

**PROBLEMS ASSOCIATED WITH EVALUATION OF EXTENSION OF
TIME (EOT) CLAIM IN GOVERNMENT PROJECTS**

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TIME (EOT) CLAIM IN GOVERNMENT PROJECTS

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requirements for the award of the degree of
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Specially dedicated to *Mak* and *Abah*

I really miss both of you.

Al-Fatihah

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ABSTRACT

Normally, the Extension of Time (EOT) shall be assessed based on the knowledge of the Superintending Officer (S.O) and any additional information given to him by the Contractor. However there are several problems that may delay the process of assessment of the EOT such as lack of details and particulars of submission by the Contractor, late submission of claim by the Contractor and poor demonstration of the impact of delay to the project's completion date. Apart from that, the Contractor's failure to provide the requested information is also a factor the S.O can take into account in assessing the EOT. This research was carried out to achieve two objectives; (i) to identify the most common problems associated with the assessment of EOT's application and (ii) to identify how these problems can be solved by JKR. There are three (3) most common problems encountered by the S.O during assessment process namely lack of details and particulars, inadequate efforts from the Contractor to mitigate the delay and reasons to claim EOT are not relevant events as per contract. The problems were all very highly ranked by the respondents with the frequency of 83%, 78% and 70% respectively. The results imply that strict compliance to the contract requirement is important if the Contractors wanted to secure their entitlement of EOT. In addition, there are six (6) recommended solutions that have been identified to minimize the problems, which include (i) *Jawatan Kuasa Lanjutan Masa (JKLM)* (ii) training course (iii) progress meeting (iv) proper planning (v) written instruction and (vi) strict enforcement. Ultimate findings of this research are expected to provide a significant contribution to the industry players in government's projects thus help to identify areas for further improvement.

ABSTRAK

Biasanya, Lanjutan Masa (EOT) perlu dinilai berdasarkan kepada pengetahuan Pegawai Penguasa (P.P) dan apa-apa maklumat yang diberikan kepadanya oleh Kontraktor. Walaubagaimanapun terdapat beberapa masalah yang boleh melambatkan proses penilaian EOT seperti kekurangan perincian dan butiran penyerahan oleh Kontraktor, kelewatan Kontraktor untuk mengemukakan permohonan dan demonstrasi kesan kelewatan kepada tarikh penyiapan projek yang lemah. Kegagalan Kontraktor untuk memberi maklumat yang diminta juga merupakan faktor yang boleh diambil oleh P.P dalam menilai EOT. Kajian ini dijalankan bagi mencapai dua objektif iaitu (i) mengenalpasti masalah yang paling umum berkaitan dengan penilaian permohonan EOT dan (ii) untuk mencadangkan penyelesaian masalah tersebut. Terdapat tiga (3) masalah paling biasa dihadapi oleh P.P dalam proses penilaian iaitu kekurangan maklumat dan butir-butir, usaha yang tidak mencukupi dalam mengurangkan kelewatan daripada Kontraktor dan peristiwa kelambatan yang dituntut bukan peristiwa yang berkaitan seperti kontrak. Kesemua masalah tersebut paling tinggi dipilih oleh responden dengan frekuensi masing-masing adalah sebanyak 83%, 78% dan 70%. Keputusan membayangkan bahawa pematuhan sepenuhnya kepada keperluan kontrak adalah penting jika Kontraktor ingin mendapatkan kelayakan EOT. Terdapat enam (6) penyelesaian yang dikenalpasti untuk mengurangkan masalah-masalah tersebut; (i) Jawatan Kuasa Lanjutan Masa (JKLM) (ii) kursus latihan (iii) mesyuarat kemajuan (iv) perancangan yang sempurna (v) arahan bertulis (vi) penguatkuasaan yang ketat. Penemuan utama kajian ini dijangka akan memberikan sumbangan ketara kepada pihak terlibat dalam projek-projek kerajaan dan dengan itu membantu untuk mengenalpasti bidang yang memerlukan penambahbaikan.

