

LATE PAYMENT PROBLEMS AMONG CONTRACTORS IN MALAYSIA

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*To my beloved mother and father,
Puan Anni Hasan
Encik Mohd Nazir Darus*

*To my beloved husband,
Ahmad Shuradi Mohd Zaman*

*To my beloved sister and brothers
Allahyarham Noerdian Shah
Noor Wahida
Nazirul Haqiq*

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ABSTRACT

Late payment to contractors is a common cause of disputes in the construction industry all over the world. Although there has been a remarkable progress in Malaysia's construction industry in the recent years, problems arising from payment issues are getting more serious. The rapid increase of the late payment issues nowadays has gone to the point that it tends to decrease the good image of construction industry in Malaysia. The aims of this study is to investigate the consequence of the late payments problems confronted by contractors in Malaysia and to proposed strategic actions that could be taken by the contractors in securing their payments. The methodology adopted was through literature search and questionnaire surveys. This study was limited to contractors within Malaysia. Frequency and average index analysis was used to analyze the data collected. Results of the survey indicate that the main factors of late payments problems come from the clients-related category. Impact of late payment that has the highest index was the negative relationship it created between developers and contractors. The last section of analysis indicated that most contractors choose to do a follow up using formal procedure in the case of late payment. In conclusion, it is hoped that these findings will guide effort to improve the payments problems of the Malaysia construction industry, and will be useful to draft a better way in seeking right for the contractors in getting payment on the stipulated time.

ABSTRAK

Isu pembayaran kepada kontraktor (ataupun kekurangan bayaran) adalah sebab utama yang mengakibatkan konflik dan perbalahan di kalangan pihak – pihak yang terlibat di dalam industri pembinaan seluruh dunia. Walaupun terdapat pencapaian yang tinggi di dalam perkembangan industri pembinaan di Malaysia, masalah yang timbul dari isu pembayaran kepada kontraktor menjadi semakin serius dari semasa ke semasa. Peningkatan mendadak di dalam masalah kelewatan pembayaran kepada kontraktor telah menjadi satu punca yang menyebabkan imej industri pembinaan Malaysia terjejas di mata dunia. Tujuan penyelidikan ini adalah untuk menyiasat kesan – kesan kelewatan pembayaran ke atas kontraktor di Malaysia dan mencadangkan langkah – langkah yang boleh diambil oleh kontraktor untuk mendapatkan bayaran. Metodologi yang digunakan dalam menyempurnakan penyelidikan ini adalah secara kajian literatur, dan menjalankan proses soal selidik. Penyelidikan ini melibatkan kontraktor di dalam Malaysia. Frekuensi dan analisis purata indeks telah digunakan untuk menganalisis data. Keputusan menunjukkan kelewatan pembayaran adalah disebabkan faktor yang berkaitan dengan pemaju. Kesannya pula adalah hubungan negatif yang wujud antara kontraktor dan pemaju. Kesan ini merupakan kesan dengan indeks yang paling tinggi. Seksyen terakhir analisis menunjukkan bahawa kebanyakan kontraktor memilih untuk membuat susulan menggunakan prosedur rasmi dalam mendapatkan bayaran tertunggak. Adalah diharapkan bahawa kajian ini akan meningkatkan usaha sedia ada dalam menangani masalah bayaran lewat di dalam industri pembinaan Malaysia dan akan dijadikan panduan untuk merangka langkah – langkah lebih baik dalam mengetengahkan hak kontraktor untuk mendapatkan bayaran ke atas kerja – kerja yang telah dilaksanakan di dalam masa yang telah ditetapkan.

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LIST OF SYMBOLS

I	-	Relative Index
i	-	response category index
W_i	-	the weight assigned to the i th response
X_i	-	frequency of the i th response given as percentage of the total response for each cause
r_s	-	Spearman's rank correlation coefficient
d	-	the difference in ranking between each factors, impacts and actions
N	-	number of variables
Σ	-	Total

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CHAPTER I

INTRODUCTION

1.0 Introduction

Malaysia's construction industry has expanded during these past years and had contributed to the country's economy. But last year, a negative two percent (-2%) growth has caused some reactions among the players in the construction industry. When the government decided to promptly start the twenty-six (26) projects under the Malaysian Ninth Plan, it was welcomed by the industry's players.

This would not only give new hopes to the contractors but to those in the construction's manufacturing and supplying area as well. It is expected that the fast act in initiating these project would regenerate the construction domestic sector to a new level.

