

Perp. Sultanah Zanariah, UTM



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THE PROFILE OF CONSTRUCTION DISPUTES

ASNIAH BT ABIDIN

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Requirements for the award of the degree of
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Specially dedicated to my family for your love and support
“With love and appreciation”

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ABSTRACT

Dispute in construction industry always occur and can be attested by many court cases reported in court proceedings, various law journals and law reports. Construction disputes can have serious implication in construction project. The project may suffer cost and time overrun, the owner may suffer significant loss and profit and worst still the project may be abandoned or failed. This is because construction is a complex process involving of many activities, myriads of individual, different company or firms, different size, part of country with different skills and capabilities and always subject to changing environment. The issues are which elements is actually the common subject matter of the disputes? What is the nature of the disputes? Who are the parties involved? What type of the project? When do the disputes occur? And what kind of standard form of the project? Therefore, the objectives of this study is to develop profile of construction disputes feature or characteristic of the dispute where consists of the nature of the disputes, the parties involved, type of the project, time of the disputes occurred, and standard form of contract for the project. Limitation of this study will be on the construction disputes reported by Malayan Law Journal between 1997-2007, cases in Malaysia and related to Building Contract only while the methodology of this study will be based on the secondary data analysis. Research finding identified that the common nature of construction disputes is payment and the disputes are related to non payment of certified sums and mislead in payment procedure according to terms of standard form of contract. The most party involved in construction disputes are between the employer and the main contractor. The analysis also identified that the most disputes occurred during construction phase and mostly involved of building construction while PAM Standard Form of Contract is the most form of contract that involved in construction disputes. By developing this profile, hopefully it will help the project manager in anticipate the common disputes at early stage of the project. Besides as a tool in contract management, this profile definitely helps to prevent or minimize the disputes in Malaysian construction industry.

ABSTRAK

Pertikaian dalam industri binaan sering kali timbul dan boleh dibuktikan melalui kes-kes mahkamah yang dilaporkan dalam jurnal dan laporan undang-undang. Pertikaian dalam industri binaan boleh memberi kesan serius terhadap projek binaan umpamanya melibatkan kos yang tinggi dan mengambil masa yang lama sehingga menyebabkan klien terpaksa menanggung kerugian dan mungkin akan menyebabkan projek tersebut terbengkalai dan gagal dilaksanakan. Ini kerana pembinaan merupakan proses yang kompleks dan melibatkan pelbagai aktiviti, melibatkan individu dalam jumlah yang banyak, pelbagai syarikat dan firma yang berbeza, perbezaan saiz, pelbagai negara dengan kemahiran dan kebolehan yang berbeza dan sering berubah mengikut persekitaran. Isunya ialah, apakah elemen yang menjadi punca utama kepada pertikaian ini? Apakah penyebab kepada pertikaian ini? Siapakah yang terlibat? Apakah jenis binaan yang sering terlibat? Bila pertikaian ini sering berlaku? Dan apakah jenis borang kontrak yang digunakan dalam projek tersebut? Dengan itu, objektif kajian ini ialah untuk membangunkan profil ciri-ciri atau sifat pertikaian industri binaan yang merangkumi punca pertikaian, parti yang terlibat, jenis projek yang terlibat, masa pertikaian berlaku, dan jenis borang kontrak yang digunakan. Skop kajian ini dihadkan kepada pertikaian industri binaan yang dilaporkan oleh *Malayan Law Journal* antara tahun 1997-2007, terhad untuk kes Malaysia dan hanya melibatkan kontrak binaan, manakala kaedah kajian ini melibatkan analisis data sekunder. Hasil kajian mendapati punca utama pertikaian industri binaan ialah berkenaan dengan pembayaran dan pertikaian ini melibatkan tiadanya pembayaran bagi jumlah yang telah disahkan dan juga kesalahan dalam mengikut prosedur pembayaran mengikut borang kontrak yang berlainan. Pihak yang terlibat dalam pertikaian ini pula biasanya melibatkan majikan dan juga kontraktor utama. Kajian juga mendapati kebanyakan pertikaian berlaku semasa peringkat pembinaan dijalankan dan melibatkan projek bangunan manakala Borang Kontrak PAM ialah jenis borang kontrak yang sering terlibat dalam pertikaian. Dengan adanya profil ini, diharap ianya akan membantu pengurus projek dalam mengenalpasti pertikaian yang sering timbul dari peringkat awal sesuatu projek seterusnya dapat membantu untuk mengelakkan atau meminimalkan pertikaian dalam industri binaan Malaysia.

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- BMC Construction Sdn Bhd v Dataran Rentas Sdn Bhd* [2001] 1 MLJ 356
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CHAPTER 1

INTRODUCTION

1.1 Background of the Problems

Dispute in construction industry always occur and can be attested by many court cases reported in court proceedings, various law journals and law reports. For example The Building Law Reports which start in 1976, now running to 57 volumes and Construction Law Reports began in 1985 has now 27 volumes containing thousands of cases.

Construction issues and disputes grow from variety of causes as reported in the cases. A survey of more than 300 relatively recent major disputes leads to the conclusion that the causes of dispute are attributed to five sources (Hohns H.Murray, 1979).

They are, errors, defects, or omission which exist in the contract document, the failure of someone to accurately estimate the costs of the undertaking in its beginning, the changed condition of the site or location, the consumer and the people involved.

The main objective of project management and contract management is to ensure that the project is successful, completed on time, within cost at the described quality given the fragmented and complex nature of the construction. It is most appropriate to adopt an anticipatory approach of management. For example to anticipate problems before they actually occur and to handle necessary measure actions where one of the main functions of Project Manager or Contract manager is to act as arbitrator or dispute handler.

