

**FAIR AND REASONABLE ASSESSMENT IN GRANTING
EXTENSION OF TIME**

NOR AZIZAN BINTI MUHAMED

A report project submitted in partial 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

MAY, 2009

ABSTRACT

In most contracts, the employers delegate the role of assessing the contractor's application for extension of time to the Contract Administrators or Superintending Officers. In making any determination under a building contract, Contract Administrators or Superintending Officers have the duty to act fairly and reasonably on a rational basis. Any assessment they make must be based on reasons that can stand up to scrutiny by the other parties to the contract. They should carry out a detailed, logical and methodical analysis of the documents and other evidence submitted in support of the application for an extension of time. Failure to act fairly can lead to invalidation of their certificates. However, it is difficult to give the actual definition of 'fair and reasonable assessment' in granting extension of time. A dispute arises when there is an issue of determining whether the Contract Administrator or Superintending Officer acts correctly regarding the 'fair and reasonable assessment' in granting extension of time. The objective of this study is to identify how Superintending Officers or Contract Administrators approach their duties in assessing Extension Of Time fairly and reasonably. The approach adopted in this research is based on four case laws and five case studies in housing projects located in various areas in Pahang, hoping that the findings will assist the Superintending Officers or Contract Administrators to assess the Extension Of Time to contractors fairly and reasonably. However, an analysis of past courts' judgments indicate no case law that clearly defines 'fair' and 'reasonable' assessment for granting extension of time, although the English case of *John Barker Construction Ltd v London Portman Hotel Ltd (1996) 83 BLR 31*, held that there was a guideline for the Superintending Officers or Contractor Administrators to act in a fair and reasonable way in assessing the contractor's applications for extension of time.

ABSTRAK

Kebiasaannya dalam sesuatu kontrak, tanggungjawab untuk membuat penilaian untuk lanjutan masa telah diwakilkan oleh Pihak Klien kepada Pegawai Kontrak atau Pegawai Penguasa. Pegawai Penguasa atau Pegawai Kontrak mempunyai kewajipan tugas secara adil dan munasabah dalam membuat sebarang penilaian dan keputusan. Sebarang penilaian yang dibuat mestilah bersandarkan alasan yang kukuh oleh pihak yang berkontrak. Mereka hendaklah membuat penilaian secara terperinci, logik dengan menganalisa segala dokumen serta bukti-bukti untuk membantu dalam membuat penilaian untuk lanjutan masa. Kegagalan berbuat demikian boleh mengakibatkan sijil lanjutan masa yang dikeluarkan tidak sah. Walaubagaimanapun, adalah sukar untuk memberi maksud sebenar penilaian secara adil dan munasabah. Masalah timbul apabila penilaian yang dibuat oleh Pegawai Penguasa atau Pegawai Kontrak dipertikaikan. Kajian ini bertujuan untuk mengenalpasti bagaimana pendekatan Pegawai Penguasa atau Pegawai Kontrak berlaku adil dan munasabah dalam membuat penilaian terhadap lanjutan masa. Pendekatan yang digunakan dalam kajian ini adalah berdasarkan empat kes mahkamah serta lima kajian kes dalam projek perumahan di Negeri Pahang. