

**REVISING CONTRACT SUM:
THE EMPLOYER RIGHT TO SET – OFF PAYMENT**

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ABSTRAK

Sehingga hari ini, pertikaian mengenai bayaran telah lama menghantui industri pembinaan. Walaupun, telah nyata di dalam kontrak berkenaan persetujuan harga kontrak, majikan selalunya tidak berpuas hati dengan hasil kerja oleh kontraktor. Ini menyebabkan majikan menolak bayaran yang dikemukakan oleh Arkitek dengan cara menahan dan kemudiannya memotong bayaran di dalam perakuan interim. Tindakan sedemikian menyebabkan kontraktor membawa tindakan mahkamah bagi memperolehi semula bayaran yang masih terhutang. Sebaliknya, majikan akan mengemukakan tindakbalas terhadap permohonan kontraktor dengan mengemukakan pelbagai alasan dalam melewatkan pembayaran. “Set – off“ selalunya disalahtafsirkan sama sebagai “counterclaim“ atau “abatement“. Dalam kes – kes yang berkaitan, keputusan yang ditetapkan oleh hakim telah meletakkan syarat – syarat dalam mentafsirkan terma ini. Penyelidikan ini juga merumuskan bahawa kecacatan kerja merupakan faktor utama mengapa majikan memotong bayaran interim kepada kontraktor. Dalam hal ini, mahkamah akan bergantung sepenuhnya kepada keputusan kes – kes yang didapati

ABSTRACT

Until today, dispute concerning payment had long plague the construction industry. Despite, on what was written on contract on agreed contract price, the employer always dissatisfied with contractor's work. This led the employer to reject payment issued by the Architect by withholding and later setting – off payment in interim certificate. This kind of action had caused the contractor to bring action against the employer in reclaiming the money due to them. On the other hand, the employer will counterclaim against the contractor by putting up excusable reasons in delaying payment. Set – off always misconstrued as same as counterclaim or abatement. In related cases, decisions decided by the judge put conditions in construing the terms. The research also concluded that defective works was the key factor of why the employer setting – off interim payment to the contractor. In this regard, the Court will depend solely on precedent cases available and the most prominently the provision of set – off available in contract. Hence, the employer right to set – off payment must be made according to contract available and not blindly done.