

**TERMINATION PROCEDURES OF PROJECTS
BY THE PUBLIC WORKS DEPARTMENT (PWD)**

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TERMINATION PROCEDURES OF PROJECTS
BY THE PUBLIC WORKS DEPARTMENT (PWD)

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of the requirements for the award of the degree of
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*Dedicated with deepest love and greatest affection to my beloved husband
Mohd Shahrul bin Shari, my parents, my parents in law and my four lovely children
Atiqah, Shaafi, Ayesha and Salehuddin.
Their radiant love continues to bring out the best in me.*

Thank you for your sacrifices, support, guidance and constant Du'a.

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ABSTRACT

Termination of contract is one of the most significant problems in construction industry with major concern is given to public sector projects, as it has a direct relationship with the public and the nation's socio-economic growth. Projects may suffer cost and time overrun and the owner may suffer significant loss and profit, worst still the project may be abandoned. From an observation report there were more than 50% of the projects in Ninth Malaysia Plan supervised by PWD are completed behind time. Some of these delays might be contributed by non-completed projects due to termination of contracts. The objective of this study is to identify the procedures of termination of contract by PWD. The research methodology adopted was the case study analysis based on the four (4) selected projects being implemented in the State of Johore, and terminated by PWD. The data and information were also gathered from interviews and documentary analysis. From the research findings there were five (5) salient procedures of termination of contract had been provided under Clause 51.1 of PWD 203A Standard Form of Contract and enumerated under Surat Arahan Ketua Pengarah Kerja Raya Bil.8/2013. PWD has complied with all the procedural requirements enumerated under the contractual provisions and guidelines, except with the timing for the issuance of Notice of Termination as well as to make the claim against the Contractor for the loss and/or damage caused to the Government to complete the project. This study is important to enhance the knowledge and understanding mainly for the public officials that termination of contract must be done with greatest care and must follow strictly all the procedural requirements, or otherwise such termination will be challenged by the Contractor before the court, and will be held as a wrongful termination.

ABSTRAK

Penglibatan pelbagai pihak dalam proses pembinaan, boleh menyebabkan pertikaian dan permasalahan antara pihak-pihak tersebut. Penamatan kontrak adalah salah satu permasalahan utama dalam industri pembinaan, khususnya bagi projek-projek di sektor awam yang dilaksanakan Kerajaan atas faktor kepentingan masyarakat dan pertumbuhan sosio-ekonomi negara. Apabila kontrak ditamatkan, projek akan mengalami kerugian dari segi kos, masa, prospek keuntungan dan lebih kritikal adalah projek akan terbengkalai. Berdasarkan satu laporan pemerhatian, lebih 50% projek di bawah Rancangan Malaysia Kesembilan (RMK-9) yang dilaksanakan oleh Jabatan Kerja Raya (JKR) disiapkan melangkaui tarikh siap asal yang ditetapkan. Kelewatan penyediaan projek-projek berkenaan disebabkan antaranya oleh projek-projek yang gagal disiapkan kerana telah ditamatkan kontrak. Objektif kajian ini adalah untuk mengenalpasti prosedur penamatan kontrak oleh JKR. Kaedah metodologi kajian yang digunakan adalah berdasarkan analisis kajian kes ke atas empat (4) projek yang telah dilaksanakan di negeri Johor Darul Takzim dan telah ditamatkan kontrak oleh JKR s

emasa projek dalam tempoh pembinaan. Temuduga dan analisis dokumen-dokumen berkaitan telah dijalankan bagi mendapatkan data dan maklumat untuk mencapai objektif kajian. Hasil kajian menunjukkan terdapat lima (5) prosedur utama dalam penamatan kontrak oleh JKR sepertimana dalam Syarat-syarat kontrak PWD203A (Rev.1/2010) dan Surat Arahan Ketua Pengarah Kerja Raya (SAKPKR) Bil.8/2013. JKR telah mematuhi keseluruhan prosedur yang telah ditetapkan dalam melaksanakan tindakan penamatan, kecuali pematuhan tempoh masa yang telah ditetapkan untuk mengemukakan Notis Penamatan Kontrak serta tuntutan kepada kontraktor ke atas kos dan/atau kerugian atau kerosakan kepada Kerajaan bagi menyiapkan projek yang telah ditamatkan kontrak. Kajian ini amatlah penting untuk memberi kefahaman yang lebih jelas kepada penjawat-penjawat awam bahawa penamatan kontrak projek-projek Kerajaan perlu dilaksanakan dengan teliti dan mematuhi segala ketetapan dalam kontrak bagi mengelakkan tindakan penamatan JKR dicabar oleh Kontraktor di mahkamah dan boleh diputuskan bahawa penamatan adalah tidak sah di sisi undang-undang.