But nonetheless, there would be some problems that will hinder the progress in regenerating the industries. Contractors are often blamed when there are problems such as safety, nonconformance and delays issues at site and people failed to look beyond that. They failed to recognize the root problem that led to these issues that often caused constant headache to all the contractors around the world.

1.1 Background Of Study

Payment is a sum of money paid to someone. In the construction industry, payment is the sum of money paid to contractors, consultants and suppliers after their works, service or materials has been successfully realized or accepted. Payments are so important to these parties that it is a constant headache for them as problems in construction would always be revolving around the poor payment practices.

In cases like this, contractors would be directly affected as they are the one who receive and spend the most amounts of monetary sources in a project done. A regular disbursement of interim payment is a critical point for a contractor to help them survive in the construction field.

Whether it is late payment or not being paid in the amounts certified, it all literally means big problems to the contractors as cash flow will be effected. Some small construction companies such as Class F contractors would even close business due to late payments.

Many actions have been taken by government to curb the payment problems among contractors. Datuk Seri S. Samy Vellu in 2004 for instance has proposed to directly pay the subcontractors client in ensuring they get their payment on time. Datuk Seri Abdullah Ahmad Badawi (2005) also show his support in ordering departments or government organization to distribute payment in a period less than one month of the date accepted invoice. Government officers that delayed the distribution of payments to contractors will be given surcharge.

But that does not stop there. Recently, Datuk Seri Abdullah Ahmad Badawi shows his concerns over complaints from contractors and suppliers about late payments. He had instructed that all payments must be made within three weeks of the date of receipts of the bills.

Government is very particular about this matter because it was giving a negative perception of the current implementation of the 9th Malaysia Plan that is moving at a slow pace. Other than, there are also another five measures to be carried out with immediate effect, following numerous complaints of late payment in Malaysia's construction industry.

Nonetheless, there are still cases of delayed payment and non-payment in arbitration if not in the court. Contractors are still facing problems in receiving their payments. Arbitration and judicature process not only consumed much time and money but could kill the business as well. As a contractor, what is the most appropriate action should be taken in securing their payments without effecting their business and cash flow?

1.2 Problem Statement

Construction industry has been one of the main contributors for the Malaysia's growth every year. From economic point of view, the works in construction industry are very important because it is linked and support the growth of other 50 industry in Malaysia.

Governments are at their best supporting for the development of construction industry especially for the Bumiputeras under the New Economic Plan (DEB). The outcome from this supports has shown that the number of Bumiputeras contractor has increased from 2,049 in 1972 to 46,789 as at 31st May 2005. With this figures increasing each day, non-government organization are also needed to put up demand for construction in ensuring the growth of the construction industry and the other industries linked to it.

But despite the growth and support, construction industry is also facing lots obstacles and problems. Delays, abandonment, payments and health and safety issues, and payments are among the list of problems constantly faced. Payments issues

nonetheless bring the hardest impact to contractors. Even though government are giving their full attention throughout the years, this problems does not seem to dissolve.

1.3 Aims And Objectives Of Study

The aim of this study is to investigate the consequences of late payments problems confronted by contractors and to propose remedial actions that could be taken by contractors in securing their payments. In achieving this aim, four objectives have been outlined which includes:

- i. To identify the factors that caused late payment issues in construction industry;
- ii. To identify the impacts of late payment on projects / construction industry; and
- iii. To investigate the strategic action taken by contractors to improve the situation and project performance due to late payment problems.

1.4 Scope Of Study

This research will be focusing on two main parties in the Malaysia's construction industry, contractors and developers. Contractors were chosen because they conveyed the large categories on the construction industry team player. Developers on the other hand, were chosen because they are the paymaster in most of the construction projects. Both parties are equally important in getting the right information in this research. They work hand in hand within any construction project and often payments problems occur between these two parties

1.4.1 Contractors

This research will be focusing on contractors, sub-contractors and clients for construction projects in Malaysia where a regular disbursement of interim payment is the main method of payment to contractor.

The main respondent chosen are contractors as they spend and receive the most amounts of monetary sources in a project. Contractor is a person or firm that undertakes a contract to provide materials or labour to perform a service or do a job. In this research, contractors include main contractors as well as subcontractors doing any construction in Malaysia. If anything involved payments, they will be directly affected.

