

THE NEW PAYMENT CLAUSES IN THE  
PWD 203/203A (REV. 1/2010) CONDITIONS OF CONTRACT  
IN ALIGNING TO CIPAA

**HASNITA AHMAD**

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*Specially dedicated to Azim (the determined),  
Hariz (the keeper) and Aiman (the lucky one)...  
You are the reasons for my happiness*

*To Mak, my sisters and brothers, Mustafa...  
I can never thanked enough*

*To Liza, really, thank you for everything*

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## ABSTRACT

Payment disputes is one of the biggest issues in the construction industry normally faced by contractors which results from default in payment by the employers. In the construction project, these payment default are issues on non-payment, late payment and under payment that impacts Malaysian construction industry causing delay in completion of the project. In order to mitigate the problem, a resolution to disputes relating to timely payment which is speedy and economical needs to be formed. The Government of Malaysia being one of the largest employer in Malaysia construction industry, in realizing problems on the impact of cash flow to construction contracts, has alongside with the industry main players addressed the issues to be taken seriously and thereon supports the formation of the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012). The proposed CIPAA 2012 came into operation on 15th April 2014 to address payment issues on improving cash flow and principally aims to alleviate the problem with regular and timely payments made to the unpaid party. This act opens up avenue for contractors to dispute certification of payment by employers. Therefore it is very essential that the Government of Malaysia, plan strategies to overcome or minimize payment problems in projects handled directly by Government. Public Works Department (PWD) as the Government's project implementation agency, needs to improve and align its current payment-related procedures to suit CIPAA 2012 requirements thus minimize any potential claims arising from the contractor. PWD has taken steps to make amendments to the Standard Conditions of Contract PWD 203/203A (Revision 1/2010) to further strengthen the payment procedure on ensuring contractor is paid fairly and accordingly. In conclusion, the amendments made to the PWD 203A (Rev. 1/2010) Conditions of Contract is determined to align to the principle aims of CIPAA in ensuring regular and timely payment, hence proceeds to mitigate the possibility of Government projects being dragged into adjudication through CIPAA 2012.

## ABSTRAK

Pertikaian dalam bayaran adalah merupakan salah satu isu terbesar yang dihadapi oleh kontraktor akibat dari kegagalan majikan membuat bayaran. Dalam projek pembinaan, pertikaian ini adalah bagi keadaan tidak dibayar, kelewatan membuat bayaran dan bayaran yang tidak setara dengan amaun kerja, yang telah memberi impak kepada industri pembinaan di Malaysia yang mengakibatkan kelewatan penyiapan projek. Bagi membendung masalah ini, satu penyelesaian yang cepat dan ekonomik berhubungkait dengan ketepatan bayaran perlu dibentuk. Dalam industri pembinaan, Kerajaan Malaysia sebagai salah satu majikan utama dalam industri pembinaan di Malaysia, menyedari akan masalah impak aliran tunai dalam kontrak pembinaan telah seriringan dengan peneraju utama industri mengambil berat isu ini dan seterusnya menyokong pembentukan Akta Pembayaran dan Adjudikasi Industri Pembinaan 2012 (CIPAA). Pada 15 April 2014, CIPAA 2012 telah dikuatkuasakan dan mula beroperasi untuk mengenalpasti is-isu dalam pembayaran dengan keutamaan untuk mengatasi masalah ini dengan kaedah ketepatan pembayaran kepada pihak yang tidak dibayar. Akta ini membuka jalan kepada kontraktor untuk mempertikaikan bayaran oleh majikan. Oleh itu, adalah penting bagi Kerajaan Malaysia untuk merangka strategi bagi mengatasi atau meminimalkan masalah bayaran bagi projek-projek yang dikendalikan oleh Kerajaan. Dalam konteks ini, Jabatan Kerja Raya (JKR) selaku agensi pelaksana projek Kerajaan, perlu mengkaji semula prosedur semasa agar sejajar dengan kehendak CIPAA dan seterusnya meminimalkan kemungkinan menghadapi tuntutan daripada kontraktor. JKR telah mengambil langkah untuk membuat pindaan kepada Syarat-syarat Kontrak PWD 203/203A (Revision 1/2010) bagi memperkukuhkan prosedur bayarannya, selaras dengan itu memastikan kelangsungan bayaran kepada kontraktor selaras dengan kehendak CIPAA 2012, seterusnya membendung projek-projek Kerajaan dari kemungkinan dibawa ke adjudikasi di bawah CIPAA 2012.

