

**RISK IN CONSTRUCTION CONTRACTUAL
TERM AND CONDITION**

SITI HUDA BINTI KAMARUZAMAN

UNIVERSITI TEKNOLOGI MALAYSIA

ACKNOWLEDGEMENT

First of all, I wish to extend my sincere appreciation to everybody who contributed to the accomplishment of this dissertation. My dissertation supervisor, Assoc. Prof. Dr. Rosli Abd. Rashid is specially remembered for his time, patience and efforts in moulding me and my thought process. The completion of this dissertation would not have been possible without invaluable knowledge, experience, discussion, conscientious supervision and encouragement.

I would also like to my dearest friends for their generous assistance to check up the sentences structure of this dissertation. Furthermore, I would like to express my sincere thank to construction professionals, who generously spent their precious time to participate in this dissertation. Their honest information, opinions, and comments are very useful indeed.

Eventually, I am most thankful to my beloved parents and family for their continuous support and encouragement given to me unconditionally in completing this project report. Without the contribution of all those mentioned above, this work would not have been possible.

ABSTRACT

A construction contract is an agreement between employer (building owner) and the contractor which legally binding. There are always formed in writing. What have agreed by the parties are written in the contract documents which is comprise of Form of Tender, Instruction to Tenderers, Bill of Quantities, Specifications, and Drawings including the Articles of Agreement and Standard Form of Contract. The standard form of contract contains terms and conditions which define responsibility and liability of the parties who enter into the contract. Therefore, it is crucial for the parties particularly the contractor to understand fully the meaning of terms and conditions contain in the standard form of contract. This is because they not only define the rights and duties of the parties but also the distribution of risks among them. In this context, what are the risks for the contractor that inherent in the clause found in the standard form? In this case, JKR form of contract. The study is limited to JKR form of contract where 6 clauses is selected base on frequency of issues being raised associated with them. The objectives of this study are to identify the risk pose by the different clause found in the JKR form of contract and to rank them according to their probability. The study employed a brainstorming process that conducted within a group of 4 persons to identify the risks that possibly give effect to the contractors. The next stage is classification of risk, where the identified risk is classify by area of impacts which is financial, technical and contractual. The last stage is to rank the risk by doing probability rating method. The study highlighted the most significant probability occurring in the industry. The highest probability is variations, EOT, materials and defects. Based on this study, it is suggested that for further study to study on PAM form of contract. This study also give emphasize to contractor which risk is categories under high, medium and low towards them.

ABSTRAK

Kontrak pembinaan ialah persetujuan antara majikan (pemunya bangunan) dan kontraktor yang mana dimeterai secara sah. Ia selalunya di formatkan dalam bentuk tulisan. Apa yang dipersetujui oleh kedua pihak ditulis didalam dokumen kontrak ini yang mana mengandungi Borang Tender, Arahan kepada Penender, Kuantiti Bil, Spesifikasi, dan Lukisan-lukisan termasuk Artikel Perjanjian dan Borang Standad Kontrak. Borang Standad Kontrak mengandungi terma-terma dan syarat-syarat yang menjelaskan tanggungjawab dan bebanan pihak-pihak yang memasuki kontrak tersebut. Oleh itu, adalah penting bagi pihak-pihak berkenaan terutamanya kontraktor untuk memahami sepenuhnya maksud terma-terma dan syarat- syarat yang terkandung dalam Borang Standad Kontrak. Ini kerana ianya bukan sahaja menerangkan hak-hak dan tugas-tugas pihak yang terlibat malah juga agihan risiko dikalangan mereka. Dalam konteks ini, apakah risiko terhadap kontraktor yang terdapat dalam klaus di dalam Borang Kontrak Standard? Di dalam kes ini ialah Borang Kontrak . Kajian adalah terhad kepada borang kontrak JKR dimana 6 klaus dipilih berdasarkan kekerapan isu-isu timbul berkaitan Klaus-klaus berikut. Objectif kajian ini ialah untuk mengetahui risiko yang terdapat dalam Klaus yang berlainan di dalam borang kontrak JKR dan untuk menentukan kedudukan risiko berdasarkan kebarangkalian ia terjadi. Kajian ini di kendalikan dengan menjalankan percambahan fikiran dengan 4 orang yang berkecualan untuk mengenalpasti risiko yang memberi kesan kepada kontraktor. Peringkat seterusnya ialah klasifikasi risiko dimana risiko yang sudah dikenalpasti diklasifikasikan mengikut kesan impak seperti kewangan, teknikal dan kontrak. Peringkat terakhir ialah dengan melakukan kaedah kadar kebarangkalian. Kajian ini mengutarakan kebarangkalian yang paling besar berlaku dalam industri. Kebarangkalian yang paling tinggi ialah variasi, lanjutan masa, bahan-bahan dan kecacatan. Berdasarkan kajian ini, adalah disarankan untuk kajian akan datang untuk mengkaji Borang Kontrak. Kajian ini juga dapat memberi gambaran kepada kontraktor tentang risiko yang yang tinggi, sederhana dan rendah kepada mereka.