

METHOD OF ASSESSING CONCURRENT DELAYS

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Specially dedicated to *Mak* and *Ayah*

I really miss both of you.

Al-Fatihah

To my children

Nathasya, Ryan, Noura and Nche

May this be an inspiration.

And

To my husband,

Thank You.

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ABSTRACT

Construction delay claims are inevitable in most projects in the construction industry. It is rarely seen that a project completed without any adjustment on the completion time. Concurrent delay claims are the most disputed issue in the industry mainly because there is no uniform definition and lack of understanding on the concurrent delay itself. The objective of this research is to establish method of assessing concurrent delay which has been accepted and applicable in the court of law. The method of assessing extension of time which involves single event of delay are normally straight forward but when there are more than one causes of delay and often when one of the causes of delay are due to the contractor's own fault and the other are a Relevant Event, the Extension of Time award are often disputed. This research is a critical analysis of selected journals which discussed issues of concurrent delay. Analysis has directed to the legal principles, approaches and method used in the practice and which have been tested in the court of law for assessing concurrent delay claims which is significant in assisting a contract administrator in evaluating concurrent delay claims in practice. The findings are expected to be useful as to encourage further references and studies. Further research in quantitative nature can be carried out in which case studies can be carried out in practice.

ABSTRAK

Tuntutan Lanjutan Masa adalah tidak dapat dielakkan di dalam industri pembinaan. Jarangkali dilihat sesuatu projek dapat disiapkan tanpa perlu mengubah tarikh siap asal projek tersebut. Lanjutan Masa Serentak adalah isu yang paling mendapat perhatian dimana ianya menjadi pertikaian di dalam industri pembinaan kerana kemungkinan besar adalah disebabkan tiada definisi seragam dan kurangnya kefahaman terhadap maksud sebenar Lanjutan Masa Serentak itu sendiri. Objektif kajian ini adalah untuk mengenalpasti Prinsip Perundangan Lanjutan Masa Serentak yang telah diterima dan digunapakai di mahkamah serta pendekatan dan kaedah yang biasa digunapakai dan diterima oleh industri pembinaan dan di buktikan di mahkamah.

Kaedah dan pendekatan yang digunakan untuk penilaian Lanjutan Masa yang melibatkan kelewatan tunggal adalah mudah. Walaubagaimanapun jika kelewatan tersebut melibatkan lebih daripada satu(1) punca kelewatan serta apabila salah satu punca kelewatan adalah di sebabkan oleh kelewatan kontraktor sendiri dan kelewatan ‘acara berkaitan’, awad Lanjutan Masa yang diberikan oleh Arkitek/Pentadbir Kontrak selalunya dipertikaikan. Kajian ini adalah merupakan analisa kritikal bagi jurnal yang terpilih yang membincangkan isu isu berkaitan Penilaian Lanjutan Masa Serentak. Analisa yang dijalankan adalah menjurus kepada Prinsip Perundangan, pendekatan dan kaedah yang digunakan di dalam amalan industry pembinaan dan telah pun dibuktikan secara perundangan bagi menilai kelewatan serentak di mana ianya adalah penting di dalam membantu pentadbir kontrak did lam membuat penilaian. Hasil kajian juga dijangka dapat menggalakkan kajian lanjut dan menjadi rujukan di masa hadapan. Kajian lanjut secara kuantitatif dapat dijalankan dan kajian kes boleh dijalankan di dalam amalan industri pembinaan.

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LIST OF ABBREVIATION

ABBREVIATION	DESCRIPTION
The Contractor	The person identified as the Contractor in the contract.
EOT	Extension Of Time
LD	Liquidated Damages
LAD	Liquidated Ascertained Damages

CHAPTER 1

INTRODUCTION

1.1 Background Studies

The construction Industry in Malaysia plays a significant role acting as a catalyst for the economic growth through the creation of wealth to other industries such as education, financial, manufacturing, services and other.

Recent studies has shown that the construction industry growth has been flourishing mainly due to the budget allocations from the government in the 9th Malaysia Plan launched in 2007 and hoped to continue its growth in the new 10th Malaysian Plan.

In the recent years, time in the construction project has become a major issue and the government had emphasised on project completion and the financial consequences on projects which are delayed. The industry demanded projects to be delivered not only cost efficient, but in shortest time as possible, with high attainable quality, as safely as deemed acceptable without upsetting the ecological balance in order to remain sustainable, which have been addressed by the former Minister of Works, YB Dato Seri Samy Vellu (2007).

It is well accepted for the industry players to give more emphasis to the time related issues as early as the tendering stage. This will be achieved through the employment of forms of contracts available in the industry. It is normal to see

provisions which is time related, drafted into the conditions of contracts to ensure time related risks are properly allocated for the interest of the contracting parties.

Construction delays can be defined in many ways. Al-Khalil and Al-Ghafly(1999) relates construction delay to progress compared to baseline construction schedule while Assaf(2006) stated that a delay is when there is time overrun or extension of time to complete the project. Therefore delay is a situation when the actual progress of a construction project is slower or completion date is beyond the specified date.

Wei (2010) defined that Construction delays can be defined as the late completion of work compared to the planned schedule or contract schedule.

Nevertheless, delay is inevitable and known to be the most common and obvious risk in the construction industry. It can have devastating economic effects on both the owners and contractors which is usually the most expensive consequences to occur in a project.

