

PAYMENT FOR OFF-SITE UNFIXED MATERIALS AND GOODS

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A master's project report submitted in partial fulfillment of the
requirements for the award of the degree of
Master of Science in Construction Contract Management.

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JULY 2011

ACKNOWLEDGMENT

First of all, Alhamdulillah and thanks to Almighty God Allah s.w.t, for giving me the opportunity to finish the study. I also wanted to express my sincere appreciation to my supervisor, Associate Professor Dr. Rosli Abdul Rashid for his time, encouragement, guidance, critics and friendship. Without his support and interest, this study would not have been the same as presented here.

Lastly, I would like to express my love and appreciation to my parents Rustam Kama and Jumaida Harris, siblings and all my friends in class of Master in Construction Contract Management. Thank you for being supportive, caring, and encouraging throughout the study and also during the good all days in Universiti Teknologi Malaysia. Thank you so much and I love all of you.

ABSTRACT

Construction industry in Malaysia will usually involve the execution of a building contract between the owner (employer) and the contractor using the Standard Form of Contract. The contracts normally contain clauses stipulating the rights, duties, obligations and responsibilities of the employer and the contractor as well as remedies for the breach of any of the duties. One of the important elements in the construction contract is "payment" by employer to the contractor. Based on the Standard Form of Contract in Malaysia, the employer will pay the contractor according to the percentage value of work done including the percentage of unfixed materials and goods which are delivered to the site or adjacent to the site. But in practice, the Superintending Officer (S.O.) or employer did pay the contractor for materials and goods which are not delivered "on" or "adjacent" to the construction site. Thus, the objectives of the study are to determine whether employer may include value of the off-site unfixed materials and goods in the interim payment and to identify the circumstances that allow for the payment for unfixed materials and goods off-site. The analysis done is through analysis of documents such as Standard Form of Building Contract, Treasury Instruction, and Treasury Circular, Preliminaries item in Bills of Quantities, books, journals and articles. Based on the analysis of the documents, it is identified that the employer cannot pay the contractor for off-site unfixed materials and goods and cannot include the value of the stated items in the interim payment. The employer only can pay the contractor for the work he had properly executed and for the unfixed materials and goods which are delivered to or adjacent to the construction site. There are no circumstances that allowing the employer to pay for off-site unfixed materials and goods to the contractor. The finding of the study is hopefully can be reference to the employer and to the contractor especially on the issue of payment for off-site unfixed materials and goods and also to help the construction professional to understand the legal aspect of their work in the area of payment for unfixed materials and goods.

ABSTRAK

Industri pembinaan di Malaysia biasanya akan melibatkan pelaksanaan kontrak bangunan di antara pemilik (majikan) dan kontraktor dengan menggunakan Borang Kontrak Standard. Kontrak biasanya mengandungi klausa- klausa yang telah menetapkan hak-hak, kewajipan, obligasi dan tanggungjawab majikan dan kontraktor serta remedi bagi pelanggaran mana-mana tugas. Salah satu elemen penting dalam kontrak pembinaan adalah "bayaran" oleh majikan kepada kontraktor. Berdasarkan kepada Borang Kontrak Standard di Malaysia, majikan akan membayar kontraktor mengikut nilai peratusan kerja yang telah dilakukan termasuk peratusan bahan- bahan dan barang-barang binaan yang tak dipasang, yang dihantar ke tapak pembinaan atau bersebelahan dengan tapak pembinaan. Tetapi, Pegawai Penguasa (P.P.) atau majikan tetap membayar kontraktor untuk bahan-bahan dan barang-barang binaan tak dipasang yang tidak dihantar ke tapak pembinaan atau bersebelahan dengan tapak pembinaan. Keadaan ini selalu berlaku terutamanya apabila tapak pembinaan tersebut terletak di kawasan bandar atau di dalam kawasan tapak pembinaan yang terhad. Oleh itu, objektif kajian ini adalah untuk menentukan sama ada majikan boleh memasukkan nilai bahan-bahan dan barang- barang binaan tak dipasang yang berada dihantar ke luar tapak ke dalam pembayaran interim dan untuk mengenal pasti keadaan yang membenarkan pembayaran bagi bahan-bahan dan barang- barang binaan tak di pasang yang dihantar ke luar tapak. Analisis yang dilakukan adalah melalui analisis dokumen seperti Borang Kontrak Bangunan Standard, Arahan Perbendaharaan dan Pekeliling Perbendaharaan, Item Permulaan dalam Bil Kuantiti, buku, jurnal dan artikel. Berdasarkan analisis terhadap dokumen-dokumen, ianya telah dikenal pasti bahawa majikan tidak boleh membayar kontraktor untuk bahan-bahan dan barang- barang binaan tak di pasang yang dihantar ke luar tapak dan tidak boleh memasukkan nilai barang-barang yang dinyatakan dalam pembayaran interim. Majikan hanya boleh membayar kontraktor untuk kerja-kerja telah disempurnakan dan juga untuk bahan-bahan dan barang-barang binaan yang dihantar ke tapak pembinaan atau bersebelahan dengan tapak pembinaan. Tiada keadaan yang membenarkan bayaran untuk bahan-bahan dan barang- barang binaan tak di pasang luar tapak kepada kontraktor. Hasil kajian ini diharap dapat dijadikan panduan oleh majikan dan juga kepada kontraktor terutamanya di dalam isu pembayaran untuk bahan- bahan dan barang- barang binaan tak dipasang yang berada di luar tapak pembinaan, selain dapat membantu pihak profesional dalam sektor pembinaan untuk memahami aspek undang- undang tentang kerja mereka yang berkaitan dengan bayaran untuk bahan- bahan dan barang- barang binaan tak dipasang.