of Construction Contract*, Sweet & Maxwell, Malaysia

<sup>16</sup> Rajoo, S. (1999). *The Malaysian Standard Form of Building Contract (The PAM 1998 Form)*, Malayan Law Journal, Malaysia.

<sup>17</sup> Carnell, N.J (2005). *Causation and Delay in Construction*, Blackwell Publishing Ltd., UK

<sup>18</sup> Hadi, S.A & Al-Hejji, S. (2006), Causes of Delay in Large Construction Projects, *International Journal of Project Management*, 24, 349-357.

<sup>19</sup> Kumaraswamy, M.M & Chan, D.W.M. (1998). Contributors to Construction Delay, *Construction Management and Economics*, The University of Hong Kong, 16, 17-29.

<sup>20</sup> Odeh, A.M & Battaineh, H.T. (2002). *Causes of Construction Delay: Traditional Contracts*, *International Journal of Project Management*, 20, 67-73.

subcontractor's works is among the top 4.<sup>21</sup> With reference to that, it reveals that delay caused by subcontractors can be considered as a significance cause that contributes to delay in projects. Therefore, these studies show that delay caused by nominated subcontractor is a significance cause of delay in construction world.

Basically, under PWD 203A Clause 43(k), PAM 98 Clause 23.7(vii) and CIDB Clause 24.1(p) has asserted that the contractor is allowed extension of time on account of delays on the part of the nominated sub-contractor or nominated suppliers. Due to that, the main contractor is entitled to an extension of time when delayed by a nominated sub-subcontractor and there is no liability on the part of the employer for liquidated damages.

However, a particularly controversial area of risk allocation in respect of nominated sub-contractors and suppliers is that of delay. The reason why this is controversial is that, where such an extension of time is granted to main contractor, the employer is deprived of the right to claim liquidated damages which the main contractor would otherwise passed on to the delaying sub-contractor.<sup>22</sup>

Besides that, in the case of *Westminster City Council v. Jarvis & Sons Ltd (1970) 7 BLR 64*, cites that the main contractor claimed extension of time by rely on phrase 'delay on the part of nominated sub-contractor' and has taken all reasonable steps to avoid and reduce. Finally, the court held that no extension should be granted.<sup>23</sup> Thus, it shows to identify causes of delays are often difficult and the burden on the party seeking to prove delay is a heavy one.<sup>24</sup> Hence, what is the nature of the delay in nominated subcontractor's work? What are the main causes that contribute to this delay? What are

---

<sup>21</sup> Aibinu, A.A., & Odeyinka, H.A. (2006). Construction Delays and their Causative Factors in Nigeria, *Journal of Construction Engineering and Management*, 132, 667-677.

<sup>22</sup> Murdoch, J., Hughes, W. (2000). *Construction Contracts- Law and Management*, Spon Press, London.

<sup>23</sup> Ibid, 21

<sup>24</sup> Carnell, N.J (2005). *Causation and Delay in Construction*, Blackwell Publishing Ltd., UK

common circumstances causing delay in nominated subcontracting and their implication to the main contractor?

In the view of the above, it is necessary for the parties in this construction industry, mainly employer, architect, main contractor and nominated subcontractor to have better knowledge of the causes of delay in nominated subcontractor's work before considering it's the implication to the main contractor.

### **1.3 Objective of the Study**

With reference to the above problem statement, the following is the objective of this study:

1. To identify circumstances which are caused to delay in nominated subcontractor's work and their implication to the main contractor.

### **1.4 Scope of the Study**

The following the scope of study:

1. The approach adopted in this study is case law based. The case will be referred is only having connection to this study which is delay in nominated subcontractor's work. Although, the issue of delay is closely related to extension of time and liquidated damages, these areas are not elaborated in detail.
2. The standard forms of contract used in Malaysia, PAM 98, PWD203A and CIDB 2000 will be compared and discussed. The court cases referred in this study include Malaysia, Singapore, Australia, and English cases. There is no limit to the cases chosen in terms of time frame, as long as it has not been overruled by higher court and establishes a good law.

