

COMPARISON BETWEEN CONSTRUCTION CONTRACT USED FOR  
GOVERNMENT PROJECTS IN INDONESIA AND MALAYSIA

ADI ARGO SOEWENDO

A thesis submitted in fulfilment of the  
Requirement for the award of the degree of  
Master of Science (Construction Contract Management)

Faculty of Built Environment  
Universiti Teknologi Malaysia

JULY 2011

## ACKNOWLEDGMENT

In preparing this thesis, I was in contact with many people, researchers, academicians, and practitioners. They have contributed towards my understanding and thoughts. In particular, I wish to express my sincere appreciation to my main thesis supervisor, Assoc. Prof. Dr. Maizon Hashim, for encouragement, guidance, critics and friendship. Without her continued support and interest, this thesis would not have been the same as presented here.

I am also indebted to Ministry of Public Works Indonesia for funding my master study. Librarians at UTM also deserve special thanks for their assistance in supplying the relevant literatures and PT. Istaka Karya (Persero) for its support.

My fellow postgraduate students should also be recognized for their support. My sincere appreciation also extends to all my colleagues and others who have provided assistance at various occasions. Their views and tips are useful indeed. Unfortunately, it is not possible to list all of them in this limited space. I am grateful to all my family members.

## ABSTRACT

Standard forms of contract have been used widely in construction industry in the world. PWD 203A (Rev.2007) is one of Malaysian standard forms of construction contract for building and civil projects for public work. In contrast Indonesia still do not have a standard form of construction contract unless for government project where a regulation for Standards and Guidelines for the Procurement of Construction Services which was published by Ministry of Public Work of Indonesia (Permen No.43/2007) that has been in use. The important thing is that the standard form of contract are drafted based on its construction practices, circumstances, nature of politic and culture of the society. It is presumed that there are some similarities and differences of its provisions, term and conditions since Malaysia and Indonesia have similar cultural roots while having a different legal basis. The main objective of this research is to compare the PWD 203A (Rev.2007) and the Permen No.43/2007 and find out how far the similarities and differences on the terms and conditions of the both forms. Hopefully in the future can be used to develop and improve the current standard of government's contract for construction industry as well as to identify the disputes earlier and minimize it. The focus on the comparative study is on the selected clauses which are considered as dispute area in construction industry i.e, Payment to Contractor, Variation, Delay and Extension of Time, Dispute Resolution, Termination of Contract and Contractor. This is a descriptive study which is combine literature analysis and interview techniques. The research found that in general there are more similarities than differences between the two forms. The system of administration of contract between PWD 203A (Rev. 2007) and Permen No.43/2007 is significantly different. Under PWD 203A (Rev.2007), Advance Payment not expressly stated and there is no remedies for late payment by the employer as well as Pemen No.43/2007. PWD 203A (Rev.2007) also provide detail procedure in dispute resolution than Permen No.43/2007. Moreover PWD 203A (Rev.2007) does not provide clause for determination of contractor own employment due to default by the employer. In general the Permen No. 43/2007 provides flexibility to the contract administrator in the management of the contract. Upon the analysis of selected clauses, there are some provisions that can be used to develop and improve the current regulation for standards form of contract or to draft the standard form of contract in Indonesia.

## ABSTRAK

Borang standard kontrak telah digunakan secara meluas dalam industri pembinaan di dunia. JKR 203A (Rev.2007) adalah salah satu bentuk standard kontrak pembinaan untuk bangunan dan projek sivil bagi kerja-kerja awam di Malaysia. Sebaliknya Indonesia masih tidak mempunyai borang kontrak pembinaan kecuali bagi projek kerajaan yang sudah menjadi peraturan bagi Standard dan Garis Panduan Perolehan Perkhidmatan Pembinaan diterbitkan oleh Kementerian Kerja Raya Indonesia (Permen No.43/2007). Perkara penting untuk menuediakan borang standard kontrak adalah bahawa mereka adalah digubal berdasarkan amalan pembinaan, keadaan ini, sifat politik dan budaya masyarakat. Adalah dianggap bahawa terdapat beberapa persamaan dan perbezaan peruntukannya, terma dan syarat sejak Malaysia dan Indonesia mempunyai akar budaya yang sama, manakala yang mempunyai asas undang-undang yang berbeza. Objektif utama kajian ini adalah untuk membandingkan JKR 203A (Rev.2007) dan Permen No.43/2007 dan mengetahui sejauh mana persamaan dan perbezaan mengenai terma dan syarat-syarat kedua-duanya. yang pada masa akan datang boleh digunakan untuk membangunkan dan meningkatkan taraf semasa kontrak kerajaan bagi industri pembinaan serta untuk mengenal pasti pertikaian lebih awal dan mengurangkannya. Tumpuan kajian perbandingan adalah mengenai peruntukan-peruntukan terpilih yang dianggap sebagai kawasan pertikaian dalam industri pembinaan iaitu Pembayaran kepada Kontraktor, Perubahan Kelewatan dan Lanjutan Masa, Pertikaian Penamatan, Kontrak dan Kontraktor. Kajian ini adalah kajian deskriptif yang menggabungkan analisis sastera dan teknik temu bual. Penyelidikan mendapati bahawa secara amnya terdapat lebih persamaan daripada perbezaan antara kedua-dua borang. Dalam borang kontrak JKR 203A (Rev.2007), Bayaran Pendahuluan tidak dinyatakan dan tidak ada remedi bagi kelambatan pembayaran oleh majikan serta Pemen No.43/2007. JKR 203A (Rev.2007) juga menyediakan prosedur terperinci dalam Permen penyelesaian pertikaian No.43/2007. JKR 203A (Rev.2007) tidak memberi fasal untuk penamatan kerja oleh kontraktor kerana lalai oleh majikan. Secara umum Permen No.42/2007 memberi fleksibiliti untuk pentadbir kontrak dalam pengurusan kontrak. Apabila perbandingan daripada fasal, terdapat beberapa peruntukan yang boleh digunakan untuk membangunkan dan memperbaiki bentuk semasa taraf kontrak atau draf borang standard kontrak di Indonesia.