

LAND ACQUISITION ISSUES FOR JABATAN KERJA RAYA's ROAD WORK
PROJECT

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To my beloved mother, Azimah A. Karim; dearest husband, Azhar Mahat, my children Muhrizah Damia and Muhriz Danial. Thank you for your support and never ending love.

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ABSTRACT

Land acquisition issues for JKR roadwork project has often generate conflict and construction dispute for many years. If the issues can be resolved at earlier stage, this could lead to substantial financial and time savings for the projects. Therefore, this study has been undertaken to review the land acquisition issues for JKR's roadwork projects. The methodology adopted for this study consist of a comprehensive review of literature, interviews with main stakeholders involved in land acquisition issue and questionnaire survey. This study was conducted using the data generated from within JKR personnel as well as other stakeholders, namely the client and consultant which involved in land acquisition stage. The finding of the study found that the major problems related to delay in land acquisition are: multiple owners in one title; owner dissatisfaction with the low compensation amount; slowness in processing the land acquisition matters; delay in removal of the existing structure of the affected land and the old record of land that has been acquired has not been updated by land office. These problems have given negative impacts toward the overall project performance such as: time and cost overrun; loss and expense claim; delay in the relocation of utility services and additional cost for rental of land. This study also determined several strategies and recommendation for improvement towards JKR's roadwork project implementation. Finally, it is hope that the findings from this study will help the JKR to improve the land acquisition process for the development of the project in the future.

ABSTRAK

Isu pengambilan tanah untuk projek jalan di JKR sering mengakibatkan percanggahan dan pertikaian sekian lama. Jika isu ini dapat diselesaikan pada peringkat awal, kemungkinan besar terdapat penjimatan dari aspek kos dan masa bagi projek tersebut. Oleh itu kajian ini telah dijalankan untuk mengkaji isu yang berkaitan dalam proses pengambilan tanah bagi projek jalan di JKR. Metodologi yang diguna pakai bagi kajian ini terdiri daripada kajian literatur, temu bual dengan professional yang terlibat didalam proses pengambilan tanah dan pengedaran borang soal selidik. Data untuk kajian ini diperolehi daripada pegawai di JKR serta pihak berkepentingan seperti klien dan perunding yang terlibat dalam peringkat pemerolehan tanah. Hasil kajian ini mendapati antara masalah utama yang berkaitan dengan kelewatan dalam pengambilan tanah adalah: terdapat beberapa pemilik di dalam satu geran tanah; pemilik tidak berpuas hati dengan amaun pampasan yang rendah; kelambatan dalam memproses urusan pengambilan tanah; kelewatan dalam mengeluarkan struktur yang sedia ada di atas tanah yang terjejas dan rekod lama tanah yang diambil tidak dikemaskini oleh pejabat tanah. Akibat daripada permasalahan tersebut telah meninggalkan kesan negatif terhadap pembangunan projek seperti: masa dan kos pembinaan bertambah; tuntutan kerugian dan perbelanjaan daripada Kontraktor; kelewatan dalam pengalihan semula kerja utiliti dan kos tambahan untuk penyewaan tanah. Kajian ini juga mengenalpasti beberapa strategi dan cadangan untuk penambahbaikan terhadap pelaksanaan projek-projek jalan di JKR. Akhir sekali adalah diharap supaya hasil kajian ini dapat membantu usaha pihak JKR memperkemas proses pengambilan tanah untuk pembangunan projek di masa hadapan.

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LIST OF ABBREVIATIONS

CJ	Cawangan Jalan
CKJG	Cawangan Kejuruteraan Jalan & Geoteknik
CPUM	Cawangan Pengkalan Udara dan Maritim
CPK	Cawangan Pengurusan Korporat
EPU	Economic Planning Unit
FC	Federal Constitution
FHWA	Federal Highway Administration
JKPTG	Jabatan Ketua Pengarah Tanah & Galian
JKR	Jabatan Kerja Raya
JPPH	Jabatan Penilaian & Perkhidmatan Harta
KKR	Kementerian Kerja Raya
KPTG	Ketua Pengarah Tanah & Galian
LAA	Land Acquisition Act 1960
MMK	Majlis Mesyuarat Kerajaan
MyeTaPP	Sistem Pengurusan Tanah Persekutuan & Pembahagian Pusaka
NLC	National Land Code 1965
P.O.S	Possession of Site
PTG	Pejabat Tanah & Galian
<i>p</i> -value	Probability value
PWD 203/203A 2010	Condition of Contract Public Works Department
SKALA	Monitoring Control System
S.O	Superintending Officer
SPSS	Statistical Package for Social Science