## TABLE OF CONTENTS

CHAPTER	TITLE	PAGE
	<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>xiv</b>
	<b>List of Tables</b>	<b>xv</b>
	<b>List of Figures</b>	<b>xvi</b>
	<b>List of Abbreviations</b>	<b>xvii</b>
	<b>List of Appendices</b>	<b>xviii</b>
 <b>1</b>	 <b>INTRODUCTION</b>	
1.1	Background of Research	1
1.2	Problem Statement	3
1.3	Objective of the Research	5
1.4	Scope and Limitation of Research	5
1.5	Significance of Research	6
1.6	Research Methodology	6
1.7	Organizations of Chapters	9

<b>CHAPTER</b>	<b>TITLE</b>	<b>PAGE</b>
<b>2</b>	<b>THE ENFORCEMENT OF CONSTRUCTION INDUSTRY PAYMENT ADJUDICATION ACT</b>	
2.1	Introduction	11
2.2	Overview of CIPAA	14
2.3	Principle Aims of CIPAA	15
2.4	Payment Default Identified	18
2.5	Government Projects Governed by CIPAA	20
2.6	Disputes Occurring in Government Projects	23
	2.6.1 Common problems encountered in Government Project	23
	2.6.2 PWD as the implementation Agency	24
	2.6.3 Placing Procedures in line with CIPAA 2012	25
2.7	The Likely Impact of CIPAA on Government Projects	26
2.8	The Consequences of CIPAA on Government Projects	27
2.9	Conclusion	28

<b>CHAPTER</b>	<b>TITLE</b>	<b>PAGE</b>
<b>3</b>	<b>THE FUNDAMENTAL PRINCIPLES IN THE NEW PAYMENT CLAUSES IN PWD 203A CONDITIONS OF CONTRACT</b>	
3.1	Introduction	29
3.2	Obligations of the Government and Contractor in Payment	31
3.2.1	Government's obligation	31
3.2.2	Contractor's Obligation	31
3.3	The Purpose of Amendment to the Conditions of Contract	32
3.3.1	The background of the amendments to PWD 203/203A (Rev. 1/2010)	33
3.3.2	The amendments to PWD 203/203A (Rev. 1/2010)	33
3.3.3	The New Provision for Clauses in PWD 203/203A (Rev. 2010)	34
3.4	The Fundamental Principles of Clause 28 for Interim Payment in Addendum no 1	39
3.4.1	Written application by Contractor	39
3.4.1.1	The Clause	39
3.4.1.2	Underlying reasons in the Clause	39
3.4.2	Contractor to submit amount due	41
3.4.2.1	The Clause	41
3.4.2.2	Underlying reasons in the Clause	42
3.4.3	S.O. inspects and verify the works	44
3.4.3.1	The Clause	44
3.4.3.2	Underlying reasons in the Clause	44
3.4.3.2.1	Quality of Workmanship	45
3.4.3.2.2	Variation Works	46



<b>CHAPTER</b>	<b>TITLE</b>	<b>PAGE</b>
3.4.4	S.O. to issue Interim Certificate	48
	3.4.4.1 The period of honouring certificate	48
	3.4.4.2 Issuance of the payment certificate a condition precedent to payment	49
	3.4.4.3 S.O as the certifier	50
3.4.5	Contractor fails to submit	53
	3.4.5.1 The Clause	53
	3.4.5.2 Underlying reasons in the Clause	53
3.5	The Fundamental Principles of Clause 31 for 54 Final Payment	54
	3.5.1 The Clause	54
	3.5.2 Underlying reasons in the Clause	55
3.6	Aligning to Principle Requirement of CIPAA	59
	3.6.1 PWD's mechanism of practice	59
3.7	Conclusion	65

