

FAST TRACK ARBITRATION: THE 100 DAY ARBITRATION PROCEDURE

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ABSTRACT

Fast track arbitration is a new approach to dispute resolution for construction disputes. It is defined as a procedure that compresses a full arbitration within a specified short, certain limited time period in order to perform faster than conventional arbitration. The 100 Day Arbitration Procedure was introduced by the Society of Construction Arbitrators, United Kingdom as a fast track arbitration procedure. In the construction industry of Malaysia, arbitration has been claimed to be a time consuming dispute resolution method because the process normally takes longer to be resolved, similar to litigation. A preliminary survey was conducted and the result showed that although the 100 Day Arbitration Procedure has been known for quite some time, no arbitrators had ever used it in construction disputes in Malaysia. The objective of the study is to determine the readiness level of arbitrators to use the 100 Day Arbitration Procedure in construction disputes. In order to achieve the objective, a questionnaire survey was used in this study. There were several aspects taken into consideration to measure the readiness level of arbitrators to use the 100 Day Arbitration Procedure. Such as: experience, expertise, ability, knowledge, willingness, additional power given, request by disputing parties and statutory requirement. The survey conducted was directed at arbitrators whose expertise are in construction disputes and registered under KLRCA, PAM and MIArb in Malaysia. Descriptive statistics were used to analyse the data and results showed that the readiness level of arbitrators to use the 100 Day Arbitration Procedure in construction disputes is at a rather satisfactory level. The overall readiness level of arbitrators is high and none of them have low readiness in all the aspects studied. In short, it can be determined that arbitrators do have high level of readiness to use the 100 Day Arbitration Procedure in the construction disputes.

ABSTRAK

'Fast track' timbangtara merupakan satu pendekatan baru bagi penyelesaian perselisihan dalam pertikaian pembinaan. Ia ditakrifkan sebagai suatu prosedur yang menyingkatkan dan mengesahkan prosedur timbangtara penuh dalam jangka waktu tertentu supaya prosedur dilakukan dengan lebih cepat daripada timbangtara konvensional. Timbangtara Prosedur 100 Hari telah diperkenalkan oleh Pertubuhan Pembinaan Penimbangtara, *'United Kingdom'* sebagai satu kaedah *'fast track'* timbangtara. Dalam industri pembinaan Malaysia, timbangtara telah didakwa sebagai kaedah penyelesaian yang memakan masa disebabkan prosesnya mengambil masa lebih lama untuk diselesaikan seperti litigasi. Satu kajian awal telah dilakukan dan hasil menunjukkan bahawa walaupun Timbangtara Prosedur 100 Hari telah dikenali dalam suatu jangka masa, tetapi tiada penimbangtara menggunakannya dalam penyelesaian pertikaian pembinaan di Malaysia. Tujuan kajian ini adalah untuk menentukan tahap kesediaan penimbangtara menggunakan Timbangtara Prosedur 100 Hari dalam pertikaian pembinaan. Bagi mencapai tujuan tersebut, kajian soal selidik telah digunakan. Terdapat beberapa aspek diambil kira untuk mengukur tahap kesediaan penimbangtara seperti pengalaman, kemahiran, kemampuan, pengetahuan, kerelaan, tambahan kuasa diberikan, permintaan daripada pihak pertikaian dan penguatkuasaan undang-undang. Kajian ini dilaksanakan terhadap penimbangtara pembinaan yang berdaftar di bawah KLRC, PAM dan MI Arb di Malaysia. Statistik deskriptif digunakan untuk menganalisis data dan hasilnya didapati bahawa tahap kesediaan penimbangtara adalah agak memuaskan. Secara keseluruhannya, tahap kesediaan adalah tinggi dan tiada satupun daripada mereka memiliki kesediaan yang rendah dalam semua aspek dikaji. Ringkasnya, dapat ditentukan bahawa penimbangtara memiliki tahap kesediaan yang tinggi untuk menggunakan Timbangtara Prosedur 100 Hari dalam pertikaian pembinaan.