

WRONGFUL TERMINATION OF CONTRACT IN  
CONSTRUCTION INDUSTRY

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## ABSTRACT

Construction contract plays a very important role in all construction projects. Construction contract cover all the terms and conditions of the contract that need to be complied by all parties in the contract. Once a party enters into a construction contract, he must strictly perform his obligation according to the terms and conditions of the contract. So, it is very important for the contractual parties to understand the contract documents and construction law to assist them to understand their role and responsibilities. If any of the contractual party breach the conditions of contract or unable to perform his obligations, then another party can terminate or determine the contract. "*Termination*" and "*determination*" have different definition. "*Termination*" of contract means that to treat the contract as an end. "*Determination*" means that to reconsider the contract and not simply terminate the contract. In Malaysia, there are several types of standard forms of construction contracts available for use in the construction industry, such as PWD 203A, PAM, CIDB etc. Under these standard forms of construction contract, there are several clauses provided for termination or determination of contract by the employer and also by the contractor. Generally, these standard forms of construction contract provide the clauses which allow the contractual parties to terminate a contract and also the procedures to terminate a contract. If the termination of the contract is not done correctly, it can be considered as a wrongful termination of construction contract. If the termination of construction contract is wrongful, then the termination could be void or invalid. Therefore, this study focused on the reasons why the termination of contract is considered as wrongful or unlawful. From the result of this research, it can be concluded that the common reasons for wrongful termination of construction contract are unreasonable grounds of termination, issuance of notices and breach of contract by terminating party before termination of contract.

## ABSTRAK

Kontrak pembinaan memainkan peranan yang penting dalam setiap projek pembinaan. Kontrak pembinaan mengandungi semua terma dan syarat yang perlu dipatuhi oleh semua pihak terlibat dalam kontrak. Apabila salah satu pihak terlibat dalam satu kontrak pembinaan, pihak tersebut perlu menjalankan tugasnya dengan mematuhi segala terma dan syarat yang terkandung dalam kontrak. Oleh sebab itu, pihak yang terlibat perlu memahami dokumen kontrak dan undang-undang pembinaan dengan teliti. Jikalau salah satu pihak melanggar terma dan syarat dalam kontrak pembinaan atau gagal menjalankan tugasnya, pihak yang lain boleh menentukan atau menamatkan kontrak. Terdapat pembezaan antara perkataan “*menamatkan*” dan “*penentuan*” (determination) kontrak. “*Menamatkan*” bermakna mengakhiri hayat kontrak tersebut. “*Penentuan*” bermakna mempertimbangkan semula. Di Malaysia terdapat beberapa borang kontrak setara yang boleh digunakan dalam industri pembinaan seperti PWD 203A, PAM, CIDB dan sebagainya. Menamatkan atau penentuan kontrak oleh majikan dan juga kontraktor ada dinyatakan dalam borang kontrak setara. Kebiasaanya, dalam borang kontrak setara ada menyatakan keadaan yang mengizinkan dan langkah-langkah untuk pihak-pihak menamatkan kontrak. Jika penamatan kontrak tidak dilakukan dengan betul, penamatan kontrak tersebut boleh dikatakan adalah tidak sah. Jika penamatan kontrak pembinaan tersebut tidak sah, penamatan tersebut boleh diabaikan dan dikatakan tidak wujud. Oleh itu, kajian ini tertumpu kepada sebab-sebab penamatan kontrak yang tidak sah. Melalui kajian ini, boleh disimpulkan bahawa sebab-sebab penamatan kontrak yang tidak sah adalah dasar penamatan yang tidak munasabah, pengeluaran notis dan mungkir kontrak oleh pihak yang menamatkan kontrak sebelum penamatan.