

DELAY IN SETTLEMENT OF FINAL ACCOUNT

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Specially dedicated with deepest love to *Umi* and *Abah*, Datin Hanisah Binti Hj
Ismail and Dato' Hj Romli Bin Hj Hassan and my *husband* Mohammad Harith Bin
Mohd Yunos

Thank you for your support, love and encouragement

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ABSTRACT

When the project is certified to be practically completed the contractor will be entitled to be paid the final payment. There are a lot of criticism regarding the final account for construction projects that have been settled unreasonably late or far beyond the period stipulated in the contract. This scenario occurs due to the duration to settle the final account by government agencies. The government agencies have failed to prepare the final accounts and final certificates according to the period stated in the condition of contract and the government agencies also failed to release the performance guarantee sum or performance bond within stipulated time. Therefore, the objective of this study is to identify the problem associated with the settlement of final account in the government projects and to recommend the solution to the problem related to settlement of final account. The scope of this study is limited to government project and government agencies . This questionnaires and interview will be analysed to achieve the aims to identify the problem associated with the settlement of final account and recommended solution. From the analysis, it can be summarized that, there are ten (10) serious problems associated with the settlement of final account. This are listed as variation, price, time, contractor, contract, management matter (contract administrator), human, contractual, client and external factor. There are numerous solutions to resolve these problems that have been identified by the respondents in chapter 5 of the study. Therefore, by conducting this research, hopefully will help the quantity surveyor and contract administrator in identifying the problems in settlement final account and make reasonable actions as soon as possible. This also to enable quantity surveyor to reduce potential conflict in final account settlement and to ensure that the final account and final certificate can be completed in timely manner.

ABSTRAK

Apabila projek itu disahkan secara praktikal siap kontraktor berhak untuk dibayar pembayaran akhir. Terdapat banyak kritikan berkenaan akaun akhir bagi projek-projek pembinaan yang telah dibayar lewat atau lambat daripada tempoh yang ditetapkan dalam kontrak. Senario ini terjadi kerana terdapat penangguhan di dalam penyelesaian perakaun muktamad oleh agensi kerajaan. Kegagalan agensi kerajaan untuk menyediakan akaun muktamad dan sijil akhir mengikut tempoh yang dinyatakan dalam syarat-syarat kontrak dan juga kegagalan agensi kerajaan untuk melepaskan wang jaminan pelaksanaan dalam masa yang ditetapkan. Oleh itu, objektif kajian ini adalah untuk mengenalpasti masalah yang berkaitan dengan penyelesaian perakuan muktamad dalam projek-projek kerajaan dan mencadangkan penyelesaian kepada masalah tersebut. Skop kajian ini adalah terhad untuk projek kerajaan dan agensi-agensi kerajaan. Soal selidik dan temubual akan dianalisis untuk mengenalpasti masalah yang berkaitan dengan penyelesaian perakuan muktamad dan cadangan penyelesaian yang disyorkan. Daripada analisis yang dijalankan, dapat dirumuskan bahawa, terdapat sepuluh (10) masalah yang serius berkaitan dengan penyelesaian perakuan muktamad. Diantaranya ialah perubahan, harga, masa, kontraktor, kontrak, perkara-perkara pengurusan (pentadbir kontrak), manusia, perkara-perkara kontrak, pelanggan dan faktor luaran. Penyelidikan ini, diharapkan dapat membantu juruukur bahan dan pentadbir kontrak di dalam mengenalpasti masalah dalam penyelesaian perakuan muktamad dan mengambil tindakan sewajarnya secepat mungkin. Penyelidikan ini juga bertujuan untuk membolehkan juruukur bahan mengurangkan pertelingkahan di dalam penyelesaian perakuan muktamad dan memastikan perakuan muktamad dapat diselesaikan mengikut tempoh ditetapkan.