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LIST OF ABBREVIATIONS

CIDB	Construction Industry Development Board
IEM	Institution of Engineers Malaysia
PWD	Public Works Department
JKR	Jabatan Kerja Raya
CIDB	Construction Industry Development Board
PKK	Pusat Khidmat Kontraktor
GDP	Gross Domestic Product
RMK-9	Rancangan Malaysia Ke Sembilan
CNC	Certificate of Non Completion
LAD	Liquidated Ascertained Damages
SO	Superintending Officer
EOT	Extension of Time
SPB	Sistem Pengurusan Bersepadu
SA KPKR	Surat Arahan Ketua Pengarah Kerja Raya
CPM	Critical Path Method

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CHAPTER ONE

INTRODUCTION

1.1 Background Of The Study

The construction industry in Malaysia, like that of many developing countries, plays an important role in the national economy, through its contribution to gross national product and employment. In 2013, it was reported that the construction industry has contributed not less than RM23.9 billion or 10.6% to gross domestic product (GDP).¹

Despite this important role, the industry is still largely inefficient, especially regarding contract administration in the public sector, delays, cost and time overruns, poor project implementation and termination of contract.² Key industry players both in public and private sector such as Public Works Department, Construction Industry Development Board (CIDB), employers, contractors and consultants are thus bracing themselves for the challenges of the new era towards becoming a high-income nation and well-developed country by the year 2020.

¹ The Malaysian Economy in Figures 2013 (Updated Edition) Prepared by Economic Planning Unit, Prime Minister's Department, 26th December 2013

² <http://www.epu.gov.my/> as accessed 15th September 2014

Traditionally, the contractor carries the risk of completing construction works on time. This arises from the responsibility the contractor has for scheduling the work, managing sub- contractors and developing the means and methods of construction.³ Shortcomings that may result in delay or added costs are thus considered non excusable.⁴

The construction industry is a complex industry with many parties involved in its process and operations, often brought together to work for a particular project. Due to its multi- faceted nature and involvement of numerous parties, disputes are often inevitable.⁵ The natures of disputes in Malaysian construction industry are payment, default, performance bond, damages, variations, termination, delay and defect.⁶ One common dispute in the public sector construction is the issue of ‘determination’ of the contractor’s employment or termination of the contract by the employer or the Contractor itself.

It is to be noted that previous study has shown that for projects being implemented and administered by PWD, scheduling that fails to take into account the important matters will result in projects having extension of time, or termination. This will affect the end user involve additional expenses, including financial liability, employee relocation and storage of equipment and problems inventory.⁷

Termination often termed to be a taboo among the players in the construction industry owing to the severity of the consequences arising that may lead therefrom.⁸

³ Lynch, B.G. (2003), “The employer's risk?”, Building Journal Hong Kong, China, June, pg. 66- 9.

⁴ Thomas, R., Smith, G.R. and Cummings, D.J. (1995), “Enforcement of liquidated damages”, Journal of Construction Engineering and Management, Vol. 121, pg. 459- 63.

⁵ Entrusty Group (2010),” Construction Contract &Management Issues”, Master of Builders Articles & Publications, Volume 3, pg.64

⁶ Asniah Abidin (2007) “The Profile Of Construction Dispute”, Masters thesis, Faculty of Built Environment, Universiti Teknologi Malaysia, pg.6

⁷ Hasan, Muhamad Khair (2010) “Improving Time Estimation In JKR Project”, Masters Thesis, Faculty of Civil Engineering, Universiti Teknologi Malaysia, pg. 2

⁸ John Wong. (2005). Terminated or be Terminated. The Malaysian Surveyor. 39.1. Page 12

Termination can have serious implications for the progress of the project and almost always brings the contracting parties into arbitration or litigation.

