

THE VIABILITY OF ONLINE DISPUTE RESOLUTION IMPLEMENTATION

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ABSTRACT

Alternative Dispute Resolution (ADR) is one of the methods in settling the dispute other than litigation. There are numbers of ADR used for the settlement in construction disputes includes Online Dispute Resolution (ODR), mediation, arbitration and conciliation. Online Dispute Resolution (ODR) had been available since 1996. It refers to the use of internet technology, wholly or partially, as a medium by which to conduct the proceedings of ADR.

ODR can be efficient that it encourages the resolution of disputes in the environment within which the dispute arose. ODR is supposed to have more opportunities in Malaysia Construction Industry (MCI) compare to the other ADR in terms of speedy and cost. Otherwise, it is something foreign to Malaysia, but it has a potential to be introduce in the Malaysia Construction Industry (MCI). The question or issues is whether it will be a viable method of settling construction dispute in Malaysia.

The objectives of this study is to determine the viability of adopting Online Dispute Resolution (ODR) as a method for settling construction dispute the study focuses on the Malaysia construction industry and construction disputes related in Malaysia and other Commonwealth country cases.

This research based on documentary data such as books, journals, seminar paper and articles. Indeed, published resources like books, journals, varies standard form of contract, and related statutory are the most helpful in this literature review.

As results, to implement the ODR in Malaysia first the regulation party who will control the system is important to be creating in handle and conduct the system through Internet. The security and partier's trustworthy the provision on ODR in term of law should be created to reinforce the ODR as a binding method. The quality of online justice can be more practical and effective if the government policy is issued and the own standard form of contract for Online Dispute Resolution is provided.

Besides, Malaysia should improve the Information and Communication Technology (ICT) system in order to deploy the high speed Internet access through the country at the government expense because this system fully recover by the Internet from filling up the forms, send the document, face to face meeting and resolve the dispute need the advance technology to avoid any disruptions will the process is conducted.

The specific web pages also need to construct in the Internet using the specific domain name provided for every country such as .org, .net. and .com. It is important to protect the policy and procedures and allow the parties to access the website upon of the registration. Finally, process and procedures in ODR must be clear to avoid any misunderstanding and lack of confidence among the parties.

ODR has a potential in Malaysia Construction Industry (MCI) seem it give more advantages for the parties. In order to implement the ODR in settling the dispute, the provision framework should be follow as a guarantee in operating the system. Even ODR can prove to be successful, but it will never completely replace litigation.

ABSTRAK

Alternative Dispute Resolution (ADR) merupakan salah satu kaedah dalam menyelesaikan pertikaian selain daripada tindakan undang-undang. Terdapat beberapa kaedah ADR yang digunakan untuk penyelesaian dalam pertikaian dalam pembinaan termasuk Online Dispute Resolution (ODR), mediation, arbitration dan conciliation. Online Dispute Resolution (ODR) telah disediakan sejak tahun 1996. Ia merujuk kepada penggunaan teknologi internet, keseluruhan atau sebahagiannya, sebagai bahasa pengantar yang menjalankan prosiding ADR.

ODR lebih efektif kerana dapat menyelesaikan resolusi pertikaian dalam persekitaran apabila pertikaian timbul. ODR sepatutnya mempunyai lebih banyak peluang dalam Industri Pembinaan Malaysia berbanding dengan lain-lain kaedah ADR dari segi kecepatan dan kos. Walaubagaimanapun, ia adalah sesuatu yang asing di Malaysia, tetapi ia mempunyai potensi untuk diperkenalkan dalam Industri Pembinaan Malaysia. Persoalan atau isu-isunya sama ada ia akan menjadi satu kaedah yang berdaya maju menyelesaikan pertikaian pembinaan di Malaysia.

Objektif kajian ini adalah untuk menentukan sama ada Online Dispute Resolution (ODR) boleh menjadi salah satu kaedah dalam menyelesaikan pertikaian pembinaan kajian kepada industri pembinaan Malaysia dan pertikaian pembinaan yang berkaitan di Malaysia dan negara Komanwel kes-kes yang lain.

Kajian ini berdasarkan data dokumentar seperti buku, jurnal, kertas seminar dan artikel. Malah, sumber-sumber yang diterbitkan seperti buku, jurnal, berbeza bentuk standard kontrak, dan berkanun berkaitan yang paling membantu dalam kajian literatur ini.

Kesimpulannya, untuk melaksanakan ODR perlu mewujudkan parti dalam Malaysia yang akan dapat mengawal sistem dan mengendalikannya melalui Internet. Keselamatan dan amanah daripada 'party' dari segi undang-undang perlu diwujudkan untuk mengukuhkan ODR sebagai kaedah yang selamat digunakan. Kualiti keadilan dalam talian akan lebih praktikal dan berkesan jika dasar kerajaan dikeluarkan dan borang standard kontrak untuk Penyelesaian Pertikaian secara Online disediakan.

Selain itu, Malaysia perlu meningkatkan sistem Maklumat dan Teknologi Komunikasi (ICT) dalam usaha untuk meningkatkan kelajuan Internet melalui negara pada perbelanjaan kerajaan kerana sistem ini dilaksanakan sepenuhnya oleh Internet dari mengisi borang, menghantar dokumen itu, mesyuarat dan menyelesaikan pertikaian itu memerlukan teknologi untuk mengelakkan sebarang gangguan yang akan dijalankan. Laman-laman web tertentu dalam membina Internet dengan menggunakan nama domain khusus seperti org., net. dan .com penting untuk melindungi dasar dan prosedur dan membenarkan pihak-pihak untuk mengakses laman web semasa pendaftaran. Akhir sekali, proses dan prosedur dalam ODR mestilah jelas untuk mengelakkan sebarang salah faham dan kurang keyakinan di kalangan pihak-pihak.

ODR mempunyai potensi dalam Industri Pembinaan Malaysia (MCI) dan memberi lebih banyak kelebihan kepada pihak terlibat. Dalam usaha untuk melaksanakan ODR di dalam menyelesaikan pertikaian itu, rangka kerja peruntukan harus diikuti sebagai jaminan dalam sistem operasi. ODR boleh dilaksanakan tetapi ia tidak akan menggantikan sepenuhnya tindakan undang-undang.