

# **EMPLOYER RIGHT IN THE EVENT OF CONTRACTOR'S LIQUIDATION**

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## **ABSTRACT**

The current crisis in the world's financial system has left the construction industry facing its toughest challenges for a generation. In regards to the construction industry, the sector that is currently experiencing a boom time perhaps more than any other is the one dealing with insolvency. Among the construction insolvency, the insolvency of a main contractor is the frequent occurrence. This has brought issues and problems to employer who would become unsecured creditor in the event of contractor's liquidation. Furthermore, several clauses in standard forms of contract are unable to protect the interest of the employer and may jeopardize the interest of the employer when the contractor goes into liquidation. Therefore, the aim of this study is to recommend amendments to certain clauses that will protect the employer's interest in the event of contractor's liquidation. The standard forms of contract chosen for the research are PWD Contract 203A, PAM Contract 2006, and CIDB Contract 2000. This study focuses on the law cases that have been determine by the court to identify the critical issue arises during the contractor's liquidation. However, this study only focuses on the critical issues specifically: direct payment, performance bond, unfixed materials and goods, set-off and determination. The critical issues are those issues that are commonly arising. Through getting familiar with those issues, the legal position of the issues can be easily determined and propose the recommendation amendments to several clauses in the standard forms of contract to protect the interest of the employer. The proposed recommendation able to give some guidance to parties involved in construction industry especially employer.

## ABSTRAK

Krisis kewangan sekitar dunia kini telah menyebabkan bidang pembinaan menghadapi cabaran yang terberat kepada parti dalam sektor pembinaan. Dalam sektor pembinaan, krisis muflis adalah paling kerap berlaku berbanding dengan sektor lain-lain. Di antara kesemua jenis muflis yang berlaku dalam sektor pembinaan, kejadian kontraktor utama yang muflis adalah paling kerap berlaku. Kejadian ini telah membawa pelbagai isu-isu dan masalah-masalah kepada pihak majikan serta menjadi pemiutang tak sekure dalam kejadian sedemikian. Selanjutnya, beberapa klausa dalam borang kontrak standard tidak dapat melindungi kepentingan pihak majikan apabila kejadian kontraktor muflis. Oleh sebab itu, kajian ini bertujuan mencadangkan pindaan yang berpatutan kepada beberapa klausa untuk melindungi kepentingan pihak majikan dalam kejadian kontraktor muflis. Borang kontrak standard yang ditumpu oleh penulis kajian ini adalah Borang Kontrak Standard J.K.R 203A, PAM 2006, serta CIDB 2000. Kajian ini akan fokus ke atas kes undangan yang telah ditentukan oleh mahkamah untuk mengenal pasti kritikal isu yang berlaku apabila kejadian kontraktor muflis. Bagaimanapun, kajian ini hanya tertumpu kepada isu-isu yang tertentu seperti bayaran terus, bon pelaksanaan, pemotongan bayaran, bahan-bahan binaan, dan penamatan kontrak. Kritikal isu yang dikenal pasti adalah isu yang kerap berlaku dalam kejadian kontraktor muflis. Dengan lazimnya isu yang kerap berlaku, sah kedudukan kepada isu tertentu dapat mudah ditentukan dan penulis dapat mencadangkan pindaan yang berpatutan kepada beberapa klausa untuk melindungi kepentingan pihak majikan. Diharapkan klausa yang telah dicadangkan oleh penulis dapat memberi sedikit sebanyak bimbingan kepada parti dalam sektor pembinaan terutamanya pihak majikan.