CHAPTER 1

INTRODUCTION TO RESEARCH

1.1 Introduction

JKR was established in 1872 to build infrastructure for socio-economic development and political systems in Malaysia and today JKR is the foremost technical department in national infrastructure development (Zakaria and Sufian, 2009). JKR provides expertise to ensure the best practice in technical consultancy, project management, asset and etc. Even though there are many experts in JKR, there are still significant problems on the land acquisition matter which incur additional cost and time towards the project values.

In the construction of roadwork project, land acquisition is the compulsory process by which JKR requires to get the consent from the private landowners to acquire their land for any public purpose or for a beneficial purpose to the Malaysian economic development.

Generally, in government construction contract, JKR's obligation is to provide possession of the site to the contractor in sufficient time once the letter of award has been granted to them as stipulated in the contract. However, it's become a common in JKR road work projects where the letter of award has been released to the contractor even the land acquisition processes still incomplete.

According to PWD 203/203A (2010), clause 38.2 has clearly stipulated that it is the government's obligation to provide the possession of the site to the Contractor on or before the "Date for Possession" as stated in the Letter of Acceptance. The contractor shall commence the Works once the Performance Bond and insurances have been deposited to government and regularly and diligently proceed with and complete the works on or earlier than the Date of Completion.

In the condition of contract also has mentioned that the possession of site can be given in section or in parts with condition by mentioning or stated in the Appendix of the condition of contract or in Contract Document. Unfortunately, in practice, JKR did not follow the stipulated procedure.

Condition of Contract PWD 203/203A (2010) in Clause 38.4 stipulated that, if the government delay in giving the possession of site from the "Date of Possession" as stated in a Letter of Acceptance or delay in giving any section or part of the Site, the Superintending Officer (S.O) shall issue instruction to revise the "Date of Possession" and as well as "Date of Completion. However, it does not allow the Contractor to claim for any loss or damage due to such delay.

Clause 38.5 in Condition of Contract PWD 203/203A (2010) also describe, in the event that the delay in giving possession of the whole site is more than ninety (90) days from the "Date of Possession", the S.O shall notify the Contractor either to:

- a) Proceed with the works once the site is subsequently made available, then, Clause 38.4 will apply, or
- b) Terminate the contract

However, Clause 38.6 stated that in the event the possession of the site was given in any section or part and delayed beyond ninety (90) days from the "Date of Possession", the S.O shall inform the Contractor either to:

- a) Proceed with the works once the site is subsequently made available, then, Clause 38.5 will apply, or
- b) The Contractor may make application to S.O to omit the relevant section or part of the Works from the original contract. If the S.O agrees with the request, then, the omission to the Contract will apply and deemed to be a variation to the Contract. The variation shall not vitiate the Contract. However, if the S.O disagrees with the request, then, the Contractor may claim for any loss and/or expenses caused by and in respect of such delay beyond ninety (90) days.

The term of the contract has clearly stated step by step on the possession of site issue for construction works. However, JKR still did not follow the stipulated term of contract. The land acquisition issue was taken for granted by keeping on making the same mistake during the process. Hence, it is important to address the major issues in land acquisition for JKR's roadwork projects for further improvements.

1.2 Background of Study

Land acquisition is a complex and complicated process which requires several years to complete and involves many stakeholders. Malak et al. (2002) reported that construction projects become more challenging and more complex due to new standards, advanced technologies and clients' high expectations which would result in additional cost and changes to the project. Hence, the construction process, documentation and the complexity of the condition of contract have become an inevitable burden of implementing today's construction projects.

