

ANTICIPATION OF THE ISSUES CONCERNING “DISPUTE” IN STATUTORY
ADJUDICATION UNDER CIPAA 2009 IN MALAYSIA

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ABSTRACT

Statutory adjudication had been adopted in year 1998 in United Kingdom (UK) under the Housing Grants, Construction Regeneration Act 1996 (HGCRA) which purposely to resolve the poor payment attitude in construction industry. Malaysia also had started the similar afford whereby Construction Industry Development Board Malaysia (CIDB) had collaborated with construction industry in year 2003 to initiating Construction Industry Payment and Adjudication Act (CIPAA) and the CIPAA draft is referred to the HGCRA in UK. However, there are issues concerning interpretation of “dispute” arose throughout the years of enactment of HGCRA in UK. Therefore, the purpose of this study is to identify the issues concerning interpretation of “dispute” arose under the HGCRA in UK and anticipated those issues in Malaysia’s context under CIPAA. Due to the time limitation of this research, only those cases related to issues concerning interpretation of “dispute” heard in the court of UK from the year 2005 until 2010 had been analysed. This research was conducted by literature review and case law journals analysis. The outcome of this research is particularly important to acknowledge the construction parties who intend to resolve their dispute through adjudication. The significant findings in this research are that there are three out of five issues concerning interpretation of “dispute” which arisen under HGCRA was anticipated to be occur under CIPAA. Those issues are interpretation of the meaning of “dispute”, issue on crystallisation of dispute and issue on the scope and extent of the dispute. Meanwhile, two issues, namely the issue on the singular words of “a dispute” and the issue on referring a decided dispute under HGCRA was anticipated not to occur under CIPAA in Malaysia. In conclusion, improvements are needed in the draft CIPAA 2009 to minimise the argument and to improve the dispute resolution to achieve effective and efficient alternative in solving the construction dispute through statutory adjudication in Malaysia.

ABSTRAK

Statutori adjudikasi telah diguna pakai semenjak tahun 1998 di United Kingdom di bawah undang-undang “*Housing Grants, Construction Regeneration Act 1996*” (HGCRA) yang bertujuan untuk menyelesaikan masalah pembayaran dalam industri pembinaan. Malaysia juga sedang melangkah ke arah pembentukan undang-undang sedemikian di mana undang-undang “*Construction Industry Payment and Adjudication Act*” (CIPAA) telah dicadangkan oleh pihak Construction Industry Development Board Malaysia (CIDB) Malaysia pada tahun 2003 dan ia didrafkan dengan merujuk kepada HGCRA. Namun sedemikian, isu-isu mengenai interpretasi “pertikaian” telah wujud semenjak daripada perundangan HGCRA. Justerusnya, penyelidikan ini dijalankan bagi mengenal pasti isu-isu mengenai interpretasi “pertikaian” di bawah undang-undang HGCRA dan seterusnya menjangka sama ada isu-isu tersebut akan berlaku di bawah undang-undang CIPAA. Disebabkan masa yang diperuntukan untuk penyelidikan ini adalah terhad, skop penyelidikan dibataskan dengan hanya mengkaji selidik kes-kes berkaitan dengan interpretasi “pertikaian” yang berlaku antara tahun 2005 sehingga 2010. Penyelidikan ini dijalankan dengan menggunakan kaedah kajian literatur dan analisis jurnal kes undang-undang. Keputusan penyelidikan ini adalah penting terutamanya bagi pihak yang ingin menyelesaikan pertikaian melalui adjudikasi. Antara isu-isu yang dijangka akan berlaku di bawah CIPAA adalah isu tentang maksud istilah “pertikaian”, isu tentang pengukuhan kewujudan sesuatu pertikaian dan isu tentang skop pertikaian manakala isu-isu yang dijangka tidak akan berlaku adalah isu penggunaan istilah “*a dispute*” dan isu tentang masalah “pertikaian” yang telah diputuskan oleh adjudikator. Kesimpulannya, pembaikan bagi CIPAA 2009 harus dilaksanakan bagi meningkatkan efektif dan efisien dalam menyelesaikan pertikaian yang berlaku dalam industri pembinaan melalui statutori adjudikasi di Malaysia.