TABLE OF CONTENTS

CHAPTER	TITLE	PAGE
	DECLARATION	ii
	DEDICATION	ii
	ACKNOWLEDGEMENT	iv
	ABSTRACT	v
	ABSTRAK	vi
	TABLE OF CONTENTS	vii
	LIST OF TABLES	xiii
	LIST OF FIGURES	xv
	LIST OF ABBREVIATION	xv
	LIST OF APPENDICES	xvi
1	INTRODUCTION	1
	1.1 Background of the Problems	1
	1.2 Problem statement	4
	1.3 Objectives	6
	1.4 Scope of Works	6
	1.5 Significant of Studies	7
	1.6 Research Methodology	7
	1.6.1 Identifying Research Issue	8
	1.6.2 Literature Review	8
	1.6.3 Data and Information Collection	8
	1.6.4 Research Analysis	9
	1.6.5 Conclusion and Recommendations	9
	1.6.6 Research Flowchart	10
	1.7 Chapter Organization	11
	1.7.1 Chapter 1: Introduction	11
	1.7.2 Chapter 2: Extension of Time	12
	1.7.3 Chapter 3: The Procedures for Extension of Time Claim	12

CHAPTER	TITLE	PAGE
	1.7.4 Chapter 4: Problems Associated with Evaluation of Extension of Time Claim	12
	1.7.5 Chapter 5: Research Methodology	13
	1.7.6 Chapter 6: Data Analysis	13
	1.7.7 Chapter 7: Conclusion and Recommendations	13
2	EXTENSION OF TIME	14
	2.1 Introduction	14
	2.2 Extension of Time	15
	2.3 Definition and Purpose of Extension of Time	15
	2.4 Act of Prevention	16
	2.5 Time at Large	18
	2.6 The Certifier	21
	2.7 Construction Delay	22
	2.7.1 Critical and Noncritical Delays	23
	2.7.2 Excusable and Non-excusable Delays	24
	2.7.3 Compensable and Non-compensable Delays	24
	2.7.4 Concurrent and Non-concurrent Delays	25
	2.8 Ground for Extension of Time	25
	2.9 Valid Reason for Claim under PWD 203A (Rev.1/2010)	26
	2.9.1 Force Majeure	28
	2.9.2 Exceptionally inclement weather	29
	2.9.3 Suspension of Works	30
	2.9.4 Disputes with neighbouring owners	31
	2.9.5 Superintending Officer's instructions	31
	2.9.6 Late nominations, instructions, drawings or levels	32
	2.9.7 Delay in giving possession of the site	33
	2.9.8 Artist, tradesmen and others	33
	2.9.9 Inability to obtain materials or goods	34

CHAPTER	TITLE	PAGE
	2.9.10 Delay on the part of nominees	35
3	THE PROCEDURES FOR EXTENSION OF TIME CLAIM	36
3.1	Introduction	36
3.2	Application for Extension of Time	36
3.2.1	Nature of Application for Extension of Time	37
3.2.2	Extension of Time Provisions in P.W.D 203A (Rev.1/2010)	38
3.3	Submission of Delay Notice	39
3.3.1	Timing of the Notification	40
3.3.2	Form of the Notice	40
3.3.3	Contents of the Notice	41
3.4	Making of the Application	42
3.4.1	Forms of the Application	42
3.4.2	Contents of the Application	43
3.4.3	Adequacy of supplied information	44
3.4.4	Nature of Information Required	45
3.4.5	Flowchart Application of EOT	46
3.5	Assessment of EOT Application	48
3.5.1	Express provision	48
3.5.2	Basis of Assessment	49
3.5.3	Assessment Process	51
3.6	Flowchart Assessment of Extension of Time	53