Termination occurs when an employer instructs a contractor to permanently stop the performance of work and leave the site. Termination of contract occurs when a valid and enforceable contract is brought to an end either by becoming impossible to perform due to unforeseeable circumstances at the time the contract was formed or by the actions of one or both parties.⁹ When the employment of the contractor has been determined, the procedures, mechanisms and forms of recovery and remedies are as provided in accordance with the provisions of the contract.¹⁰

In Malaysia, most of the Standard Contract Forms termination clauses like PAM 2006, PWD Form 203A (Rev.2007), PWD Form 203A (Rev.1/2010) and CIDB Standard Form of Contract for Building Works 2000 Edition, are intended as with the many other contractual remedy provisions, to provide a mechanism that may be operated by one party, in the event of specified breached of the contract by the other, in lieu of rescission and/or an action for damages.

In this study, it will focus on the termination of construction contract by the employer according to the PWD Form 203A (Rev.2007) and PWD Form 203A (Rev.1/2010). Under both versions of PWD 203A Forms of Contract, which is applied to government projects implemented by PWD, has indeed express provisions for determination of the contractor's employment by the employer in the event of specified breach by the contractor of its obligation to complete the works. It also envisages the procedures, mechanisms and forms of recovery and remedies to be within the contract, and not outside the contract. Nevertheless, the additional provision under PWD Form 203A (Rev.1/2010) as compared to PWD Form 203A (Rev.2007) is on the determination of contractor's own employment by himself, if

⁹ The Entrusty Group (2008), "Is Determination Of Employment And Termination Of Contract The Same In Meaning And Implications?", Master of Builders Articles & Publication, 2nd Quarter, pg 96

¹⁰ Ibid. 5

the employer breaches its contractual obligations as provided in the particular contract.

Under clause 51.1 (a) PWD Form 203A (Rev.2007) and (Rev.1/2010), it allows the employer to terminate the contract if there is any default by the contractor, such as the contractor without reasonable cause suspends the carrying out of the works; the contractor fails to proceed regularly and diligently with the works; the contractor fails to execute the works in accordance with the contract; the contractor refuses or neglects to comply with a written notice from the SO; or the contractor fails to comply with the provisions of clause 27 (a), (b) and (d). Besides that, under clause 51.1 (b), the employer may terminate the contract if the contractor becomes bankrupt or insolvent.

Nevertheless, contracts based on the PWD Form 203A (Rev.2007) and (Rev.1/2010) provides for pre-arbitration resolution of disputes in general, whereby a dispute or difference as described of whatsoever kind between the employer, the Superintending Officer (SO) or the superintending officer's representative and the contractor must in the first place be referred to the SO for his decision and this reference to the SO is a condition precedent to any reference to arbitration. If the Contractor disagrees with the SO's decision, he may give notice of disagreement and require the dispute to be referred to arbitration after completion, termination or abandonment of the contract.¹¹

1.2 PROBLEM STATEMENT

Construction contracts differ from other commercial contracts in that, other than the parties to the contracts themselves, i.e. the employer and the contractor,

¹¹ Professor Datuk Sundra Rajoo (2014), "Dispute Boards & Adjudication in Malaysia : An Insight into the Road Ahead", DRBF 14th Annual International Conference in Singapore on "Dispute Boards: Realising the Potential for Dispute Avoidance".

there is a third person who features prominently throughout. This third person is variously referred to as “the Engineer” in Institution of Engineers Malaysia (IEM) standard Forms, the “the Architect” in PAM forms and “the Superintending Officer” Or “S.O.” in PWD and CIDB forms. In fact, it is the case in all standard forms that, upon the execution of the contracts, the employer hardly plays any role other than payment, and is limited to have some say on matters relating to termination of employment and others.¹²