<b>CHAPTER</b>	<b>TITLE</b>	<b>PAGE</b>
<b>4</b>	<b>RESEARCH METHODOLOGY</b>	
4.1	Introduction	66
4.2	Research Proposal	67
4.3	Literature Review	68
4.4	Collection and Data Analysis	68
4.4.1	Structured Interview	69
4.5	Report Writing	70
4.6	Conclusion	70
<b>5</b>	<b>RESEARCH ANALYSIS</b>	
5.1	Introduction	71
5.2	Preliminary Interview	72
5.3	Analysis of the Fundamental Principles in the new clauses	72
5.4	Structured Interview	73
5.5	Respondent's Background	75
5.5.1	Respondent's Position in CKUB	75
5.5.2	Respondent's Years of Experience in Quantity Surveying	76
5.6	Identifying the Fundamental Principles in the clauses	77
5.6.1	CIPAA 2012 awareness and payment disputes in Government	77
5.6.2	The problems associated with payment in PWD	79

<b>CHAPTER</b>	<b>TITLE</b>	<b>PAGE</b>
5.7	Solutions to align current operational practice to suit CIPAA	83
5.7.1	The inclusion of new clauses	83
5.7.2	Operating practices through PWD's mechanism	84
5.7.3	Open ended questions	84
5.8	Conclusion	85
<b>6</b>	<b>CONCLUSION AND RECOMMENDATION</b>	
6.1	Introduction	86
6.2	Research Findings	87
6.2.1	CIPAA 2012 Awareness	87
6.2.2	The New Inclusion and its requirement for payment	87
6.2.3	Aligning to principle aims of CIPAA 2012	90
6.3	Limitations of the Research	94
6.4	Future Research	95
6.5	Conclusion and recommendation	95
	<b>REFERENCES</b>	97
	<b>APPENDIX 1</b>	
	<b>APPENDIX 2</b>	
	<b>APPENDIX 3</b>	

## LIST OF CASES

CASES	PAGE
Sutcliffe v Thackrah (1974)	44
Jurong Town Corp v Sembcorp Engineers and Constructors Pte Ltd (2009)	46
Rupert Morgan Building Services Ltd v Jervis [2004]	49
Lubenham Fidelities & Investments Co v South Pembrokeshire District Council (1986)49	49
SGL Carbon Fibres Ltd v RBG Ltd (2012)	50
Corudace v London Borough of Lambeth (1986)	51
Penwith District Council v VP Developments Ltd (1999)	55
Salt Lake City v Smith	65

## LIST OF TABLES

TABLES NO	TITLE	PAGE
2.1	Payment defaults	18
2.2	Causes of Late Payment	25
3.1	The comparison between PWD FORM 203A (Rev. 1/2010) & Addendum No 1	36
3.2	The Underlying Reasons of the new clauses	58
3.3	PWD's Mechanism in relation to project management	63
5.1	Respondent's position in CKUB	75
5.2	Respondent's Years of Experience in Quantity Surveying	76
5.3	CIPAA Awareness on Government's project in CKUB	77
5.4	Knowledge of the Principle Aims of CIPAA	77
5.5	Most common payment-related issues encountered by PWD	78
5.6	Contractor's Application and submission for Interim Payment	79
5.7	S.O. inspect progress of work	80
5.8	Issuance of Interim Certificate	81
5.9	Variation Works	81
5.10	Issuance of Final Certificate	82
5.11	Fundamental principles underlying new amendments	83
5.12	PWD's mechanism to manage payment	84
6.1	Aligning towards CIPAA aims	91

**LIST OF FIGURES**

<b>FIGURES NO</b>	<b>TITLE</b>	<b>PAGE</b>
1.1	Research Methodology Flow Chart	8
2.1	Nature of Construction Disputes in Malaysia	12
3.1	Flow Chart on the preparation of Interim Payment	52

**LIST OF ABBREVIATIONS**

S.O.	Superintending Officer
CKUB	Contract and Quantity Surveying Branch
PWD	Public Works Department
KKR	Kementerian Kerja Raya
CIPAA 2012	Construction Industry Payment Adjudication Act 2012
KLRC	Kuala Lumpur Regional Centre for Arbitration
CIDB	Construction Industry Development Board
SKALA	<i>Sistem Kawal dan Laporkan</i>
SAKPKR	Surat Arahan KPKR
1GFMAS	1 Government Financial Management Accounting System

**LIST OF APPENDICES**

<b>APPENDIX</b>	<b>TITLE</b>	<b>PAGE</b>
1	Preliminary Interview	96
2	Structured Interview	100
3	Surat Arahan KPKR Bil. 7/2013, 15 Mac 2013	111



## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 Background of Study**

In August 2007, the Deputy Prime Minister formally announced that a Malaysian Construction Industry Master Plan (CIMP) 2015 had been drawn up. The vision is clear: for the Malaysian construction industry to be world-class, innovative and a knowledgeable global solution provider (RICS Construction Journal, 2007).