### **1.5 Significance of the Study**

Basically, this study is expected to answer some of the uncertain issues that arise in construction contracts such as issues that related delay in construction project. In accordance to that, issues will be analyzed based on the interpretation and judgment by the courts. Normally, the reason why these issues arise in the event of delay is due the parties who are unclear and unaware of the causes of delay. Thus, by identifying the ground or causes of delay in construction project, this study will be able to create awareness to the parties consist of employer, consultant, contractor, sub-contractor and supplier about their obligation in carrying out the works within the time, budget and quality as in the contract.

In addition to that, it can be as a basic guidance for those who are involved in construction industry for instance, developers, architects, engineers, quantity surveyors, and etc. in relation to the issue of delay. Finally, hopefully it assists in avoiding unnecessary disputes while assuring project success and better relationship among the contractual parties.

## **1.6 Research Methodology**

In order to achieve the objectives of this study, a systematic process of conducting this study had been organized. Basically, this study process comprised of five major stages, which involved identifying the study issue, literature review, data collection, data analysis, conclusion and suggestions.

### **1.6.1 Stage 1 : Identifying The Research Issue**

The study issue arises from intensive reading of books, journals and articles which can be attained from the UTM library, Building Construction Information Centre (BCIC) and Resource Centre of Alam Bina (RC).Based on the study issue, the objective of the study has been identified. In addition to that, this research is executed to review the relevant court decisions, with the intention of identifying and determining the common causes constitutes delay claim in construction project.



### **1.6.2 Stage 2 : Literature Review**

Collection of various documentation and literature regarding the study field is of most important in achieving the research objectives. Besides, secondary data is collected from reading materials in printing form like books, journals, research paper, magazines, reports, proceedings, seminar paper as well as information from internet. It is important to identify trends and developments over time in construction industry, as well as the general state of knowledge concerning the subject area of delay such as background, definition, type, procedures, relevant events and etc.