Many researchers has conducted studies on the causes of delay in construction projects around the world as it is believed that delay can be minimized when their causes are identified. Most of these studies have been aimed at identifying the immediate as well as the root causes of project delays. A common theme from these studies is that project uncertainty and complexity provide a major challenge to the time management capabilities of the parties and their professional advisers and that, for many projects, delay is inevitable.

The study of Ahmad (2003) has identified the reason of construction delays and divided them into two (2) parts, which are i) lack of materials, labour and equipment, and ii) financial problem.

The process of claiming and granting of extensions of time in large projects is often a complicated and fractious process. One common reason for this is the issue of concurrent delay. A concurrent delay occurs when two or more independent causes

of delay overlap in time. More importantly, it is the causes of the delays, rather than the delays themselves, that must overlap.

Yusuwan and Adnan (2013) has identified that there are three (3) most disputed issues in Extension of Time claims in the industry. They are (i) Concurrent Delay, (ii) eligibility of a time extension claim and (iii) non-compliance to contractual requirements.

It is generally said that the contract language is considered difficult to comprehend and they are therefore a major source of disputes. Most of construction contracts are equipped with provision for extension of time, (eg. Clause 23.0 of PAM Standard Form of Contracts and Clause 43.0 of PWD Standard Form Of Contract 2010) and clarify the relevant events which the contractors are entitled to claim for extension of time. These contracts also provide for the remedies in which contractors are compensated through the Loss and/or expense clause where in cases for the delay are not due to their default (Clause 24.0 of PAM 2006 Standard Form Of Contract). The contracts are silent on the issue of concurrent delay and the parties assume that the silence operates to their benefit. This can lead to protracted disputes and outcomes contrary to the intention of the parties.

More problematic is when the contract is also silent in about the method of analyzing the claims and therefore it is often further disputed. A new or inexperienced Contract Administrator, may generously awards extension of time to the contractor and causing losses to the employer in terms of cost and time overrun. Lack of understanding of the definition and principles of concurrent delay makes the situation even worse and opens for further disputes.

1.2 Problem Statement

The foregoing discussion highlighted several pertinent issue or problems. There is no specific or clear Standard Operation Procedure (SOP) or guideline on

how to handle Extension of Time Application especially when it involves concurrent delay. Provisions in the Form of Contract appear to be too brief and too simplistic as such it is left to the Contract Administrator to use his/her discretion to address the claim for the problems associated with Extension of Time. The issue brought up several important questions:

- What is concurrent delay?
- How to assess the concurrent delay?
- What is the basis for calculating delay in the context of concurrent delay?

1.3 Research Objectives

The objective of this research is to identify the method of assessing concurrent delay.

1.4 Significant of Study

Delay continues to be a major challenge on construction projects. Disputes as to party responsibility for the financial consequences appear to be on the increase. Whilst the causes of delay have been researched extensively, relatively little research effort has been exerted into identifying the legal principles applicable and the most suitable method of analyzing the extension of time claim for concurrent delays.

This research is significant in assisting contract administrators in managing extension of time claim. This research can be develop further in testing the said method in the construction industry practice. It also can be a reference for further research in the area where research can be carried out quantitatively.

1.5 Scope of Study

This research is conducted based on collective analysis of journals and articles from online resources between year 2006-2014 parallel to the enforcement of PAM 2006 Standard form of contract.

1.6 Research Methodology

The literature review was done through internet, law and engineering journals. By referring to the research, collective data on concurrent delay, applicable legal principles, the provisions in the contract related to extension of time and the method of analyzing extension of time in the industry are synthesized.

This study has been divided into few steps mainly identifying the research issues, literature review, data collection, research analysis, conclusion and recommendation.

This approach is to ensure that the collection of information and the process of analyzing the data are precise and commendable.

1.6.1 Initial study and Identifying research issue

The general concept for the study was developed through initial intensive reading of books, journals, and articles in which related information concerning the construction industry in Malaysia and globally. From the issue, the objective of the study are identified and discussed.

1.6.2 Literature Review

References are mostly obtained from UTM library and online resources. The literature review regarding delay in the construction industry and related issues are collected and analyzed to achieve the research objective.

1.6.3 Data Collection

Various journals, case reviews, papers, reports and blogs associated with time delay and disputes in relation to concurrent delay cases are collected from Lexis Nexis, Science direct & Scribd via UTM Library collection and Online Database.

1.6.4 Research Analysis

Data are collected from Articles, journals and books were reviewed and critically analysed. Selected case law related to concurrent delay will be reviewed and critically analysed. The focus of the analysis is to find the issues related to concurrent delay and suggestions from the industry players and experts on how to manage concurrent delay claims are established and collected. The process was aiming to identify suitable method on assessing concurrent delay claims.

1.6.5 Conclusion

In summary, this research is conducted by analysing (25) twenty five selected journals between year 2006-2014 to achieve a collective view from the industry players and researchers on the suitable method of assessing concurrent delays.

The definition of concurrent delay, extension of time and related provision for extension of time will be discussed in Chapter 2. The research methodology will be discussed in Chapter 3, the Analysis of the Research in Chapter 4 and the Conclusion and recommendation will be established in chapter 5.

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