Termination of contract is one of the most significant problems in construction industry with major concern is given to public sector projects, as it has a direct relationship with the public and the nation’s socio-economic growth. From an observation report there were more than 50% of the projects in Ninth Malaysia Plan supervised by PWD are completed behind time. Some of these delays might be contributed by non-completed projects due to termination of contracts.¹³

In monitoring delayed and sick projects, PWD always encounter errant contractors in terms of work quality and financial. Despite repeated warning, discussions and extension of time had been given, most of the time eventually such contract has to be terminated. Former Minister of Works, Datuk Shaziman Abu Mansor in 2009 has mentioned that before resorting to such an action, the ministry would allow for extension of time (EOT) to problem-ridden contractors to which caused the delay.¹⁴ The EOT will only be given if the reasons for the delay are fair and are within the terms and conditions of the contract.

The Auditor General’s Report 2012 has revealed that 160 projects with a contract value of RM3.137 billion were terminated between 2007 and 2012. The Auditor General Report 2012 also found that the government had to bear losses of

¹² Oon Chee Kheng (2002), “Standard Construction Contracts In Malaysia-Issues And Challenges”, a paper presented to a seminar on “INNOVATIONS IN CONSTRUCTION CONTRACTS” held on 31 May 2002, Melaka. pg. 3

¹³ <http://www.ukessays.com/essays/construction/the-project-duration-practices-in-jkr-construction-essay.php>. as accessed on 15th September 2014

¹⁴ <http://www.mysin Chew.com/node/31567> as accessed 5th October 2014

RM4.89 million because the Public Works Department (PWD) failed to recover advance payments from banks/insurance companies for three projects that were terminated.¹⁵ The report stated that such outstanding advance payment not recovered was for a project to upgrade 50 kilometres of the Batu Pahat-Ayer Hitam, Kluang, Johor by contractor Pintasan Jaya Sdn Bhd amounting to RM3.41 million.¹⁶ The other two were a hostel and canteen project at Sekolah Menengah Seri Nering, Besut, Terengganu by IT Industries Sdn Bhd (RM780,000) and a library and hostel complex by at UiTM Perlis by YMY Resources Sdn Bhd (RM700,000).¹⁷

From the feedback obtained, PWD admitted that the outstanding balance on advance payments to the contractors could not be claimed before the expiry date of advance payment guarantee because of time constraints besides several other problems that arose during the process of termination of the contracts which included transfers and absence of the related officers.¹⁸

It is clear that proper contract administration in the implementation of government projects supervised by the prominent technical agency like Public Works Department (PWD) has been a main concern of the stakeholders nowadays. Delivering the project on time as stated in the contract to the client is important to JKR as an implementer.¹⁹ Failure to deliver the project on time to the client will reflect on the capability of PWD as a government technical department.

Projects may suffer cost and time overrun and the owner may suffer significant loss and profit, worst still the project may be abandoned. Failure to complete infrastructure and public amenities projects not only will give a bad image and reputation to PWD, but also created doubts and a negative perception towards

¹⁵ The Sunday, October 1, 2013.

¹⁶ Ibid. 15

¹⁷ Ibid. 15

¹⁸ Ibid. 15

¹⁹ <http://www.ukessays.com/essays/construction/the-project-duration-practices-in-jkr-construction-essay.php> as accessed 22nd September 2014.

the tender process for the projects.

The big risk with any form of termination is that the termination could be wrongful or it is not done correctly. If the termination is proved to be wrongful, then the party terminating the contract (PWD) not only fails to deliver and complete the project on time, but also will be responsible to pay the wrongfully terminated party its contracts payments through the date of termination and potentially the loss of profit on the work not performed.²⁰

Most of termination cases were held as a wrongful termination due to a reason that they did not follow the procedure of termination as being provided in the standard form of contract.²¹ Lack of understanding, poor communication and coordination, incompetency and shortages of man power in the project management team are amongst the essential problems that has caused termination procedures failed to be understood and adhered entirely.

Although under PWD 203A Form 203A (Rev.2007) and (Rev.1/2010) have provided the express provisions on the power of the Government to terminate a contract, in order to terminate a contract on contractual grounds the it must be proved that one of the reasons for termination set out in the contract has occurred. This is not always straightforward. For example, a “failure to proceed regularly and diligently” is a common ground for termination, but it is not easy to pinpoint exactly when this sort of failure has occurred.

