

QUANTUM MERUIT IN CONSTRUCTION CONTRACTS

ZAIRRA BINTI MAT JUSOH

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

Faculty of Built Environment
Universiti Teknologi Malaysia

July 2011

ACKNOWLEDGEMENTS

First and foremost, I would like to express my sincere gratitude and utmost appreciation to my supervisor Mr. Jamaluddin Yaakob for his precious guidance, valuable advice, and inspiring encouragement throughout this project. His guidance has motivated and helped me lots especially to develop an understanding of the subject and in presenting my writing for the research. The completion and successful of this project would have been impossible without his assistance and guidance.

Special thanks also to all the lecturers in course of Master of Science in Construction Contract Management for their patient and kind advice during the process of completing the master course.

Not forgetting my dearest parents, brothers and sisters, for always be there supporting me during this process of completing of my master course. Lastly, I would like to take this opportunity to record my sincere appreciation to my classmates and friends for their morale supports and opinions throughout this research. Thank you very much.

ABSTRACT

Quantum meruit claims can arise in both contract and restitution. It is a claim for the reasonable sum for the work done. In the case of *Renard Construction (ME) Pty Ltd v Minister for Public Works*[1992] 26 NSWLR 234, Meagher JA held that the contractor was entitled to recover a *quantum meruit* that should be quantified on reasonable remuneration basis, not value of the work basis for work performed. In addition, the contract price did not represent a ceiling to the contractor's remedy. Similarly, in the case of *Murdock v Kennedy* [1952] 69 WN (NSW) 191, Street CJ held that the contract was not conclusive evidence, though it may be strong evidence. By referring to these cases, the courts do not seem to be uniformed in devising formula to for quantifying the reasonable amount for *quantum meruit*. Hence, this study intends to identify the methods of assessment used to calculate *quantum meruit* claim. The analysis was carried out by referring to *quantum meruit* cases in Malaysia construction contract. From the study, there are four methods of assessment used based on the value of work basis which are value of work done plus unfixed material, the cost of labours, materials and others plus percentage profit, the value of work done plus unfixed material less remedial cost and LAD and the balance of progress claim. While, the method of assessment used based on the reasonable remuneration basis is the average of remuneration multiply with duration of work performed. This study also found that quantification of *quantum meruit* based on reasonable remuneration basis only involves the pre-contract stage as the scope of assessment.

ABSTRAK

Tuntutan *quantum meruit* boleh berbangkit daripada isu kontrak atau pembayaran kembali (restitution). Ia merupakan tuntutan sejumlah wang yang munasabah bagi kerja-kerja yang telah dilakukan. Dalam kes *Renard Construction (ME) Pty Ltd v Minister for Public Works*[1992] 26 NSWLR 234, Meagher JA memutuskan bahawa pihak kontraktor layak untuk mendapat semula sejumlah wang berdasarkan konsep *quantum meruit* yang mana dikira berdasarkan upah yang munasabah dan bukannya berdasarkan nilai kerja bagi kerja-kerja yang telah dilaksanakan. Disamping itu, harga kontrak tidak menghadkan jumlah pembayaran kembali kepada kontraktor. Begitu juga dalam kes *Murdock v Kennedy* [1952] 69 WN (NSW) 191, Street CJ memutuskan bahawa kontrak bukannya bukti yang muktamad, walaupun ia mungkin bukti yang meyakinkan. Berdasarkan kepada kes-kes ini, mahkamah seolah-olah tidak seragam dalam menghasilkan formula bagi mengira sejumlah wang yang munasabah bagi tuntutan *quantum meruit*. Dengan itu, kajian dijalankan untuk mengenalpasti cara-cara penilaian yang digunakan bagi mengira tuntutan *quantum meruit*. Analisis ini dijalankan dengan merujuk kepada kes-kes yang melibatkan *quantum meruit* dalam kontrak pembinaan di Malaysia. Menurut kajian, terdapat empat cara untuk bagi mengira tuntutan *quantum meruit* berdasarkan nilai kerja. Cara-cara tersebut terdiri daripada jumlah nilai kerja ditambah barang tidak terpasang, kos buruh, barangan, dan lain-lain ditambah peratus keuntungan, jumlah nilai kerja dan barang tidak terpasang ditolak kos pembaikan dan kelewatan, dan baki tuntutan kemajuan kerja. Berikutnya, bagi penilaian berdasarkan upah yang munasabah adalah purata upah didarab dengan tempoh masa sepanjang kerja dilaksanakan. Kajian ini juga menemui bahawa pengiraan berdasarkan upah yang munasabah hanya melibatkan peringkat pra-kontrak sebagai skop penilaian.