The important agenda of the 10-year plan of CIMP is towards making a world class construction industry in Malaysia by 2015. In order to be a world class industry in 2015, primary issues such as delayed or non-payment needs to be resolved. Quantity Surveyors and other professionals could have a role in ensuring that by 2015, ‘everyone pays all appropriate amounts due in a timely manner’ and that ‘construction disputes are resolved much more efficiently (over days or weeks instead of years) at a fraction of the cost (Noushad, 2006).

Nine years has passed since and the plan is now shortly ending its term. A new Construction Industry Master Plan needs to be drafted for 2016-2020 (henceforth referred to as CIMP II) to further transform the construction industry to meet the nation's rising needs and expectations sustainably while at the same time seizing all opportunities from liberalization, yet in line with the national agenda (CIDB, 2003).

Payment was identified as one of ten priority areas in the Malaysian construction industry during a construction industry roundtable in June 2003 (Noushad Ali, 2006). A survey done by the Construction Industry Development Board (CIDB) in collaboration with Universiti Malaya (2006), indicated that there is a chronic problem of delayed and non-payment in the Malaysian construction industry affecting the entire delivery chain. The survey on payment issues also carried out by Malaysian Builders Association of Malaysia (2006) confirmed the facts that payment default is a major problem in the construction industry.

This study is on the subject of project payment procedures from the perspective of the principal, the Government in lieu of Construction Industry Payment Adjudication Act 2012 (CIPAA 2012) which has now come into force on 15<sup>th</sup> April 2014. The focus will be on the actions of Public Works Department (PWD) in undertaking the appropriate steps as to cater for the requirement of CIPAA 2012 in ensuring prompt and regular payment to Contractor.

The CIPAA 2012 intends to transform payment practices within the construction industry which affects the payment provision in the conditions of contract. According to Amran (2012) the Government, being one of the biggest employer, construction industry has to now look at ways to improve its current procedures pertaining to contract administration in order to minimize any potential disputes that may arise.

PWD has taken steps to make amendments to the Standard Conditions of Contract PWD 203/203A (Rev. 1/2010) with the inclusion of new payment clauses, introducing new procedures to expedite the approval of Variation Orders and on finalizing the final amount for issuance of Final Certificate.

## **1.2 Problem Statement**

The Government is among the biggest paymaster for construction works. Nevertheless, no party expects to be the negligent party at the start of a dispute. However, the party that has induced the payment default should act promptly to overcome the problems.

Since the dispute of payments in construction projects are the most intriguing factor that disrupts smooth progress of a project and the closing of final accounts, it is very essential that Government plan strategies to overcome or minimize payment problems in projects handled directly by Government. In Part 1, Section 4 CIPAA 2012 (2012), Government means the Federal Government or the State Government.

PWD is the biggest Government's technical department responsible for implementing Government's construction project, is concern about payment dispute in Government projects to minimize if not overcome. Any on-site issues should be addressed earlier so as to ensure Government's construction projects is not being summoned into adjudication.

A survey of causes of delay in building construction projects in Egypt discovered that one of the causes that delay the building construction projects is delays in contractor's payment by owner (El-Razek, Bassioni, Mobarak, 2008).

According to Harris and McCaffer (2003) late payment is defined as failure of a paymaster to pay within the period of honoring certificates as provided in the contract (cited in Hamzah, Wang, Rozana, Wong, 2010). While problems in payment at the higher end of the hierarchy will lead to a serious knock-on cash flow problem down the chain of contracts (Construction Industry Working Group on Payment, 2007).

Under a construction contract, a person is entitled to a progress payment if the person has undertaken to carry out construction work or supply related goods and services as required by the contract. The need to develop and employ strategies that will maintain a well managed cash flow will improve the project's cash flow and subsequently improve the timely performance of a project (Hamzah, Chen, Roshana, Wong, 2010).

The payment will be released only if the fund allocated for has been received by the related Government's agency (Munaaim, 2006). Client as the paymaster of the project must have an excellent financial background. Hence, the client should manage his financial aspect properly and ensure that the financial history of the company is maintained or improve or face the implication of CIPAA 2012 2012. PWD as the project implementation agency for Government, is aware on issues of delayed payments in the industry that might affect contractor's cash flow.