CHAPTER	TITLE	PAGE
4	PROBLEMS ASSOCIATED WITH ASSESSMENT OF EOT CLAIM	58
4.1	Introduction	58
4.2	Problems Associated with Evaluation of EOT Claim	58
4.2.1	Notice of Delay	59
	4.2.1.1 Contractor did not submit the delay notice	59
	4.2.1.2 Contractor does not submit the notice in timely manner	60
	4.2.1.3 Submission of notice is not in written form	61
4.2.2	Validity of the reason to claim	62
	4.2.2.1 Reasons to claim is not relevant to events as per contract	62
	4.2.2.2 The delay activities did not fall under the critical path	63
4.2.3	Supporting Document	64
	4.2.3.1 Lack of details and particulars	64
	4.2.3.2 Late submission of claim by the Contractor	65
4.2.4	Demonstration of the Impact of the Delay	65
	4.2.4.1 Poor demonstration of the impact of the delay event to the project schedule	65
	4.2.4.2 Calculation of delays is not known	68
4.2.5	Mitigation of the delay	68
	4.2.5.1 Inadequate effort in mitigating the delay from the Contractor	69
	4.2.5.2 Interpretation of the clause such as up to what extent of 'reasonable steps' or mitigation is required	69
4.3	Solution to overcome the problems	70

CHAPTER	TITLE	PAGE
	4.3.1 Delay avoidance as per JKR guideline	71
	4.3.1.1 Investigation, Design and Preparation of Tender Documents	72
	4.3.1.2 Contract Administration	72
5	RESEARCH METHODOLOGY	74
	5.1 Introduction	74
	5.2 Definition of Research	74
	5.3 Purpose of Research	75
	5.4 Types of Research	75
	5.4.1 Quantitative Research	76
	5.4.2 Qualitative Research	77
	5.5 Data Collection Method	77
	5.5.1 Primary Data	78
	5.5.1.2 Structured Questionnaire	78
	5.5.1.3 Questionnaire Design	79
	5.5.1.4 Population and Sampling Size for questionnaire	81
	5.5.1.5 Structured Interview	82
	5.5.1.6 Interview Design	82
	5.5.2 Secondary Data	83
6	DATA ANALYSIS	84
	6.1 Introduction	84
	6.2 Respondents Background	85
	6.2.1 Respondent's Post	85
	6.2.2 Year of Experience in Construction Industry	86
	6.3 Problems Associated With Evaluation of EOT	87
	6.3.1 Notice of Delay	87

CHAPTER	TITLE	PAGE
	6.3.2 Validity of the reasons to claim	89
	6.3.3 Supporting documents	90
	6.3.4 Demonstration of the impact of the delay	92
	6.3.5 Mitigation of the Delay	93
6.4	Overall results	94
6.5	Other Problems	96
6.6	Solution to Overcome the Problems	97
	6.6.1 Jawatan Kuasa Lanjutan Masa (JKLM)	98
	6.6.2 Training course	98
	6.6.3 Progress Meeting	99
	6.6.4 Proper planning	99
	6.6.5 Written instruction	100
	6.6.6 Strict enforcement	100
6.7	Conclusion	100
7	CONCLUSION AND RECOMMENDATIONS	101
	7.1 Introduction	101
	7.2 Conclusion	101
	7.2.1 Objective 1: Most common problems associated with the assessment of EOT application in Government projects.	103
	7.2.2 Objective 2: To propose the solutions to these problems	104
	7.3 Recommendations	107
	7.4 Limitation of the Research	108
	7.5 Recommendation for Future Research	108
	REFERENCE	109
	APPENDICES	114

LIST OF TABLES

Table 3.1: Timing of Notification	40
Table 3.2: Form of notice	40
Table 3.3: Contents of notice	41
Table 3.4: Timing of Application	42
Table 3.5: Express provision for assessment of EOT	48
Table 3.6: Assessment Process	52
Table 4.1: Notice of Delay and relevant cases	59
Table 6.1: Notice of Delay	87
Table 6.2: Validity of the reasons to claim	89
Table 6.3: Supporting Documents	90
Table 6.4: Demonstration of the impact of the delay	92
Table 6.5: Mitigation of the Delay	93
Table 7.1: Most common problems associated with the assessment of EOT claim in Government projects	103
Table 7.2: Uncommon problems associated with the assessment of EOT claim in Government projects	104