Heiner and Kockelman (2005) also added that a construction project is very expensive and time-consuming. It has been proven by FHWA (2003) that in the

United States, nearly one billion dollars is spent by the government for land acquisition involving construction projects in the fiscal year 1999. In consequence, land acquisition must be completed in the early stages of a project since it will determine the success and the efficiency of the project.

Normally, in roadwork projects undertaken by JKR, the main problem is acquiring the land from the landowner. Therefore, the Government needs to put in more effort in handling the issues which may arise in the process of land acquisition. Otherwise, it may affect the performance of the project in term of time, cost and quality.

In roadwork projects undertaken by JKR, land acquisition issues prolong the project, causing an increase in cost as the material price escalates and the Contractor claims for additional expenses. Therefore, land acquisition process for road work projects undertaken by JKR requires serious attention. The land acquisition process is not new in JKR, but what has been lacking is the methodologies that can help JKR personnel assess the level of effectiveness in their land acquisition process. The need for such structured process model for improving the land acquisition process cannot be overlooked.

The underlying topic of this research is to improve the land acquisition process for road work projects in JKR. This study also provides a better understanding and a clearer picture of the Land Acquisition problems during the process of acquisition or, after the awarding of the contract that may lead to dispute in the construction industry. The data from the research will be provided with solutions and recommendations which will hopefully prevent a recurrence of the issue at hand, for all JKR road work projects. Thus, this study is important to give an improved guideline for the construction practitioners dealing with land acquisition matters.

1.3 Problem Statement

Land acquisition is one of the earlier problems that JKR needs to resolve before the construction of roadwork begins. However, for several decades, this issue pertaining to land acquisition has kept occurring, thus affecting the development of the construction work. Under Federal Constitution 1957, Article 13 mentioned that no land shall be taken without payment of adequate amount of compensation to the affected landowners. Unfortunately, there is no term of defining the amount of adequate compensation.

The affected landowners are often dissatisfied, particularly with the value of compensation for the land taken, severance, injurious affection and disturbances (Ismail & Mazlan, 2009). Furthermore, the landowners argued on the low amount of compensation (Robinson, 1995) and due to improper notices delivered and payment delay (Usilappan, 1999). The complexities of the land acquisition process have also led to the delay in acquiring the land. The flow chart of the land acquisition process as established by the Valuation and Property Service Department is presented in Figure 1.1 below.