The schemes for reimbursing the contractor for works done under a typical construction contract are varied as the types of such contract agreement encountered in practice. In this research however, the schemes has been reduced into the following principal categories which is periodic payments, stage payments, advance payments and payments after completions. Questionnaires are distributed to contractors within Malaysia.

1.4.2 Clients

Clients are also chosen because they are directly involved in payment. Opinions and experiences from clients are needed in this study to get a better view from their side. In construction industry, clients are usually the developers. This includes the non-governmental institution and the government as well. Questionnaires would be distributed to clients with projects associated with the contractors.

1.5 Justification

The rapid increase of the late payment issues nowadays has gone to the point that it tends to decrease the good image of construction industry in Malaysia. Malay Contractors Association president, Datuk Roslan Awang Che once revealed that some contractors are owed RM 100 million to RM 200 million for four to five years, mostly on final payments.

There are even contractors who have to do leasing or loans with bank because of late payment. Late payment gives bad impacts to contractors, especially contractors with small capital. Not only that, it also creates a negative chain effect within the players in the construction industries such as to suppliers, sub-contractors and end users as well.

Datuk Seri Abdullah Ahmad Badawi in a statement dated 6 October 2006 believed that complaints relating payment to contractors and suppliers 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. This study is important in determining the steps contractors could take in ensuring their payment is received on time, without compromising their business.

1.6 Research Methodology

In conducting this research the methodology used is identified and fulfill objectives that has been outlined previously. This method is used at the early part of the research in getting adequate information to understand the subject. The method includes reading and extracting information from sources on the issue to get thorough knowledge of the research theory and concepts. The sources include books, previous thesis, journals, newspapers and the internet. This is critical in ensuring the subject of late payment. Figure 1 is the summary of research method use in this research.

Data collection includes distributing the questionnaires to the related personnel within the scope of the study. The questionnaires is designed to answers the objective that has been outlined. Both contractors and developers will be the respondent to these questionnaires. The next step after data collections would be data analysis. This method includes compiling all the data collected.

1.7 Summary Of Chapters

This dissertation is divided into six (6) chapters which discussed issues related to payment in Malaysia's construction industry. Chapter One (1) discuss on the introduction, problems, justification and objectives of the study. Chapter 1 also discuss briefly on the scope of study and the research methodology adopted to fulfill the objectives of the study

Chapter Two (2) discuss about payments in Malaysia's construction industry. It explains thoroughly the subject of payments by providing types of payments usually applied in the industry. This chapter also discuss briefly about late payment issue in the Malaysia's construction industry. It highlights the factors that contribute to such problems.

Chapter Three (3) identifies the impacts of late payments and the remedial actions taken by contractors to overcome the late payment problems. This chapter also explains the action taken by government in assuring that contractors who have successfully completed the works to receive their payments within the stipulated time.

Chapter Four (4) explains the methodology used in this study. The methodology used was considered based on the needs of the researcher to achieve the earlier mentioned objective. For better understanding, the methodology in this research has been simplified into a flow chart diagram as shown in Figure 1 of Chapter 1. The figure explains briefly the steps from the initial stage of identifying problem to the method of analyzing the data collected.

Chapter Five (5) describes and discuss the analysis of the data collected previously. The results of the analysis are then presented in Table 2, 3, 4, 5 and 6 of Chapter 5.

Chapter Six (6) concludes the results and finding from Chapter 5. What had been determined here is then used to make certain recommendations to improve the situation of late payment problems in Malaysia's construction industries