PWD current practice needs to iron out in line to its new clauses to ensure that the Contractor is paid fairly and accordingly. The research aims to determine the amendments made to the PWD 203A (Rev. 2010) Conditions of Contract whether it is prepared to mitigate the possibility of Government projects being dragged into adjudication through CIPAA 2012 2012.

### **1.3 Objectives of the Research**

- a) To identify the fundamental principles in the new payment clauses of the PWD 203A (Rev. 1/2010) Conditions of Contract in aligning to the principle aims of CIPAA 2012.

### **1.4 Scope and Limitation of Research**

The scope of research shall cover within the following:

- a) PWD payment procedure only excluding loss and expense claims
- b) The new inclusion to payment clauses 28 and 31 in PWD 203A (Rev. 1/2010) Conditions of Contract for Conventional Building Works
- c) Respondents are PWD's Quantity Surveyors handling payment matters in works (Building) section, Contracts and Quantity Surveying Branch, PWD Headquarters Malaysia.
- d) CIPAA 2012 (2012), focusing on the first limb of the preambles that is to facilitate regular and timely payment.

## **1.5 Significant of Research**

The research is in search of the fundamental principles in payment which can be the root cause of payment default and results in payment not being timely and regularly issued.

Therefore the research is for PWD's preparation and readiness to face possible payment claim from the main contractor under CIPAA 2012 2012.

The findings will be helpful in guiding PWD's personnel to be alerted on the salient features of CIPAA 2012 2012 and aligning its current practices into place as to avoid being dragged into the adjudication process.

## **1.6 Research Methodology**

### Stage One

Initially in the first stage, the research issue in the new payment clauses is identified by examining PWD 203A (Rev. 1/2010) Conditions of Contract. It includes references to related research papers, internet reading materials and contract books. In addition, PWD's *Surat Arahan Ketua Pengarah Kerja Raya* (SAKPKR) circular will further support PWD's mechanism and practices.

### Stage Two

The second stage is the Literature Review that will discuss related published articles collected from books, journal, articles, theses and internet reading materials regarding CIPAA 2012 and payment issues that has been carried out.

### Stage Three

The third stage is on data collection obtained from the targeted respondents through structured interview of PWD's Quantity Surveyor in Building Works section, in Contracts and Quantity Surveying Branch, PWD Malaysia who are directly involve in handling issuance of payment. Initially a preliminary interview was held and from there on the questionnaires are developed for a structured interview which was divided into four sections containing options questions and open ended questions.