1.2 Problem Statement

A study of the causes has been carried out such as errors, defects, or omission in the contract document, the failure of someone to accurately estimate the costs, the changed condition of the site or location, the consumer and the people involved.

But these are the general findings and some other elements have to be determined. This is because construction is a complex process involving many activities, myriads of individual, different companies or firms, different sizes, parts of country with different skills and capabilities and always subject to changing environments. Construction disputes can have serious implications in construction projects. The project may suffer cost and time overruns, the owner may suffer significant loss and profit and worst still the project may be abandoned or failed. As a client in any construction project, they are also trying to avoid any disputes during the construction and they don't want any lengthy litigation process in resolving disputes.

The issues are which elements is actually the common subject matter of the disputes? What is the nature of the disputes? Who are the parties involved? What type of the project? When do the disputes occur? And what kind of standard form of the project?

It is essential in construction contract management to adopt an anticipative approach to management. Since disputes have been one of the major factors affecting cost and time, it is necessary to determine the nature or the general back ground or the profile of the disputes. By having thorough knowledge and information, it will definitely help the project manager and contract manager to anticipate problems at an early stage of the project.

Therefore, profile which can be defined as a “brief description of a person, publication, broadcast station, or group in terms of a number of relevant parameters” is important to be developing in construction industry which it is to describe the common features of construction disputes.

1.3 Previous Study

One of the significant previous study is by Hohns, H. Murray (1979) which highlight the recent major disputes leads to the conclusion that their causes can be largely traced to five sources which are errors, defects, or omission in the contract document, the failure of someone to accurately estimate the costs of the undertaking in its beginning, the changed condition of the site or location, the consumer and the people involved.

1.4 Objective of Studies

The objective of this study is:

To develop profile of construction disputes feature or characteristic of the dispute where consists of the nature of the disputes, the parties involved, type of the project, when do the disputes occurred, and standard form of contract for the project.

1.5 Scope of Studies

This research is limited to the following:-

- a) To construction disputes reported by Malayan Law Journal between 1997-2007
- b) Cases in Malaysia only
- c) Cases related to Building Contract only.

1.6 Significant of Studies

This profile will applicable as a tool in construction industry where all people will get information and it is important in construction contract management to anticipative the disputes at an early stage of project in order to prevent and minimized the disputes

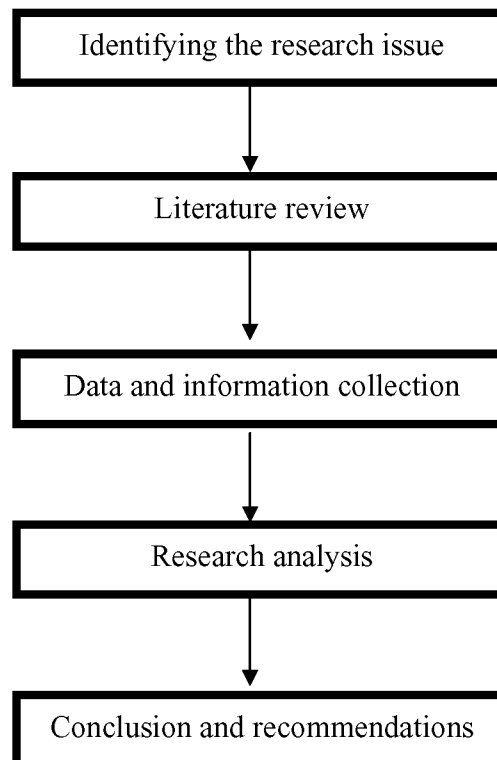
From this profile, people in this industry will be more clarified with background of the disputes, and influenced them to be more aware before they involved in construction field.

The parties such as employer, an architect, project manager, main contractor, sub contractor or supplier will be more responsible in carrying out their duty with more regularly and diligently without make the same mistakes by learning from the previous disputes.

Or maybe by this research, the clients of public and private project were in health competitive environment to prevent any dispute from occurred in their project besides ensuring their project to be successful.

1.7 Research Methodology

Briefly, the research process will be divided into five stages:



1.7.1 Stage 1: Identifying Research Issue

Identifying the research issue is the initial stage of the whole research. To identify the issue, firstly, it involves discussion with lecturer and reading on variety sources of published materials, such as journals, articles, seminar papers, previous research papers or other related research papers, newspapers, magazines, and electronic resources as well through the World Wide Web and online e-databases from University of Technology Malaysia, UTM library's website.

1.7.2 Stage 2: Literature Review

Literature review is the second stage of the research. Literature review will be involved the collection of documents which from secondary data for the research, such as books, journals, newspapers. Indeed, published resources like books, journals, varies standard form of contract, and related statutory are the most helpful in this literature review stage. Besides this, reported court cases from different sources like Malaysian Law Journal and Building Law Reports will be referred.

1.7.3 Stage 3: Data and Information Collection

This stage is data and information collection stage. This is an important stage towards achieving the objectives of this research. In this stage, the further action is to collect the relevant information based on the secondary data from the published resources. Lexis-Nexis database which provides cases of Malayan Law Journal is the main sources in getting the related cases.

1.7.4 Stage 4: Research Analysis

In this stage, it is able to determine whether the stated objectives have been achieved or vice versa. Different types of analysis will be carried out according to the requirements of the objectives.

1.7.5 Stage 5: Conclusion and Recommendations

Conclusion and recommendations is the final stage of the research. In this stage the findings will be able to show the result of the research. A conclusion needs to be drawn in-line with the objectives of the research. At the same time, some appropriate recommendations related to the problems may be made for a better solution in relation to the said problem.

1.7.6 Research Flow Chart