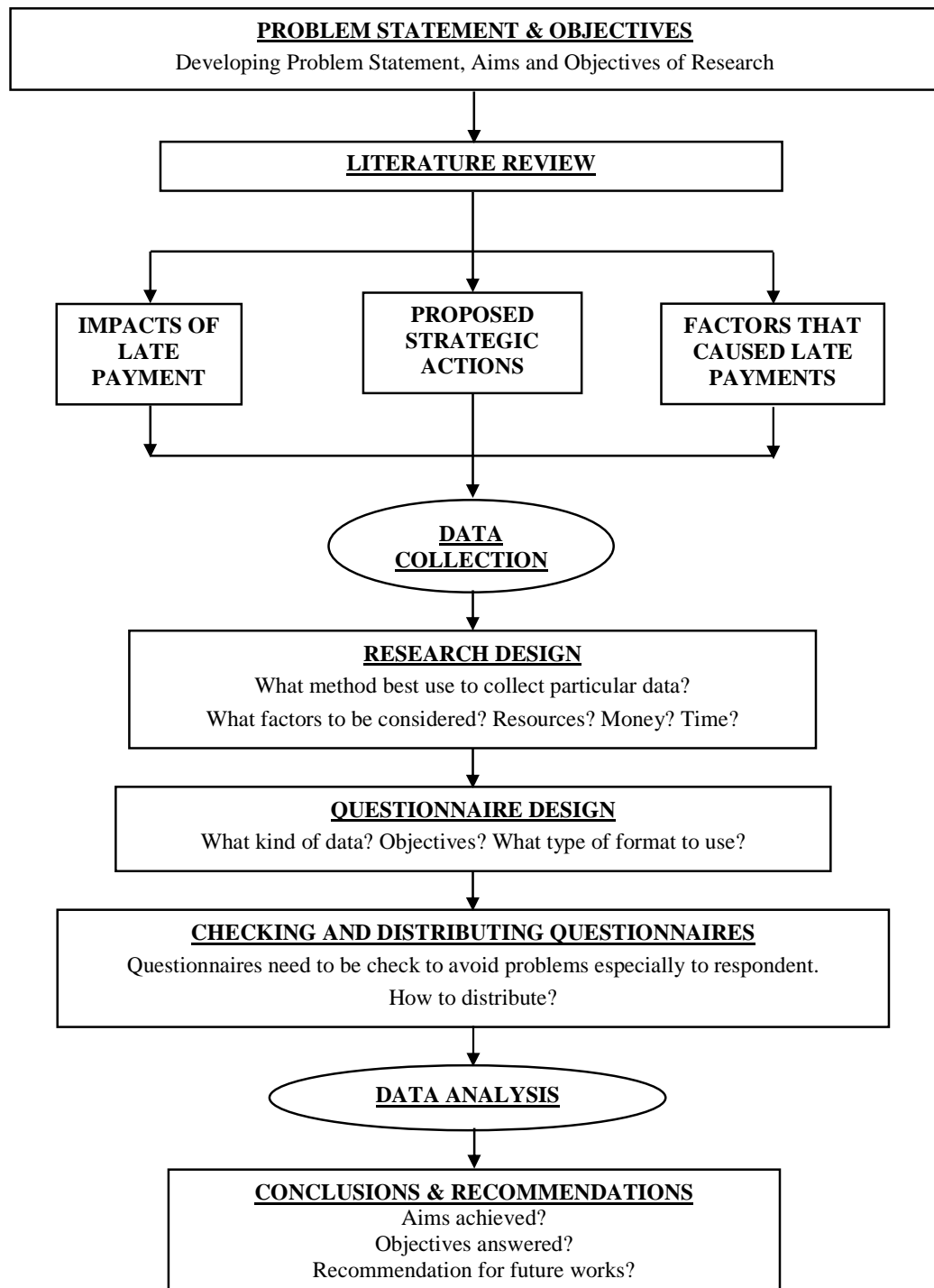


Figure 1: Flowchart Diagram of Research Methodology Adopted

- iii. Follow-up with clients using formal procedure;
- iv. Follow-up with clients by calls only; and
- v. Applying loan to utilize project.

6.2 Recommendations

What could be determined here is the different results may be resulting from the different way of thinking, different capital and different responsibilities between main contractors and sub-contractors in handling projects. Among of all the action that has been taken by contractors into getting payments, the lowest ranking was to apply charges to overdue payments.

The method of applying overdue charges was very rare in the construction industry. In this problem, time is the essence. Arbitration or litigation was also least likely chosen because it took a very long time to settle.

To improve the situation, the findings of this research must be addressed by a joint effort of all participants in the construction industry. This calls for:

- i. Enforcing clauses of late payment in contracts. Applying charges to overdue payments could be determined the same way late delivery charges has been applied.
- ii. Developing payment department for every contractors to report any late payment problems. This department would be responsible in keeping records of every client with late payment history. Penalties would be given to them if they fail to pay on time as stipulated in contracts. It shall be reminded that time is the essence and this department shall be able to settle the problems a soon as possible.

iii. Adopting a new way of payment method among developers or clients whom wrongfully withholding the payment. Penalties shall also be given personally to the employees if they are found to wrongfully withholding the payment. This is to discourage this habit.

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