### **1.6.3 Stage 3 : Data Collection**

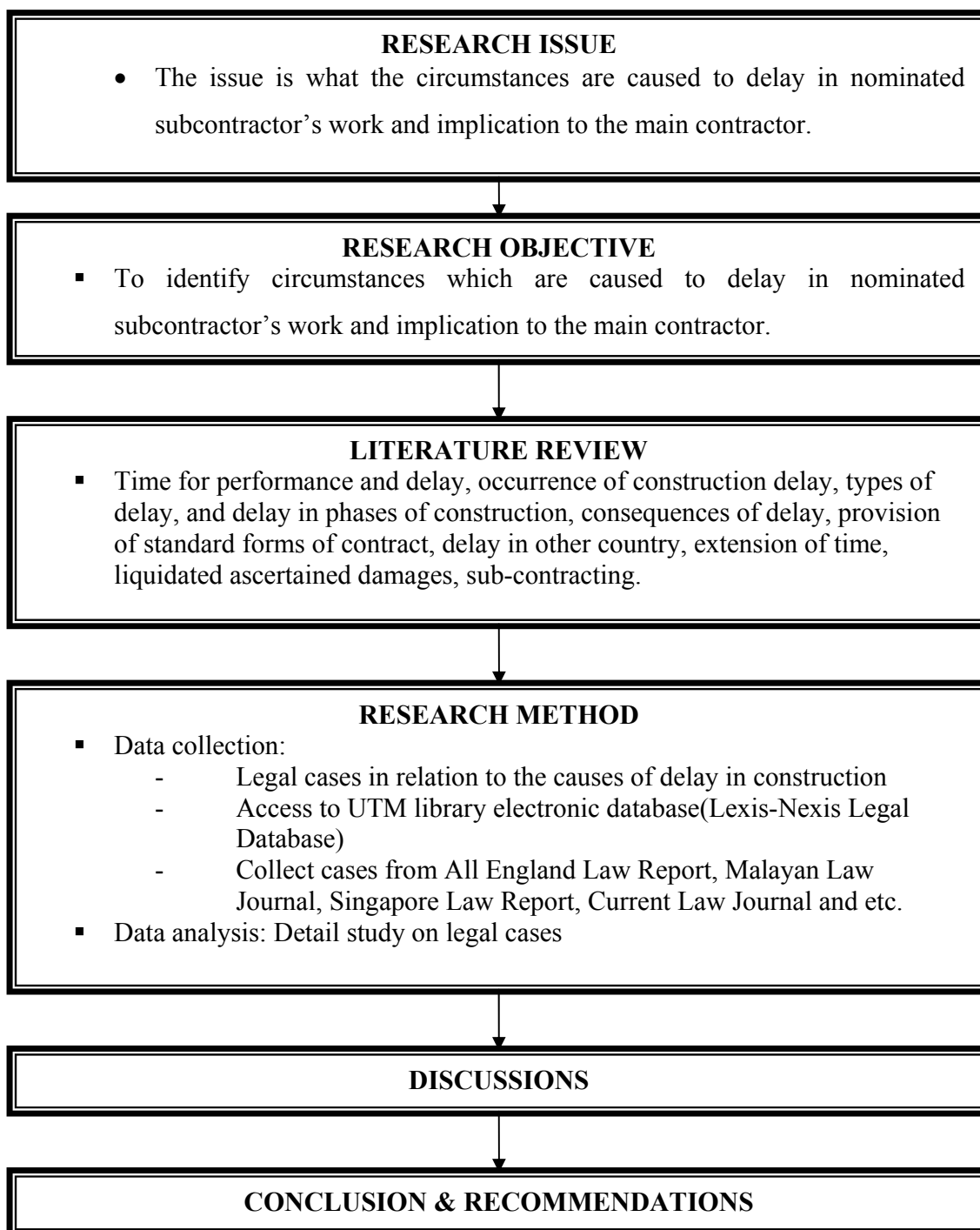
In this stage, after identifying all the background and relevant issues through literature review, legal cases based on written opinions of courts, which are related to the study issue, will be collected from different sources such as All England Law Reports, Malayan Law Journals, Singapore Law Report and etc. via UTM library electronic database, namely Lexis-Nexis Legal Database.

### **1.6.4 Stage 4: Research Analysis**

Once the previous related court cases under Malayan Law Journal are collected, it will be conducted by reviewing and clarifying all the facts of the cases. The focus will be on two parts, issues in delay caused by nominated subcontractors and the other is the implications of the delay towards the parties involved in the contract especially the main contractor. The circumstances which constitute delay in nominated subcontractor's work will be determined from the relevant cases. After issues presented by each cases, thorough discussion and comparison will be done in order to achieve objectives of this study

#### **1.6.4 Stage 5 : Conclusion And Recommendation**

In this stage, reviews on the whole process of the study will be made with the intention to identify whether the study objective has been achieved. After presenting the study findings, recommendations and limitations of the study, topics for further research emerge.



**Figure 1.1: Research Methodology**

## **5.5 Conclusion**

As a conclusion, there are many causes of delay in construction. Causes of delay can be further detailed into delay caused by owner/employer, delay caused by designer, delay caused by contractor, delay caused by subcontractor and delay not caused by party to the design and construction process. Delay can be categorized as excusable, non-excusable, compensable, non-compensable and concurrent delay. An excusable delay gives entitlement the main contractor to be granted extension of time and not liable for damages. Delay on the part of the nominated subcontractor is considered under this type of delay. Further to this, there are circumstances that may cause the completion period of nominated subcontract work become delay. This study has also determined six (6) circumstances, which may contribute to delay in nominated subcontractor's work. In addition to that, based on these causes of delay, this study has identified the implications to the main contractor whether they should be entitled an extension of time or to be liable of damages. This study could be considered as guidance to the parties in construction industry in reducing and preventing of delay in construction.