PWD who has decided to terminate on this ground will need to carry out a detailed assessment of the progress of the works to identify whether there really has

²⁰ Roslinda Rosly (2009), “The Profile of Construction Terminated Cases”, Masters Thesis, Faculty of Built Environment, Universiti Teknologi Malaysia, pg.97

²¹ Ibid. 20

been a breach. In the case of *Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd*²² the High Court has observed that sole reliance on the Critical Path Method (CPM) to evidence a failure of the defendant to proceed regularly and diligently with the works can be suspect and risky especially when the completion date was still not up. The plaintiff relying on it as a ground for terminating the contract before the completion date runs the risk that the termination had been unreasonable, invalid and wrong in law. Therefore, using merely the failure of the contractor to abide by his work programme or its update as a yardstick to establish the default per se was insufficient.

The question on the validity of termination of the contract under the PWD form of construction contract was also discussed in the case of *Sanlaiman Sdn Bhd v Kerajaan Malaysia*²³. In this particular case, the plaintiff was appointed by the defendant as the main contractor for a construction project and had received several warning and reminder letters from the latter that the progress of its work was slow and not in keeping with the time-line for the project's completion. The plaintiff had applied for two extensions of time, respectively of four months and three months to complete the works. However the defendant only allowed one 30-day extension. Despite granting the extension, the defendant issued the plaintiff a notice of default and followed that up with a certificate of non-completion ('CNC'), a claim for liquidated and ascertained damages ('LAD') and finally a letter terminating the contract. The plaintiff disputed the termination claiming it had completed more than 90% of the works and referred the matter to arbitration. The arbitrator ruled, *inter alia*, that the plaintiff was entitled to complete the project within a reasonable time as the time for completion had been set 'at large' and that the defendant's issuance of the CNC and the imposition of LAD were wrongful and invalid. He, however, held the defendant's termination of the contract was lawful and valid. The plaintiff argued that it was illogical for the arbitrator to hold the termination to be valid when he had already found that the time for completion was set 'at large'. The High Court finally dismissed the plaintiff's claim with costs and Mohamad Ariff J held that:

²² [2014] 11 MLJ 218

²³ [2013] 3 MLJ 755

- 1) There was no error of law on the face of the award or arising out of the award;
- 2) The arbitrator had considered the evidence in relation to the failure to 'proceed regularly and diligently with the works' and came to firm findings of fact on the evidence that the notice of default and the subsequent termination was not *mala fide*, unconscionable or wrongful;
- 3) The arbitrator found the plaintiff's argument that 'the CNC itself would have superseded the event complained of in the notice of default' untenable as they were both different and unrelated provisions in the contract;
- 4) Seen in its entirety, the findings in the award were not illogical or inconsistent. The arbitrator came to definite findings on the evidence and found the issues of CNC and extension of time to be separate from the issue of failure to proceed regularly and diligently with the works, which afforded a cause for termination under cl 51 of the contract.

Another important issue which often arises following termination of a contract on contractual grounds is whether the correct procedure has been followed. The general rule is that in the absence of an express provision in the contract, the exercise of a contractual power of determination need not take any particular form, so long as there is some act which demonstrates an unequivocal intention to determine.²⁴

However, the rights of determination are narrowly construed and therefore any specific provisions must be strictly observed. The said approach has been fully endorsed by the Malaysian Courts as reflected in the following extract of Nik Hashim J's judgement in *Fajar Menyinsing Sdn Bhd v Angsana Sdn Bhd*²⁵, in relation to Clause 25(i) of the PAM/ISM 1969 Form of Building Contract:²⁶

²⁴ Sundra Rajoo, Harbans Singh KS (2012), "Construction Law in Malaysia", Sweet & Maxwell Asia, pg.426

²⁵ [1998] 6 MLJ 80

²⁶ The predecessor of the PAM 1998 Forms

“...it is obvious by its provision and the marginal note that clause 25(i) is a determination clause as such, it must be construed strictly. Its provision is mandatory in nature. Therefore any formal or procedural requirements stipulated in the determination clause must be complied with exactly and meticulously...”