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LIST OF ABBREVIATION

CMGD	Certificate of Making Good Defect
FA	Final Account
EPU	Economic Planning Unit
VO	Variation Orders
KPPK	Ketua Penolong Pengarah Kanan
JKR	Jabatan Kerja Raya
SAKPKR	Surat Arahan Ketua Pengarah Kementerian Kerja Raya
Bil	Bilangan
SKALA	Sistem Pengurusan Projek
SPK	Sistem Pematuhan Kerja
CPC	Certificate of Practical Completion
SO	Superintendent Officer
CL	Clause
SPP	Surat Pekeliling Perbendaharaan
PK	Perolehan Kerajaan
PMK	Pegawai Mentadbir Kontrak (Agensi/ Konsultant)
PP	Pengawai Penguasa atau Pengarah Projek bagi Projek Reka Bina
LAD	Liquidated and Ascertained Damages
APK	Work Change Directive (Arahan Perubahan Kerja)
PHK	Adjustment for omission Contract Sum (Pelarasan Harga Kurangan)
SOFA	Statement of Final Account
VOP	Variation of Price
WJP	Performance Guarantee Sum (Wang Jaminan Perlaksanaan)
SPSS	Statistical Packaging for Social Science

LIST OF SYMBOLS

Σ	-	total sum
n	-	the number of respondent indices

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CHAPTER 1

INTRODUCTION

1.1 Introduction

The final account refers to the calculation and adjustment of the final construction cost between the client or employer and the contractor based on a fair valuation of the work carried out. Thus, a contractor's actual profits or losses can be determined when the final account is settled (Chan, 2002). Any delay in final account settlement can adversely affect the contractors' cash flow and the ability to secure its finance (Ashworth & Hogg, 2002).

The finalizing of the account is not a one sided activity involving the contract administrator but entails the necessary input of the contractor especially in terms of the provision of the relevant documents, substantiation each in regard to his claims and also of those pertaining to his sub-contractor. Therefore, there must be a proactive approach on both sides and a strict adherence to any programmed or deadlines set. For that reason, the issue of the final account remaining open for years after their Certificate of Making Good Defect (CMGD) has been issued in majority of contract (Harbans Singh,2010).

Besides that, the final account period of settled is depending on the final payment certificate described in contractual prescribed timescale. It is classified as on time and satisfaction, if the final account settlement is completed in the

contractual prescribed timescale. It is classified as delay and dissatisfaction, if the prescribed timescale overrun or if the engineer is not able to issue the final payment certificate within such timeframe (Walker, 1998).

One of the conditions of the contract that led to problems and disputes in preparation of the final account settlement is duration for preparation. Although the contract clearly identify the period for the issuance of the final account of not later than three (3) months after the issuing of the Certificate of Making Good Defect (CMGD). The period of three (3) months is a practical and reasonable time for all parties. However, as with the preparation of other documents in the administration of a building contract, the process of preparation final account often face problems and obstacles (Quantity Surveying, 2010). Moreover, the lack of understanding the roles and responsibilities in the contract regarding the issuance of a final payment certificate to the contractor will cause the disputes and problems in the closing of the final account statement (Zarabizan *et al.*, 2012).

Therefore, settling a final account can be long drawn out process, that brings together all financial aspects of the contract. The goal for a final account is to agree to a fair valuation of the works undertaken by the building contractor and to enable the contract administrator to issue the final certificate, thereby concluding the project works. Reaching an agreement between parties may involve much negotiation and the final accounts prepared from these should be able to withstand the most stringent financial audit as it's legally binding (Ashworth & Hogg, 2002).

Although the backlogs in the closing of final accounts have existed for decades, there are many factors significantly affecting the closing of a final account. For example, the construction projects in Hong Kong have been identified contractual, contractor and management. Unfortunately, factors delay in closing final account usually attract less attention and priority by project participant more difficult and frequently leads to emergence of unnecessary dispute (Kwok Chi Ko, 2009).

The rapid increase of the late payment issues nowadays has gone to the point that it tends to decrease the good image of construction in Malaysia. The Malay Contractor Association whom once revealed that some contractor are owed RM 100 million to RM 200 million for four to five years, mostly on final payment (Utusan Malaysia, 2006). According to the then Prime Minister Abdullah Ahmad Badawi (2006) dated 6 October 2006, complaints relating payment to contractors and supplier tends to give negative perception that the implementation of the 9th Malaysia Plan is moving at a slow pace. This shows the seriousness of the problems because it is related to the image of Malaysia's construction industry (Zarabizan *et al.*, 2013).

However, parallel to these increasing developments in the construction industry, the practices and procedures today are vastly different from the old days. There are numerous criticisms as to the increasing number of the construction projects final account of which were settled unreasonably late or far beyond the period stipulated in the contract (Zarabizan *et al.*, 2013).