LIST OF FIGURES

Figure 1.1: The main issues in dispute during 2012	4
Figure 2.1: Type of Construction Delay	22
Figure 3.1: Flowcharts on General Procedure on the Application for EOT Under Clause 43 of P.W.D. 203A (Rev.1/2010)	46
Figure 3.2: Flowchart on General Procedure on the Application for EOT	47
Figure 3.3: Flowchart on General Procedure on the Assessment for EOT Under Clause 43 of P.W.D. 203A (Rev.1/2010)	54
Figure 3.4: Flowchart on General Procedure on the Assessment for EOT	56
Figure 3.5: Process of Issuance Certification of Delay and Extension of Time / Non Completion Certificate	57
Figure 6.1: Respondent's Post	85
Figure 6.2: Total year of experience	86
Figure 6.3: Overall result	94

LIST OF ABBREVIATION

1. EOT Extension of Time
2. SCL Society of Construction Law Delay and Disruption Protocol
3. PAM Pertubuhan Arkitek Malaysia
4. CIDB Construction Industry Development Board
5. P.W.D Public Works Department
6. S.O Superintendent Officer
7. CA Contract Administrator
8. BPPKKR Buku Panduan Pentadbiran Kontrak Kerja Raya
9. JKLM Jawatan Kuasa Lanjutan Masa

LIST OF APPENDICES

Sample of Questionnaire

Sample of Structured Interview

CHAPTER 1

INTRODUCTION

1.1 Background of the Problems

According to Lian *et al.* (2012) project's completion date is one of the most important issues in construction management. However in construction industry, it is very impossible for a project to finish on time even though several attempt to prevent it being carried out. It is normal in construction industries for the project to have an Extension of Time (EOT) (Danuri et al., 2009).

According to Society of Construction Law Delay and Disruption Protocol (2002), Extension of Time is defined as the additional time granted to the Contractor to complete the works at new extended completion time and also to relieve him from liability of Liquidated Damages. At the same time, it offers benefit to the Employer's side by establishing new contract completion date and prevents completion time from becoming 'at large'.

In Malaysia, Government is known as the biggest initiator of a construction projects. According to Kee (2012), it is compulsory to use P.W.D form for every Government projects. However there are two common types of the form, which is P.W.D 203A (Rev. 1/2010) and P.W.D 203 (Rev. 1/2010). The former type is to be used where Bills of Quantities form part of the Contract, and the latter type is to be used based on Drawings and Specification without Bills of Quantities. Apparently, P.W.D 203A (Rev. 1/2010) is used more often than P.W.D 203 (Rev. 1/2010), this is due to factor that Bills of

Quantities are very often used in Malaysia construction industry. Therefore, P.W.D 203A (Rev. 1/2010) is taken as the representative standard form of contract in Malaysia.

According to P.W.D 203A (Rev. 1/2010), provision of Extension of Time has been stipulated under Clause 43. In addition, the Contract Administrator (CA) who evaluates and certified the Extension of Time (EOT) claim under this standard form of contract is known as Superintending Officer (S.O). This provision also provides the procedures of Extension of Time's application from the Contractor and S.O obligations to assess the application.

Procedurally, upon the works is likely to be delayed, Clause 43 required the contractor to notify about the delay and to submit a complete Extension of Time application claim to the S.O, which requires all the relevant facts with supporting documents, to enable the S.O to perform his opinion as to the cause and calculation of the length of delay. In addition, prior to the application the Contractor also need to ensure he has taken all reasonable steps to mitigate the delay and the delay is not part of his default.

Upon receive such application, the S.O must evaluate and grant the Contractor a reasonable Extension of Time for completion of the works. Normally, the ground the Extension of Time should be granted in a matter opinion of the Contract Administrator, based upon its own knowledge and upon any additional information given to it by the Contractor (Pickavance, 2010). However, according to Clause 43, the grounds of assessment are subject to if the delays are not due to the Contractor's default and the Contractor has taken all reasonable steps to mitigate the delay.

According to Murdoch and Hughes (1996, cited in Rajoo and Singh, 2012), the general rule is to the effect that an Extension of Time can only be contractually valid and tenable at law if it complies strictly with the relevant

contractual procedures. However, Clause 43 of the P.W.D 203A (Rev. 1/2010) is not mentioning any issues regarding this matter. The clause is too general and there is no specific requirement in term of time frame to submit the notice and application, documents that required to be submitted in application and the limitation of the Contractor duty to use 'reasonable steps' to mitigate the delay.