It is submitted that the essence of the judgement as reproduced above is equally applicable to the various determination clauses enshrined in the other common forms of conditions of contract used in the country, like PWD Forms, IEM Forms, Putrajaya Forms and CIDB Form.²⁷

If the terminating party fails to comply fully with the termination procedure set out in the contract, this can result in the terminating party being in breach of contract himself and having to pay damages to the terminated party. In the case of *Nirwana Construction Sdn bhd v Pengarah Jabatan Kerja Raya, Negeri Sembilan Sarul Khusus and Anor*²⁸ it was held that such notice to terminate was bad in law, for being devoid of the precise ground for termination. The court decided amongst others that the contractor is to be paid the unpaid contractual sum claimed, i.e. the sum of RM501,817.66 with interest at 8% p.a. with effect from 5th July 1996 till date of realisation, general damages for breach of contract.

Therefore, from the issues stated above, this study is to identify what are the procedures being practiced by PWD in termination action against the contractor precisely under Clause 51 of PWD 203A (Rev.1/2010) as well as other guidelines, directives provided to be complied by PWD. By analysing the facts on real project documents, the good practice and weaknesses by PWD as the project implementer can be used as a reference and lesson learned especially for those public officials to be appointed as the SOs in the future. It is hoped that this study will be a general guideline so that any weaknesses and shortcomings may be improved and overcome

²⁷ Ir Harbans Singh K.S (2003), “Engineering and Construction Contracts Management” Post Commencement Practice, Lexis Nexis, pg. 109

²⁸ [2008] MLJU 171

for the betterment of delivery system in the terms of contract administration of the public sector.

1.3 OBJECTIVE OF THE STUDY

The objective of this study is to identify the procedures being practiced by PWD in terminating the contract in the event of defaults by the contractor under Clause 51 of PWD Form 203A (Rev.2007) and (Rev.1/2010).

1.4 SCOPE AND LIMITATION OF THE STUDY

The scope of this study is limited to development projects which were implemented by PWD State of Johore, and have been terminated under the 10th Malaysia Plan (2011-2015).

As the objective of this research is to identify the procedures of termination practiced by PWD, the scope of this study will be limited to three (3) aspects of termination procedures being stipulated either in PWD203A Form 203A (Rev.2007) and (Rev.1/2010), or other government's official circulars and directives, as the following:

- (i) Timing;
- (ii) Notices;

- (iii) Person empowered and authorized under the contract to issue any relevant notices, claim, certificate or correspondence related to termination of contract by PWD.

It will refer to the relevant provisions as set out in the PWD Form 203A (Rev.2007) and (Rev.1/2010), as it is the *de facto* standard forms of construction contract used in the Malaysian public sector, besides other official documents categorized as confidential as well as non-confidential documents. Confidential documents are the projects reports, notices and correspondence of the selected projects terminated by PWD. The non-confidential documents are also referred like the Treasury Instruction, official directives and circulars, journals, books and other relevant sources of information related to the research objective. In addition, the study will be supported by the Malaysian and international cases which wherever background of knowledge is necessary.

1.5 SIGNIFICANCE OF STUDY

This research is very important as it provides basic guideline especially for the public officials acting as the Project Manager or Superintending Officer (SO), as well as other players in the construction industry such as the contractors, consultants and employers in the private sector in relation to termination disputes in construction contract. Any attempt to terminate contract must be done with greatest care and must be done in accordance with the procedural requirements stated in the PWD 203A (Rev.1/2010) and related official governments' circulars and instructions.

Furthermore, hopefully this study will also help the public officials to give a serious attention and great care when dealing with termination of contract as it may give rise to disputes that eventually will be referred to arbitration and litigation.

1.6 PREVIOUS STUDY

There are several previous theses and past studies being conducted relating to termination of construction contract. However those studies or research focused on the ‘Determination of Contract By Employer in Construction Industry’ both referring to PWD 203A and PAM (Tan LeeYong, 2006), the ‘Profile of Construction Disputes’ by Asniah Abidin, 2007, the ‘Profile of Construction Contract Termination Cases’ by Roslinda Rosly, 2009, ‘Wrongful Termination of Contract in Construction Industry’ by Choong Oi Siang, 2011 and ‘Mutual Termination of Contract in Construction Projects’ by Awang Muhamad bin Hj Jambol, 2011.