In PWD Form 203A (Rev. 1/ 2010), the contract states that the Contractor shall submit full particulars complete with supporting documents within but not more than three (3) months after issuing of the Certificate of Practical Completion. The Superintendent Officer (S.O) shall issue the Final Certificate within three (3) months after the expiry of the Defect Liability Period for the whole of the Works or three (3) months after the issuance of the Certificate of Completion of Making Good Defect (CMGD) in Clause 31.

According to circular "Surat Pekeliling Perbendaharaan, SPP Bil.6 Tahun 2011", the Superintendent Officer shall issue a final account and final certificate within three (3) months after the expiration of the defect liability period for the entire work, or three (3) months after the Certificate of Making Good Defect (CMGD)

issued, whichever is later, according to the provisions of the contract. However, according to Surat Arahan KPKR Bil (6) dlm. JKR.KPKR. 020.050/3 Klt.4 dated 20.9.2000, the final account and final certificate should be issue not later than 6 months after the date of Practical Completion has been issued.

According to the Perolehan Kerajaan (PK 4/2013), with regard to the adjustment of the contract sum and approved claims by the Claims Committee, the agency shall prepare a statement of final account within the prescribed period. Under the traditional contract the period for preparation statement of final account is nine (9) months from Certificate of Practical Completion. Whereas under design and build contract the period for preparation statement of final account is twelve (12) months from Certificate of Practical Completion. But, it is different indicated in the SA KPKR Bil. 14/2012 which is during the preparation of the statement of final account established for six (6) months after the Certificate of Practical Completion was issued for both type of contract namely traditional and design and build project.

If the final account does not settle according to the duration stated in construction contract the contract administrator is legal binding. But if the final account is not settle according to the Treasury Circular or any circular provided by department the contract administrator will be surcharge or disciplinary action will be taken to him. Normally, late or delay due to many reasons such as management matter (contract administrator), client, consultant, contractor, price, variation, time, contract, contractual, external factor and others.

1.2 Problem Statement

The delay in payment of the final account and discharge performance guarantees are often the issues and dilemmas for the contractors nowadays. In newspaper Utusan Malaysia newspaper article dated 11 December 2002, it was reported that many contractors have still not received any payment from the agencies

after completing the work. Therefore, the Deputy of Prime Minister Dato' Seri Abdullah Ahmad Badawi in his instruction dated on the 3rd of July 2001 has issued an order to government agencies to expedite the payment to contractors including the issuance of the final account and the final certificate.

According to Norshimah Meon, the Ketua Penolong Pengarah Kanan (KPPK) of the Jabatan Kerja Raya (JKR) Selangor (2010) the delays in final account also occur in government agencies because of unfamiliarity with new procedures and rules introduced by the government and also due to time constraints. As a result, the appointed quantity surveyor cannot perform the best services for government (Sr. Norshimah Bt Meon & Pn. Hanawati Bt. Hashim, 2010).

The conflict between regulations and procedures set forth by the government or the relevant agencies can also occur in the end condition of contract and document tender. As stated in the KPKR (Surat Arahan Ketua Pengarah Kementerian Kerja Raya circular, the SAKPKR Bil. 14/2012), the statement of final account should be prepared six months after the issuance of the Certificate of Practical Completion (CPC). However, both Clause 31.4 of PWD 203A (Rev. 1/ 2010) for conventional contract and Clause 54 of PWD 203 (Rev. 1/ 2010) for design and build, indicate that the final account must be issued by three months after the Certificate of Making Good Defect (CMGD). The different period in the settlement of the final account has created problems to the contract administrator to complete the final account (QS Corner, 2013).