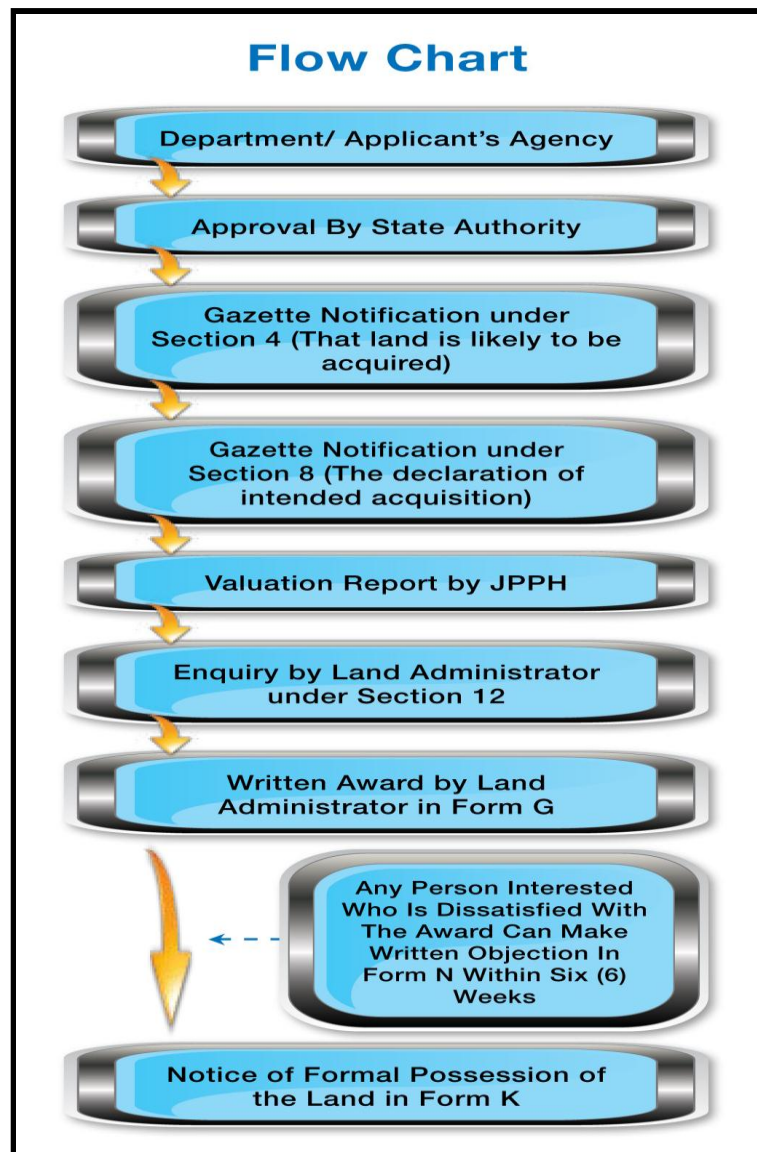


Figure 1.1 : Flow chart of land acquisition as practice by JPPH

In a government project, it is apparent that most of land acquisition problems are due to low amount of compensation and this results in the objection from the landowners. Thus, due to this problem JKR cannot acquire the land within the time frame. In addition, because of the urgency and for the purpose of economic development, the construction of the road works project needs to be begun. Thus, JKR will issue to the respective contractor, a letter of award without completing the necessary steps in land acquisition to acquire the whole affected land for the project.

Recently, in a project undertaken by JKR there is still land acquisition problems, although the construction works have started. The land acquisition

process will continue concurrently with construction works and due to this condition, the contractor may claim for additional expenses and extension of time for construction, until Form K has been released by the Jabatan Ketua Pengarah Tanah & Galian.

Construction claims are a demand by parties in the contract as a matter of right, the payment of money, time or other related issues with the contract (Tochaiwat and Chovichien, 2004). According to Tochaiwat and Chovichien (2004) also, the unsettled claims lead to disputes and figure 1.2 shows the relationship among "conflict", "claim" and disputes".

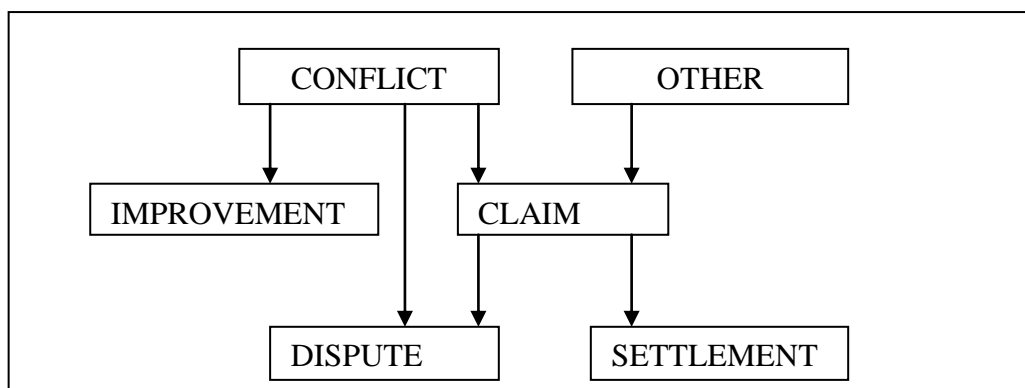


Figure 1.2: Relationship between conflicts, claims and disputes as quoted by Tochaiwat & Chovichien (2004)

Malak *et al.* (2002) also reported the complexities in construction processes, documents and condition of contracts which contribute to construction claims. Nowadays the numbers of construction claims are increasing in volumes due the complexity of the project itself, the price competitiveness among contractors and the legal approach taken in place by the owners and contractors (Tochaiwat and Chovichien, 2004). In addition, many private and public construction projects are experiencing severe cost overrun and delays which inevitably lead to claims by the contractors for an extended completion date and for the payment of additional costs (Swart, 2014).