## REFERENCE

- Bramble,B.B, Callhan, M.T.( 1992). *Construction Delay Claims*, 2<sup>nd</sup> edition, John Wiley & Sons, New York.
- Carnell,N.J (2005). *Causation and Delay in Construction*, Blackwell Publishing Ltd., UK
- Eggleston,B. (1997). *Liquidated Damages and Extension of Time*. 2<sup>nd</sup> ed. Oxford: Blackwell Science Ltd.
- Fong,C.K. (2004) *Law an Practice of Construction Contracts*, 3<sup>rd</sup> Edition, Thomson Sweet & Maxwell Asia, Singapore
- Fong,L.C. (2004). *The Malaysian PWD Form of Construction Contract*, Sweet & Maxwell, Malaysia.
- Guest,A.G.(1975). *Anson's Law of Contract*, Twenty Fourth Edition., Clarendon Pres.Oxford.
- Keating,D. (1978). *Building Contracts*, 4<sup>th</sup> ed. London Sweet & Maxwell.
- Kwakyee,A.A (1997). *Construction Project Administration in Practice*, The Chartered Institute of Building.
- Levy, S.M. (1994). *Project Management in Construction*, 2<sup>nd</sup> ed., Mgraw-Hill Inc. USA.

- Murdoch, J. and Hughes, W. (2000). *Construction Contracts-Law and Management*, 3<sup>rd</sup> ed., Spon Press, London.
- Rajoo, S. (1999). *The Malaysian Standard Form of Building Contract (The PAM 1998 Form)*, Malayan Law Journal, Malaysia.
- Robinson, N.M. (1996). *Construction Law in Singapore and Malaysia*, 2<sup>nd</sup> Ed. Butterworth Asia, Singapore.
- Seel, C. (1984). *Contractual Procedures for Building Students*, Oxford Print Associates.
- Smith, Curie & Hancock (2001). *Common Sense Construction Law- A Practical Guide for the Construction Professional*, John Wiley & Sons, Canada
- Turner, D.F. (1989). *Building Contract Disputes-Their avoidance and Resolution*, Longman Group UK Limited.
- Ventrella, T. (1994). *A Contractor's Guide to Contract Law*, Dennick Publications Ltd., London
- Wright, J.N. (1997). *Time and Budget: The Twin Imperatives of a Project Sponsor*. International Journal of Project Management.

## BIBLIOGRAPHY

- Barker,D & Padfield,C. (2002), Law Made Simple, 11<sup>th</sup> edi., Great Britain : Made Simple Books.
- Cox, A. & Thompson, I. (1998). Contracting for Business Success, Thomas Telford Publishing, London.
- Eggleston,B. (1996). The New Engineering Contract- A Commentary, Blackwell Science.
- Lal, H.(2002). Quantifying and Managing Disruption Claims, Thomas Telford Publishing, London.
- Lee, Mei Pheng (2001), General Principle of Malaysian Law, 4<sup>th</sup> ed. Penerbit Fajar Bakti Sdn. Bhd. Malaysia.
- Madge,P. (1985). A Guide to the Indemnity and Insurance Aspects of Building Contracts, RIBA Publications Limited.
- Martin, E. (2003), A Dictionary of Law, 5<sup>th</sup> ed. Oxford University Press, New York.
- Potts, K, (1995). Major Construction Works – Contractual and Financial Management, Longman Group Limited,England.

R.Pettigrew.(2005). Payment Under Construction Contracts Legislation, Thomas Telford Publishing, London.

Salleh Buang (1992)., Undang-undang Kontrak Di Malaysia,Central Law Book, Kuala Lumpur, Malaysia

Visu Sinadurai (1987), Law of Contract in Malaysia and Singapore: Case & Commentaries, 2<sup>nd</sup> ed., Butterworth, Singapore.

Vohrah,B & Wu, Min Aun (2004), The Commercial Law of Malaysia, Longman, Malaysia