

**STUDY OF THE NATURE, SOURCES AND
AVOIDANCE OF DISPUTE AND
RESOLUTION IN CONSTRUCTION
INDUSTRY**

BY

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FOR REFERENCE ONLY

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ABSTRACT

Construction dispute is found to be a very common issue in construction industry and it has brought negative impacts to each of the participants in a construction project. Therefore, this research study was carried in order to investigate the causes, impacts and disputes resolutions related to the disputes in construction industry. A questionnaire survey involving 30 respondents was conducted in order to assess the research objectives based on the perspective of construction players in Malaysia the research objectives are: (1) To recognize the nature and sources of dispute in the construction industry, (2) To identify a guideline and method for avoiding and minimizing the occurrence of disputes in the construction industry, and (3) To overview the procedure of arbitration as one of the prominent dispute resolution method in Malaysia The survey questionnaire was carried out through online questionnaire. After conducted an analysis based on the returned questionnaires, determine the main sources of dispute among the 6 group of sources of dispute, which are (1) Determination of agreement, (2) Payment, (3) The site and execution of work, (4) Time, (5) Negligence and nuisance, and (6) Final certificate/payment .Moreover, this study also look into construction stages for dispute avoidance, which are (1) Inception stage, (2) Establishment of brief stage, (3) During the design and detailing stage, (4) Preparation of tender documentation stage, (5) Preparation of tender bid stage, (6) Contract award stage and (7) During the currency of contract/ execution of work stage . Lastly, the procedure of arbitration will be study.

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DECLARATION

I declare that this project is entirely my own work except where due references are made



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LIST OF ABBREBATIONS

1. QS - (Quantity Surveyor)
2. PAM - (Pertubuhan Arkitek malaysia)
3. JKR - (Jabatan Kerja Raya)
4. CIDB - (Construction Industry Development Board Malaysia)
5. KLRCA - (Kuala Lumpur Regional Centre of Arbitration)

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Chapter 1.0

Introduction

1.1 Background of study

Construction industry stand important role in a country economic progress due to its quantity of work, the laborer needed during the construction period (working opportunities rise), etc. The construction sector condition can normally represent a country economic condition. In year 2011, Malaysia GDP had reach 278.671 Billion according to World Bank record. From the data above, the construction sector in 2011 was growing fast compare to previous years. When heaps of construction project are going on and the numbers of project increasing, the cases of dispute during the project period happened to be increased as well. There is no zero error in every project, even though all the parties connected to the project had put a lot of effort to minimize the risk which may lead to the disputes.

Due to this inconvenience situation, various methods of dispute resolution to be opted and in Malaysian construction industry, arbitration and mediation are the common methods as regulated in the Malaysian Construction Conditions of Contract; such as Public Works Department (PWD) and Persatuan Arkitek Malaysia (PAM). Besides the above mentioned, the other options will be litigation, conciliation, negotiation, adjudication, med-arb, mini-trials, and miscellaneous method. Each type of dispute resolution has different specification, time needed, and different steps to

solve different kinds of dispute. Client and contractor are able to decide on the type of dispute resolution which is fit to the situation and condition of the cases leading to a win-win situation for both disputing parties.

Thus, this study is to overview the nature of disputes resultant from various reasons and sources, to identify the relevant guidelines in avoiding and minimizing the occurrences of disputes in the construction industry and to outline the arbitration process as one of the prominent dispute resolution in Malaysia.

1.2 Problem statement

According to statement in *EC HARRIS - Global Construction Disputes 2012: Moving in the Right Direction*, There are many case-studies across the globe that demonstrate the return that construction projects can help to deliver, however on too many occasions these schemes become embroiled in disputes that ultimately costs the industry millions of dollars each year. With the global economy likely to remain subdued over the coming years, construction companies will be operating in an increasingly challenging marketplace. In such an environment, construction disputes are not just an unwanted hassle but also something that could potentially endanger a business' existence or at the very least, have a lasting impact on future business relationships. At the same time, the scale and complexity of some of the infrastructure and building construction programed that are planned over the coming years means that large and complex disputes will inevitably remain a feature of the industry despite the best intentions of all parties involved to try and avoid them. With

such limited room for error in a financially constrained climate, resolving these before they reach the formal dispute stage is always the most welcome outcome.

Thus, the highlighted issue and problem mentioned above will be discussed in the study.

1.3 Objectives of the study

In order to achieve the aim above, a set of objectives have been formulated as follows:

1. To recognize the nature and sources of dispute in the construction industry.
2. To identify a guideline and method for avoiding and minimizing the occurrence of disputes in the construction industry.
3. To overview the procedure of arbitration as one of the prominent dispute resolution method in Malaysia.

1.4 Scope of the study

The study will be based on the causes which may raise a dispute to be occurred, methods and ways to minimize and avoid the dispute and the arbitration process as the dispute resolution method in Malaysia. In meeting the objective of study, the research and data collection will be focus on Malaysia construction industry in particular and the perspective of the construction players like the architect, engineer, designer, contactors and others in managing the dispute occurred and their opinions in using arbitration in solving the dispute will be obtained.

1.5 Significance of study

The study will help the construction industry players and the public to understand and aware by the occurrences of dispute will lead to the substantial costs of contractual disputes, direct and indirect. They are borne not only by clients, designers and contractors, but also by the community through, for example, additional taxation revenue needed to provide essential services, and the management of the taxpayer-funded Federal, State and Territory court systems to deal with disputes (Skene, M. & Shaban, R., 2006). Due to this, many disputes on a construction project can be avoided if the risks and responsibilities of the parties are clearly defined, in unambiguous terms, so as to avoid any misunderstandings (Skene, M. & Shaban, R., 2006). In addition, in order to avoid disputes it is necessary to have some appreciation for the reasons that disputes may arise on a construction project and to consider the steps that can be taken to minimize the likelihood of such disputes. Some disputes will require the dispute resolution provisions of the contract including arbitration or litigation (Skene, M. & Shaban, R., 2006).

1.6 Research Methodology

To achieve the objectives of the study, two (2) main methods of research are to be applied in the study. The literature review for this study was carried out to provide information relating to the general background context of the study in relates to the nature and sources of construction dispute, methods and ways in minimizing and avoiding the occurrence of construction disputes and the process of arbitration as