According to Rajoo and Singh (2012), assessing the Extension of Time involves two sub-stages, which are preliminary stage and decision-making stage. In preliminary stage, mainly the Contract Administrator check the contractor's compliance with any express preconditions, sufficiency and adequacy of the information supplied and the content of the application itself. Most of the contract form empowers the Contract Administrator to reject the claim or request for further and better information. Like other standard form of contract, P.W.D 203A (Rev.1/2010) form does not provide any guideline on how the assessment should be carried out, it only stated the general procedures and the entitlement for Extension of Time but never provide the details guidance on the assessment of Extension of Time (Kee, 2012).

Once the preliminary checking has done, only then the decision-making stage being carried out. However most of the standard form including P.W.D 203A (Rev.1/2010) form contain uncertain statement for such obligation and does not provide any guidelines to assist the Contract Administrator to come out with the decision.

Hence, even though the provision of Extension of Time under P.W.D 203A (Rev.1/2010) is too general and does not provide clear guideline in term of application and assessment, it is vital perquisite for the Contractor to comply with the contractual requirements by submitting a comprehensive, accurate and complete application because it is the onus on the Contractor to substantiate his claim in order to smooth the process of S.O to assess his claim and ultimately can secure his entitlement for time extension.

On the other hand, Braimah (2008, cited in Yusuwan, 2013) also emphasized that “timely submission by the Contractor and quick assessment by the Contract Administrator is often recommended as a good practice”. Even though there is no specific time frame stipulated under Clause 43, it is advisable for the Contractor to submit the application as soon as possible. Timely submission and quick assessment not only will help to ensure less difficulty in claim resolution as the facts of the claims will be fresh in mind to the parties involved, but also will minimize the chances of future dispute.

1.2 Problem statement

The quality of public works has been gradually decline and human errors could be found in almost all government projects (Lim Su Goan, 2013). About 17.3% out of 417 government contract projects in Malaysia were considered sick, which the sick was defined as more than 3 month of delay or abandoned (Sambasivan and Soon, 2006). Therefore to cater these issues, it is normal in Government projects to have an Extension of Time.

However, according to Majid (2004), one of the normal problems encountered by Jabatan Kerja Raya (JKR) whilst administrating public works contract is managing the Extension of Time. There are various problems might arise when the provision of the Extension of Time do not provide very clear guideline in term of application and how assessment should be made .According to Clause 43 of P.W.D 203A (Rev.1/2010), it merely mentions that:

“Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice to the S.O as to the causes of delay and relevant information with supporting documents enabling the said officer to form an opinion as to the cause and calculation of the length of delay... “

From the Clause 43, the Contractor duty is to give the S.O as much relevant information and supporting document in order to support his application in timely manner. However, according to the clause, there are no definite time frames for every submission to be made, specific details and relevant information required to substantiate the application. Therefore the S.O might face the problem where there are lacks of details and particulars and also late submission from the Contractor for them to do the assessment since the contract does not mentioned any specific requirement. Ultimately the process of evaluation and granting the Extension of Time may be delayed.

In addition, upon receive such application the S.O should grant a fair and reasonable Extension of Time to the Contractor with the grounds that the Contractor already taken all reasonable steps to mitigate the delay. Another problem arises when there are no limitations or guideline up to what extends the Contractor should mitigate the delay. The interpretation of the clause varies and there is no standardization. Due to these issues, the dispute may arise in term of dissatisfactory of the entitlement of the Extension of Time from the Contractor.

Similarly, Yusuwan (2013) also emphasized that the process of assessing the Extension of Time is not easy as it sounds. In her research for private funding projects, there are several problems that may delay the process of assessment of Extension of Time claim such as poor submission by Contractor, late submission of claim by the Contractor and delay analysis method used by Contractor different with the method used by the Architect. Another finding from her research, Contractor fails to comply with the contractual requirements such as submission of proper delay notification becomes a common disputed issue associated with the Extension of Time claim.