Hence, this study will focus on the procedures being practiced by PWD in terminating the contract in the event of defaults by the contractor under Clause 51 of PWD Form 203A (Rev.2007) and (Rev.1/2010).

1.7 RESEARCH METHODOLOGY

In order to achieve the research objective, a systematic process of conducting this study had been organised. Basically, the process of this research consists of five (5) major stages, which involve identifying the research issue, literature review, data collection, data analysis, conclusion and recommendation.

Stage 1 – Identifying the Research Issue

The first stage of research involves initial study, which is discussion with lecturers and friends regarding the research topic and initial literature review to get

an idea of the research issue. The objective and scope of the research will be determined after the initial study and the outline will be prepared in order to identify the type and sources of data related to the research.

Stage 2 – Literature Review

After the research issue and objective have been identified, various documentation and literature review regarding the research field will be collected to achieve the research objective. Generally secondary data is collected from the latest reading materials in printing form such as books, journals, research papers, reports, newspapers as well as from the internet. It is important to identify the common issues of the terminated contracts for projects being administered by PWD, as well as the general state of knowledge concerning the subject area of termination of contract such as background, definition, procedures and effects etc.

Stage 3 – Data Collection

The third stage of research process is the data collection, which consists of primary data and secondary data.

- **Primary Data**

In order to achieve the research objective, primary data will be collected through the process of interviews. This technique hopefully will help in obtaining information on actual basis. The respondent will come from PWD officers and staffs who are involved directly in the procedures of termination of contract.

- **Secondary Data**

Sources of secondary data consist of books, articles, journals and seminar papers. The data and information will also be collected from the relevant Treasury

Instruction, Official Circulars and Standard Forms of Contract. These sources are important to facilitate in conducting a good literature review.

In summary, the methodology of this research adopts from case study of the four (4) selected PWD projects, literature review together with the semi-structured interviews to be conducted with various PWD officers and staffs directly involved in termination procedures of contract as well as documentary analysis on the research topic.

Stage 4 – Research Analysis

In this stage involves data analysis, interpretation and data arrangement. This process is to process and convert the data collected to information that is useful for the research. Arrangement of data tends to streamline the process of writing of the paper.

Stage 5 – Conclusion and Recommendations

In the last stage, the whole process of study will be reviewed with the intention to identify whether the research objective has been achieved. After presenting the research findings, further research will be suggested.