Nowadays, it has become common for most contractors to submit their claims, compensation event notices and early warning to the employers to recover losses and expenses. These losses and expenses are attributed to factors such as increasing in labour cost, strikes, cost underestimates and weather conditions. Normally, the claims submitted will be perceived negatively by the employer because many contractors abuse the claims processes to recover their losses and extra expenses, which often occur because of their own fault or their poor performance (Swart, 2014). The factors that have been discussed above show that contractors' claims are an inevitable burden of executing today's construction projects (Malak *et al.* 2002).

Furthermore, the problems with a contractor's claim for road projects in JKR is still substantially increasing day by day due to the same reason which are mainly because of delays in giving site possession, poor project planning, scope changes, error and etc. A clear framework is needed in order to minimize the number of the contractor's claim in the construction industry especially in projects undertaken by JKR.

According to Akintoye (1997), the parties in the industry have already prepared and acknowledged that along the construction period they will constantly face situations involving unpredictable factors. This situation doesn't only take place in Malaysia but also worldwide as we already know that construction is a high risk business which involves interaction of a wide variety of people with different backgrounds, skills, ideas and motivating factors which will naturally generate disagreements, differences in opinions, arguments and eventually disputes (Fugar and Sackey, 1997). The parties involved play important roles because they are the responsible persons who will make the project successful or otherwise. Thus, if the problems are not promptly solved, it will continuously affect more people and finally the whole project. Table 1.1 below shows the subject of disputes arising.

Table 1.1: Issues subject of disputes reporting from Adjudication Reporting Centre from November 2002 to July 2004 by as quoted by Haryati (2006).

No	Subject to disputes	Number	Percentage %
1	Failure to comply with payment provision	116	19.0
2	Valuation of interim payment	93	15.2
3	Valuation of variation	92	15.0
4	Valuation of final account	72	11.8
5	Withholding monies	61	10.0
6	Loss and expense	56	9.2
7	Extension of time	47	7.7
8	Defective work	23	3.8
9	Non-payment of professional fees	15	2.5
10	Determination	14	2.3
11	Liquidated and ascertained damages	8	1.3
12	Practical Completion	3	0.5
13	Contra charges	3	0.5
14	Interpretation of contract	2	0.3
15	Breach of contract	2	0.3
16	Professional negligence	1	0.2
17	Scope of works	1	0.2
18	Validity of PC Certificate	1	0.2

Thus, after reviewing the cases (refer Table 1.1) which state some problems related to contractors' claim subjects of dispute, this present study is evidently important to be undertaken in order to develop a process model for land acquisition which will minimize the occurrence of possible problems in the road project.

This study is important because, other than finding the main problems related to land acquisition issues, it is the right time for JKR to strengthen its own construction management processes and use the information herein to avoid possible disputes. This is to help them prepare for potential problems in the construction industry. Therefore, the construction claims and disputes between construction parties in construction can be minimized and at the same time the project cost values can be secured.

1.4 Aim and Objectives of the Study

1.4.1 Aim of the Study

The aim of this study is to improve and establish the process model for land acquisition for a roadwork project in Jabatan Kerja Raya.

1.4.2 Objectives of the Study

The objectives of the study have been set as follows:-

- i) To identify the major problems related to land acquisition issue for JKR road projects.
- ii) To determine the impact of the land acquisition problems to the overall project performance.
- iii) To review the limitation of the existing land acquisition process used by JKR and determination of improvement of the system.

1.5 Scope and Limitation of the Study

The scope of this study is limited to the following:-

- i) The study has covered all land acquisition issues that affect the project performance of the roadwork project in Jabatan Kerja Raya Malaysia.

- ii) The condition of contract adopted for this research was based on the PWD 203/203A 2010.

- iii) The target groups for data collection were divided into two groups, namely the internal and external stakeholders which are involved in the land acquisition process for construction works.

1.6 Brief Research Methodology

The research methodology is presented by means of flow chart for ease of understanding. This is shown in Figure 1.3. The detailed description will be elaborated in Chapter 4.