What are the most common problems encountered by the S.O during assessment process and how to solve the problems? Therefore, there are more common problems that need to be identified and the solution to solve the problems also required.

1.3 Objectives

The objectives of this research are as follows:

- (i) To identify the major problems associated with the assessment of Extension of Time (Extension of Time) application.
- (ii) To identify how these problems can be solved by JKR.

1.4 Scope of Works

To complete the research, only a few scopes of works will be considered:

- (i) The studies will focus on procedural issues only.
- (ii) Does not cover the topic of entitlement for loss and / or expense as a result of extension of time granted in a project.
- (iii) Case study will be based on Government projects only.
- (iv) Provision of Extension of Time will be based on Clause 43 of the standard contract form of P.W.D. 203A (Rev. 1/2010).
- (v) Targeted respondents are comprise of person involve with assessment of Extension of Time from Jabatan Kerja Raya within Klang Valley only.

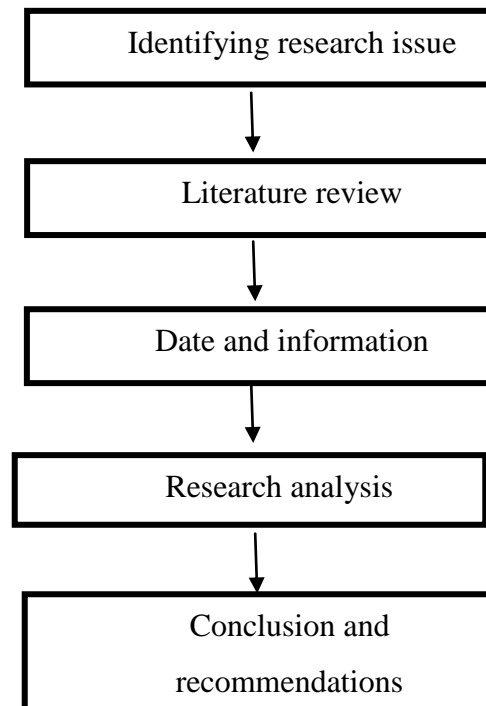
1.5 Significant of Studies

The finding from this research is expected to offer a significant contribution to the industry players in term of their awareness and attitude towards Extension of Time's claim. Besides that, it will help the industry players to identify areas for further improvement and able to anticipate the problem at early stage.

Ultimately, the chances of dispute to be happened in Extension of Time's assessment could be reduces.

1.6 Research Methodology

Briefly, the research process will be divided into five stages, which are:



1.6.1 Identifying Research Issue

The first stage of this research is to identify the research issue. It involves discussion with lecturer and reading process of several sources such as journals, articles, seminar papers, previous research papers or other related research papers, and electronic resources. Apart from that, World Wide Web and online e-databases from University of Technology Malaysia, UTM library's website also helps in the process of identifying the issues.

1.6.2 Literature Review

The second stage of the research is to carry out the literature review material. This topic will discuss all collected data based on published information and relevant to the scope of research. This literature review will be based on the research that has been done and any other information from books, journals and articles that are similar or most pertinent to the subject area.

1.6.3 Data and Information Collection

The third stage is to collect the data and information. This is an important stage towards achieving the objectives of the research. In this stage, it will focus on the collection of the relevant data from specific targeted respondents through structured questionnaire and followed with structured interview. Targeted respondents for this research are person from Jabatan Kerja Raya (JKR) who involves with the assessment of Extension of Time mainly within Klang Valley only.

The questions in the questionnaire will be structured under two parts, which is objective questions (multiple choice of answer) and subjective questions (open-ended answer). However all questions in structured interview will be designated with subjective questions (open-ended answer) only.