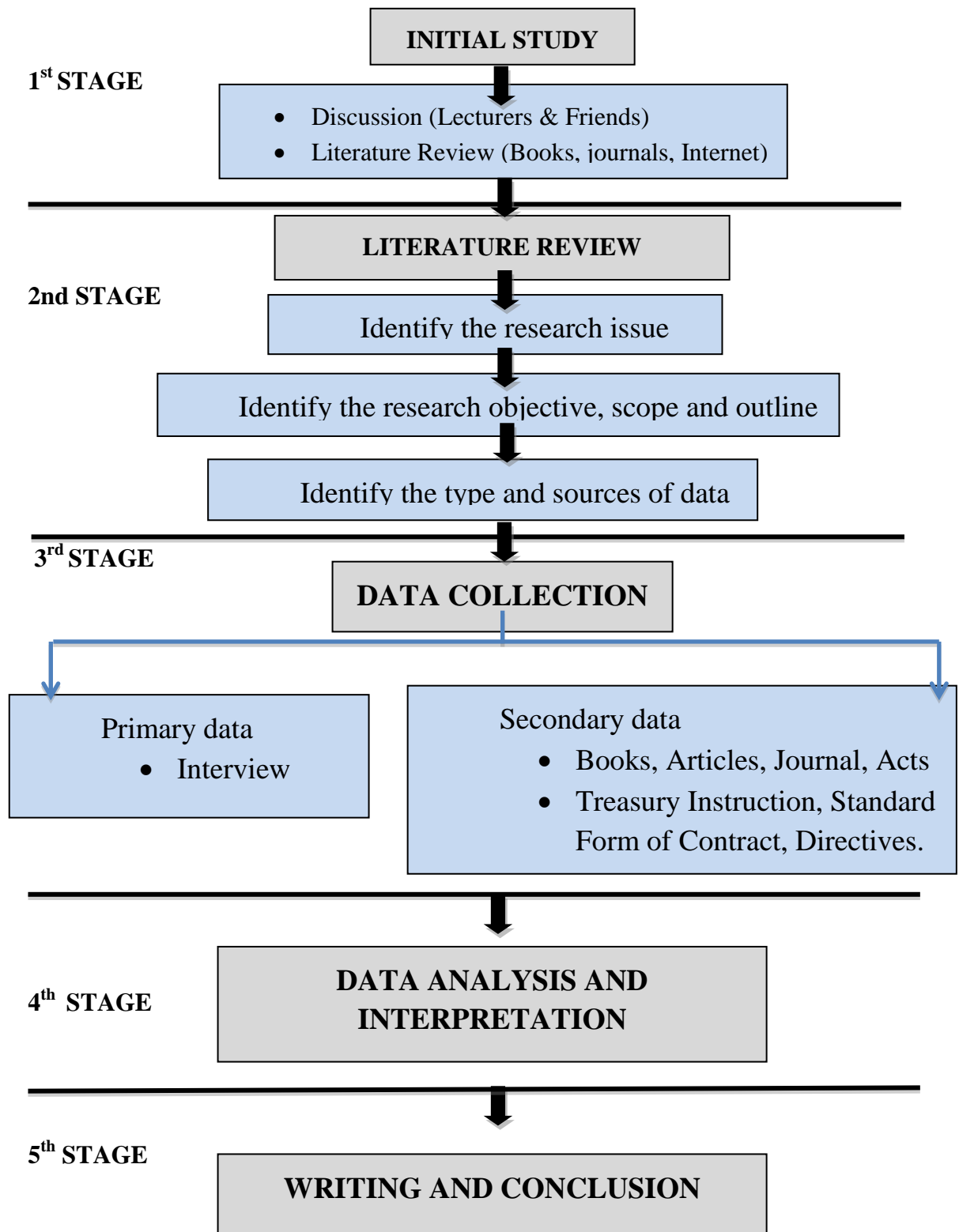


Figure 1.1 – Research Methodology Flowchart

1.8 CHAPTER ORGANIZATION

This study will consist of five (5) chapters. The brief descriptions of each chapter are as follows:

1.8.1 Chapter 1 : Introduction

This chapter presents the overall content of the study. It will introduce the background of the study, problem statement, objective and scope of study. It will also explain the research methodology in order to accomplish the objective of the study.

1.8.2 Chapter 2 : Termination of Construction Contract

This chapter will discuss generally about termination including the definition, procedures and consequences of termination of construction contract. It will also highlight in general the termination clauses provided in the existing PWD203A Standard Form of Contract.

1.8.3 Chapter 3 : Research Methodology

This chapter is to elaborate on the research methodology that has been endorsed in this study which consisting of the explanations on method used, rationale or reasons behind the method selected.

1.8.4 Chapter 4 : Data Analysis and Discussion

This chapter will consist of detailed analysis of the four (4) selected case studies and discussion on the procedures of termination, which have been practiced by PWD. The research findings on the compliance of the established termination procedures will be discussed as well as its implications on the validity of the termination of contract by PWD based on decided case law.

1.8.5 Chapter 5 : Conclusion and Recommendations

Conclusion of the research will be based on all discussions in the previous chapters to explain the findings of the research. In this chapter also, further relevant study will be suggested.

1.9 Conclusion

As a conclusion, in order to achieve the research objective, a systematic process and methodology of study shall be determined and identified in early stage. A researcher needs to focus and conducted the study based on an appropriate method. Thus, a study on termination of contract by Public Works Department hopefully will benefit the contracting parties in the construction industry, mainly the public officials and staffs as a guideline and reference in the future.

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