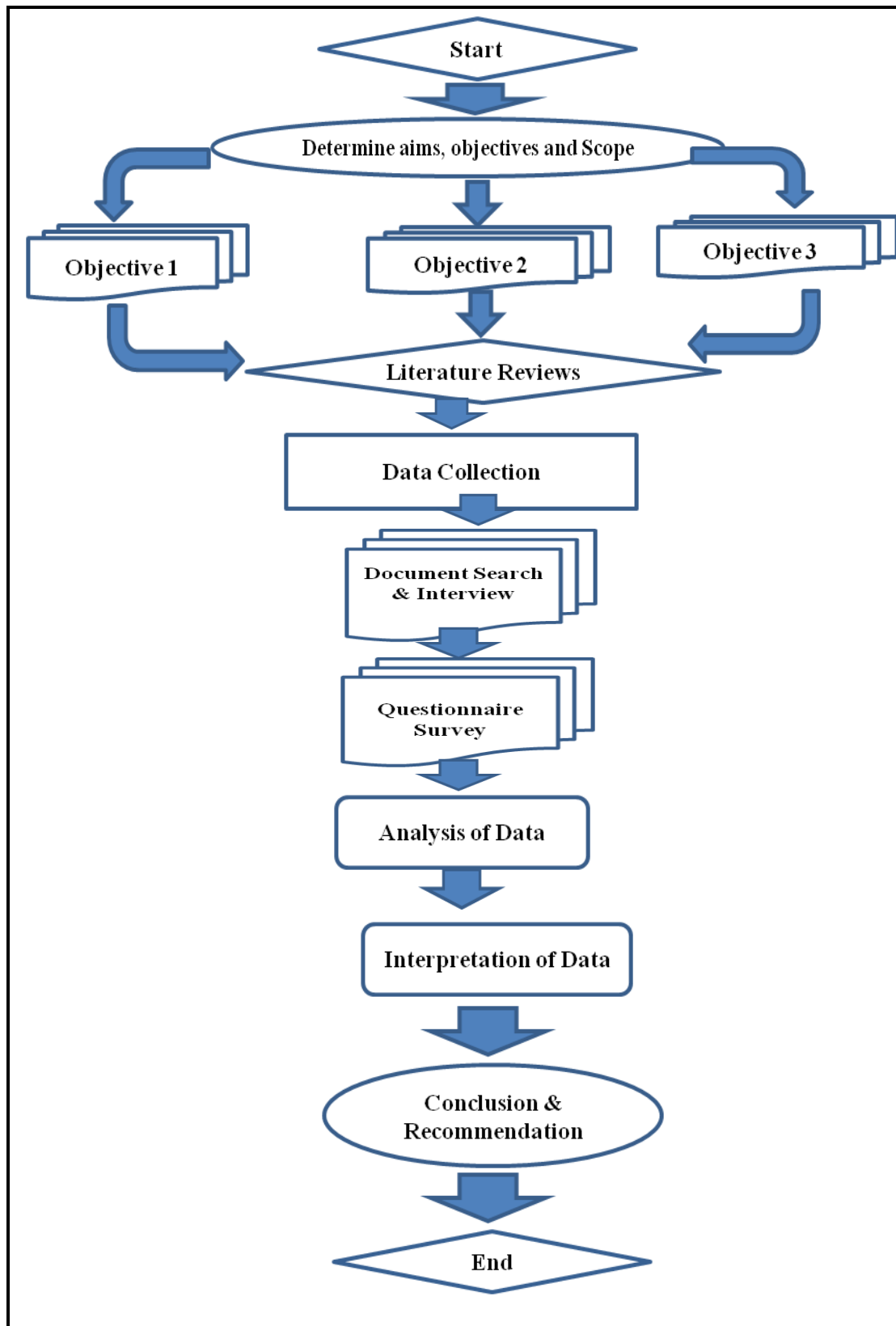


Figure 1.3 : Flowchart of the Research Methodology

1.7 Conclusion

This first chapter is mainly concerning the overview of the present research. It is an introduction for the topic and the structure of the research paper. The area of the study has been developed and the importance of this chapter is to present the idea clearly so that the reader will understand the main purpose and objective of this study. Elaboration of the subjects in chapter one will be presented in detail in the next following chapters.

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