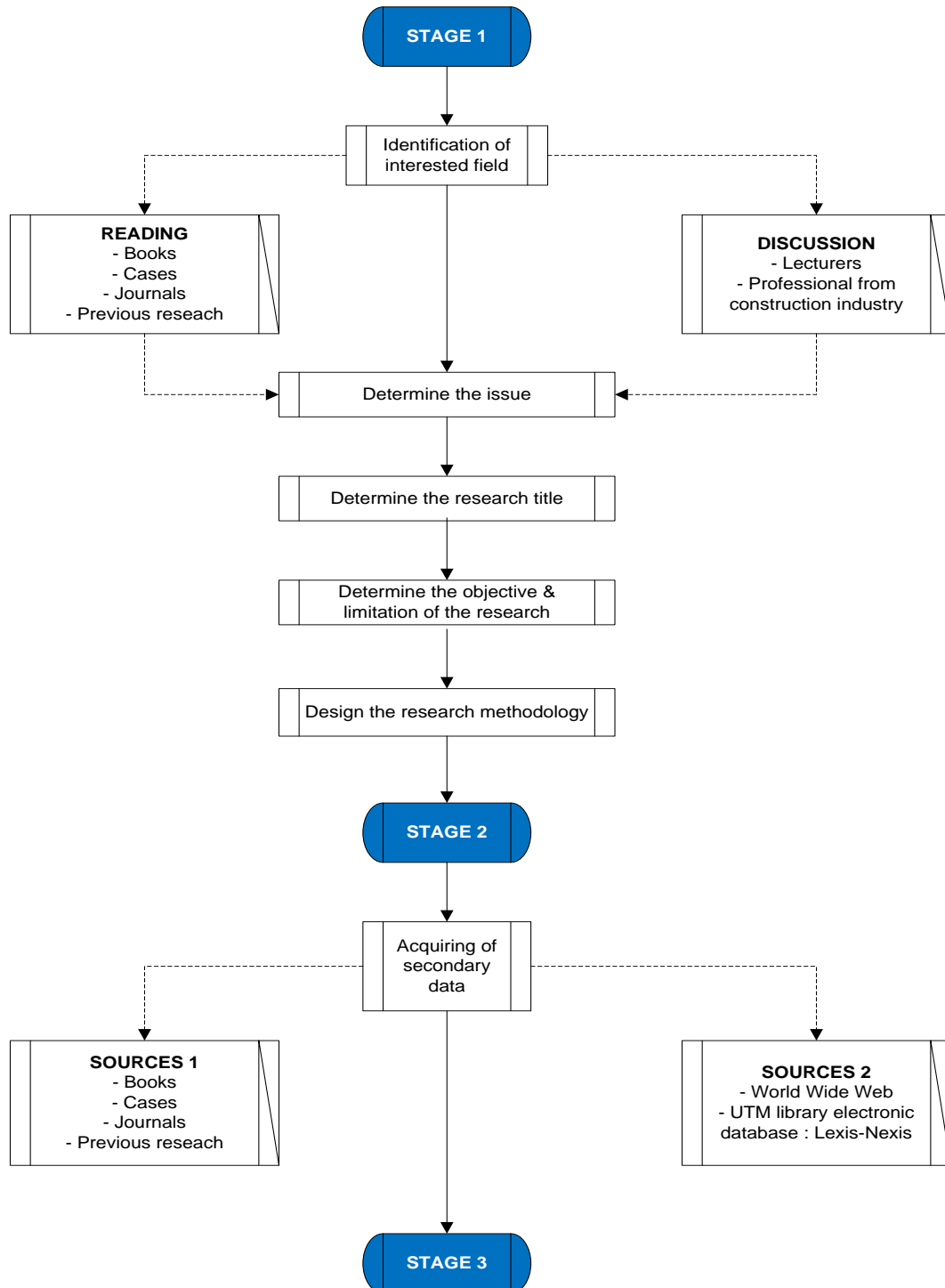
1.6.4 Research Analysis

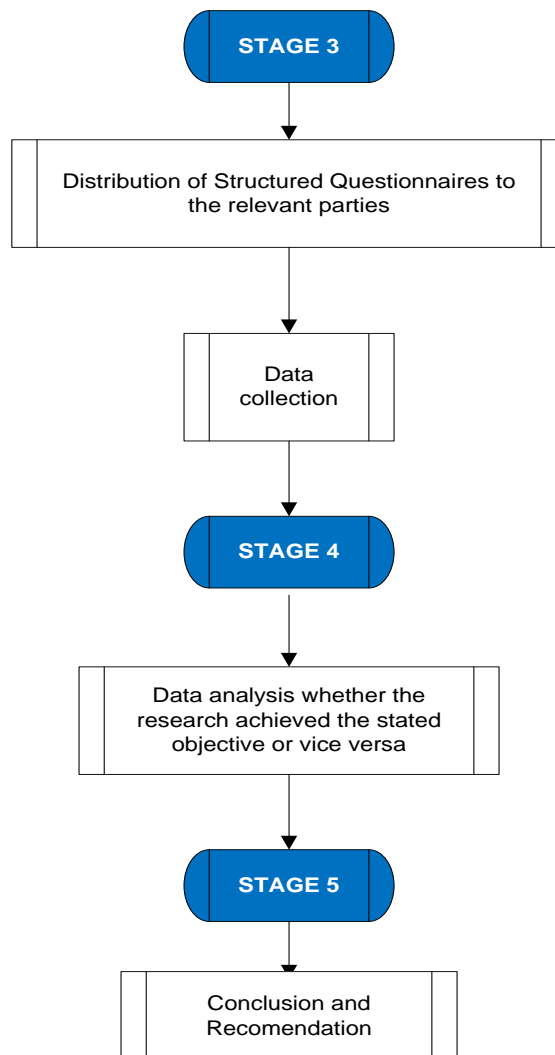
After gathering all important research data, the fourth stage is to carry out the analysis. It is a process used to transform the collected data and information with a view to reach to certain conclusion for a given situation or problem. Besides that, research analysis is helps in structuring the finding from different sources of data to support the researcher to reach a conclusion.

1.6.5 Conclusion and Recommendations

The final stage of the research is to conclude and recommends. In this stage, the important findings will be concluded and determine whether the objective of the research is achieved or not. Necessary recommendations in relation to the said problem are lined up to expand the area of research and create a better research later.

1.6.6 Research Flow Chart





1.7 Chapter Organization

1.7.1 Chapter 1: Introduction

This chapter will presents a brief background of construction disputes in Extension of Time and nature of provision under P.W.D 203A (Rev.1/2010) form. It also develops the problem statement, objective of the research,

limitation of study, significant of the research, methodology and chapters organization.

1.7.2 Chapter 2: Extension of Time

This chapter will discuss about the general principles and nature of the Extension of Time (Extension of Time) in construction industry such as the purpose of Extension of Time, the provision in standard form of contract, and the grounds of Extension of Time claim under P.W.D 203A (Rev.1/2010) form.

1.7.3 Chapter 3: The Procedures for Extension of Time Claim

This chapter will discuss standard practice in dealing with Extension of Time application. It will involves the discussing discuss about the express provision of procedure to apply Extension of Time and the evaluation process mainly based on Clause 43 of P.W.D 203A (Rev.1/2010) form.