The various agencies have also come out with standard of procedure and office procedures on how to settle the final account within the stipulated time. But no pointed out the issue or problem of late settlement of final account still persist. Some can be months to 3 years which significantly longer than stipulated in due contract and as stated by the standard of procedure. For example, in yearly report 2013 by "Cawangan Kontrak dan Ukur Bahan, Jabatan Kerja Raya" has stated Statement of Final Account was prepared more than 6 months from the date of Certificate of Practical Completion issued. The date of Certificate of Practical

Completion is 20 May 2012 which stated in “*Sistem Pengurusan Projek*” (SKALA) while the date of certify the Statement of Final Account is 20 August 2013. Moreover, in Audit Report 2012 (Siri 1) has stated, the delay in issued final account has identify in Project Redevelopment of Kuala Terengganu Airport Project Package 11-Terminal Building. It can be seen when the Certificate of Making Good Defect (CMGD) has been issued at Julai 2010 but the delay is 652 days. Furthermore, in Audit Report 2012 (Siri 2), has stated 29 project has been delay in issuing final account which is about 4 to 44 months.

Therefore, a lot of conflicting can be made in connection with the duration to settle the final account. One of them is that the final account settlement has always been delayed by the government agency. The government agency failed to prepare the final account and the final certificate at the time specified in the contract, and the government agency failed to release performance monies within the stipulated time (Zain, 2003).

Due to the problem related to the issuance of final account settlement, this study will identify the problems in the final account settlement and recommend the solutions accordingly.

1.3 Research Questions

The discussion and the statement of problem highlighted important questions:

- a) What are the problem in finalization final account by the contract administrator?
- b) What are the legal implication of the delays in the final account in accordance with the contract?

- c) What are finalization and payment of the remedy available to the contractor in the event of delay in closing final account?

1.4 Research Objectives

The objectives of this research are:-

1. To identify the problem associated with the settlement of final account in the government projects; and
2. To recommend the solution to the problems related to the settlement of a final account

1.5 Scope of Research

This research is limited to government project and government agencies.

1.6 The Significance of Research Study

This research is important in order to get a picture of the existing problems in the final account settlement and to provide solutions for the quantity surveyor's practice in government agencies. It also can alert various parties that the delay in the preparation of the final account actually has legal implications and may allow the contractor to claim compensation. It also aimed to enable quantity surveyor to reduce potential conflict in the final account settlement and to ensure that the final account settlement can be completed in a timely manner.

In addition, this research also aims to answer questions that arise in the final account settlement. Furthermore, this research can help contract administrator and quantity surveyors to make reasonable actions related to final account settlement. While to the contractors and other party involved, it is to assist them fully understand problems in final account settlement. Findings of this research will also, provide readers and other interested parties with a better appreciation and understanding of the problem in final account settlement in government agencies.

1.7 Organization of Thesis Chapter

The report is organized into six (6) chapters:

1.7.1 Chapter 1: Introduction

This chapter, will discuss the background of the problem, problem statement, objectives of the research, scope of study, significance of the study and the organization of the thesis chapter.

1.7.2 Chapter 2 : Final Account in Government Sector

This chapter discusses the definition of a final account, parties that are involved in final account, contractual provisions, and procedures in the issuance of the final account by construction contract and the standard procedures in government agencies.

1.7.3 Chapter 3 : The problem in Final Account Settlement

This chapter will discuss, the hypothesis of the problem or causes of the delay in final account settlement and the solution to the problem in final account settlement.

1.7.4 Chapter 4 : Research Methodology

This chapter is to explain research methodology that has been endorsed in this study which consist of explanations on the method used and reasons behind the selection.

1.7.5 Chapter 5 : Data Analysis

In this chapter, all the survey questionnaires will be divided into four sections and analysis. In Part A the analysis aims to identify the respondent background. In Part B the analysis aims to identify the perception in final account settlement. Hence, in Part C and Part D analysis will focus on the problems in final account settlement and the recommended solution for them.

1.7.6 Chapter 6 : Conclusion and Recommendation

This chapter presents the recommendations, conclusions and suggestions for research that are needed in this area of study. It also addresses some implications of the research recommendation to the construction industry.

1.8 Summary and Conclusion

In conclusion, the numerous criticism as to the increasing number of the construction projects final account of which were settled unreasonably late or far beyond the period stipulated in the contract. Therefore, this study is to identify the problem associated with the settlement of final account in the government project and to recommend the solution to the problem related to issuance of final account. The research has been conducted by analysing the questionnaire and interview which is distributed to quantity surveyor serve in government agency. From the analysis, the problem in settlement of final account has been identify and categorized under several problem discovered during the survey. From that, a critical analysis is done on the result of survey for the problem and recommended solution for the issues in contention as the findings of the study.

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