

COMPARISON BETWEEN THE STANDARD FORMS OF BUILDING CONTRACT USED
IN NIGERIA AND MALAYSIA

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ABSTRACT

Payment is considered as the lifeblood of the construction industry because constructions often involve very large capital outlay and take a considerable time to complete. In Nigeria, over 11,800 capital projects are abandoned as the result of non-payment or delay in payment. The research focused on payment issues aimed at identifying the differences in payment method between JCT 2009 and PAM 2006 Standard Forms, invariably recommending ways to improve payment methods in these Standard Forms. JCT 2009 Standard Form is used in Nigeria for both public and private projects while in Malaysia PAM 2006 are used for private projects and JKR 203A (Rev, 2007) is used for government projects. In Nigeria the government standard form was drafted in 1978 for public projects but was abandoned because of its deficiencies. Payment is made through the issuance of interim certificate at interval of 28 days in JCT 2009 standard Form and 21 days in PAM 2006 Standard Form. The Time of honouring interim certificate is 14 days in JCT 2009 Standard Form in PAM 2006 Standard Form is 21 days. In comparing the time of issuance and honouring certificate between PAM 2006 and JCT 2009 standard forms are the same. PAM 2006 Standard Form requires written application as mandatory. Payments on certificates are difficult in most cases because the money most of the time is used for other purpose by the employer. The research found parties to contract are not knowledgeable in construction law in Nigeria. The contractor is entitled to interest on unpaid amount due in interim certificates. The research recommended that the Nigerian government should draft its own Standard Form with, priority to offering the subject of construction law in the school's curriculum should be emphasised, workshop for contactors on legal position of payment should be organised, interest rate be paid on unpaid amount due, adequate project budget should be made, retention fund should be kept for contractor use.

ABSTRAK

Pembayaran adalah dianggap sebagai nadi industri pembinaan kerana pembinaan sering melibatkan perbelanjaan modal yang sangat besar dan juga turut mengambil masa untuk diselesaikan. Di Nigeria, lebih 11,800 modal projek terbengkalai akibat tidak membuat pembayaran atau kelewatan dalam pembayaran. Penyelidikan ini tertumpu kepada isu-isu pembayaran bertujuan untuk mengenal pasti perbezaan di antara kaedah pembayaran Borang Standard JCT 2009 dan PAM 2006, yang mana pada kebiasaanya mengesyorkan cara-cara untuk memperbaiki kaedah pembayaran di dalam Borang Standard. Hasil dari penyelidikan mendapati bahawa Borang Standard JCT 2009 digunakan di Nigeria bagi kedua-dua projek-projek awam dan swasta manakala di Malaysia PAM 2006 adalah digunakan untuk projek swasta dan JKR 203A semakan 2007 adalah digunakan untuk projek-projek kerajaan. Di Nigeria, kerajaan telah menggubal borang standard untuk projek-projek awam pada tahun 1978, tetapi telah ditinggalkan kerana terdapat kekurangan. Pembayaran dibuat melalui perakuan interim pada selang 28 hari di dalam Borang Standard JCT 2009 dan 21 hari dalam Borang Standard PAM 2006. Masa untuk menghormati perakuan interim 14 hari dalam Borang Standard JCT 2009 sementara adalah 21 hari dalam Borang Standard PAM 2006. Perbandingan masa bagi insurans dan penghormatan sijil diantara Borang Standard PAM 2006 dan JCT 2009 adalah sama. Borang Standard PAM 2006 memerlukan permohonan bertulis sebagai mandatori. Pembayaran pada perakuan adalah yang sukar dalam kebanyakan kes. Pihak-Pihak di dalam kontrak pula tidak berpengetahuan dalam undang-undang pembinaan. Kontraktor adalah berhak untuk mendapatkan faedah di atas amaun yang belum dibayar di dalam perakuan-perakuan interim. Penyelidikan ini mencadangkan kerajaan Nigeria perlu mempunyai Borang Standard yang tersendiri, keutamaan kepada subjek undang-undang pembinaan di kurikulum sekolah perlu ditekankan, bengkel undang-undang pembayaran perlu dijalankan untuk kontraktor, kadar faedah perlu dibayar atas amaun yang tidak dikenakan bayaran, projek yang mencukupi bajet perlu dilakukan dan penyimpanan dana perlu dilakukan untuk kegunaan kontraktor. Penyelidikan pada masa hadapan haruslah menganalisis fasal-fasal lain yang terdapat di dalamnya.