1.7.4 Chapter 4: Problems Associated with Evaluation of Extension of Time Claim

This chapter provides several common problems associated with the assessment of Extension of Time's claim. The problems involves difficulties faces by the Contract Administrator when dealing with the Extension of Time application from the Contractor. All the problems are identified based on the comprehensive review of previous related researches, reported cases, books and as well as expert opinion conducted with industry practitioners.

1.7.5 Chapter 5: Research Methodology

The purpose of this chapter is to explain the methodology that will be used in conducting this research. This chapter covers the definition of the research, the research strategy, data collection method, research design and the procedures to analysis the data.

1.7.6 Chapter 6: Data Analysis

This chapter will transforms and analyses the collected data from structured interview into meaningful information. The information will be presented and discuss into various form such as tabulation and graph. This chapter is also important as it will support to answer the objective of the research.

1.7.7 Chapter 7: Conclusion and Recommendations

Based on the research analysis, the important findings will be concluded and determine whether the objective of the research is achieved or not. Besides that, this chapter also will summarize the most contentious issues in relation to Extension of Time claim from perspective of the Contract Administrator from Jabatan Kerja Raya. Since this study only focus on issues associated with assessment of Extension of Time only, necessary recommendations for another study may be conducted from different respondent such as issues associated with substantiating the Extension of Time claim from the Contractor's perspective.

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