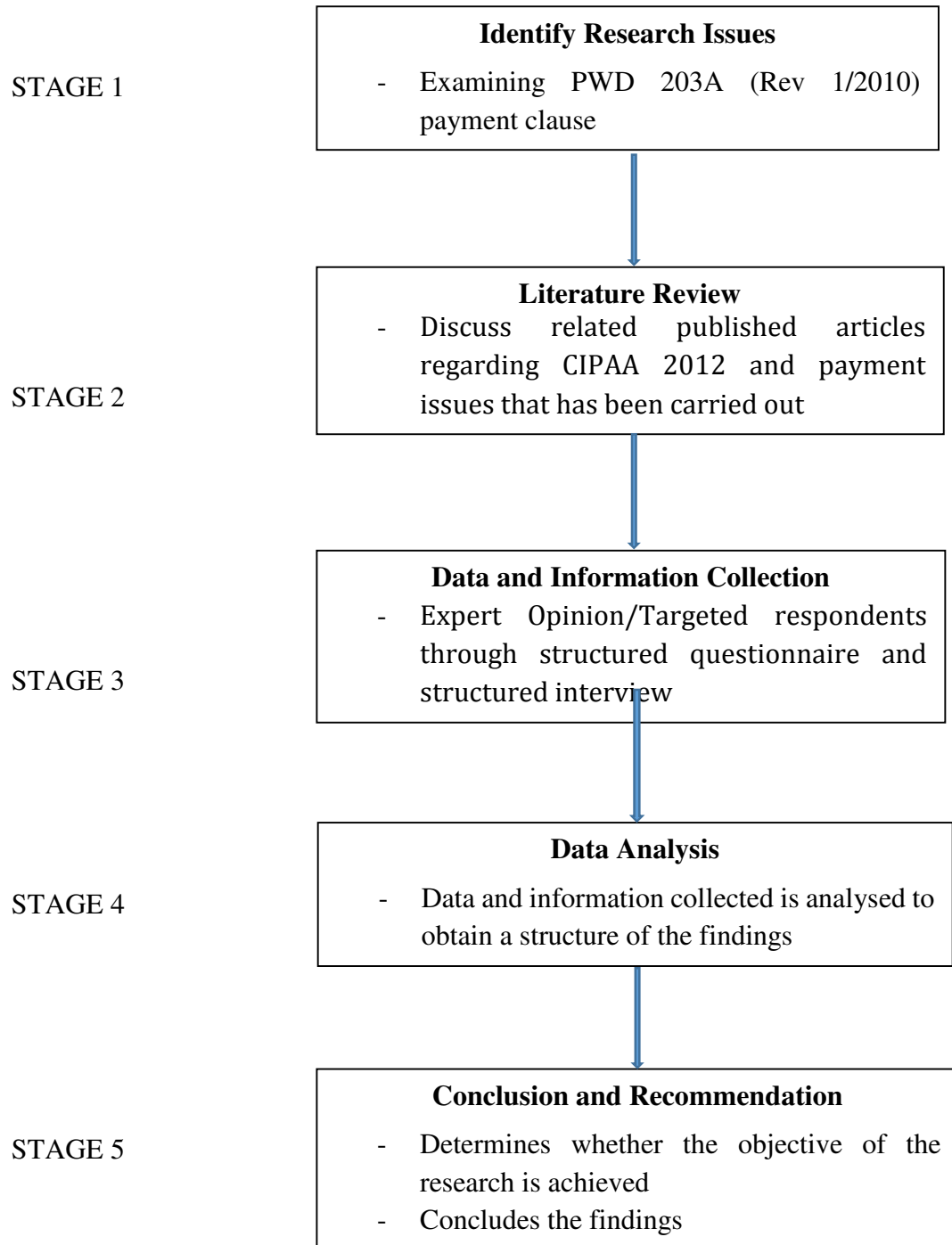
### Stage Four

The fourth stage is to carry out the Data Analysis where the collected data is analyzed to obtain a structure of the findings. The analysis helps to support the research to come to a conclusion.

### Stage Five

The final stage of the research is the conclusion to the findings which also determines whether the objective of the research is achieved. Recommendations to the outcome of the research is fairly extended for future research proposal.

The research methodology flow chart will be illustrated in Figure 1.1.



**Figure 1.1:** Research Methodology Flow Chart



## **1.7 Organisations of Chapters**

This research study is divided into six (6) chapters.

### **Chapter One - Introduction**

This chapter will present the introduction to the research which consist the background of the research, the problem statement, objectives, scope and limitations, significant of research, research methodology and organizations of chapters.

### **Chapter Two – The Enforcement of CIPAA 2012 2012 in Malaysia**

This chapter will give overview about CIPAA 2012, the purpose and principal aims that requires to be complied. The likely impact on Governments project and the consequences of CIPAA 2012 enforcement on Government projects will also be discussed as to show the implication that may arise.

### **Chapter Three-The New Payment Clauses in PWD 203A (Rev. 1/2010)**

This Chapter provides an overview of the new provision on payment clauses in PWD Conditions of Contract and the purpose of the amendment with regards to CIPAA 2012. The underlying reasons for the inclusion and whether it aligns to the principal aims of CIPAA 2012.

#### **Chapter Four- Research Methodology**

This chapter will explain and discuss the type of methodology used to conduct this research. This chapter covers the research proposal, information collection method and the method to analyse the data.

#### **Chapter Five- Data Analysis**

This chapter provide the analysis from the collected data through structured interview and transforms into useful information. The summary of the findings will be presented and conclusion drawn to meet the objective of the research

#### **Chapter Six - Conclusion and Recommendation**

This is the last chapter that will conclude the findings in the research analysis of the new payment clauses and whether PWD is ready to face the challenges of CIPAA 2012 2012. It will further determine the achievement to the objective of the research in aligning to the requirement of the CIPAA 2012 2012. Recommendation for future studies is also given under this chapter.

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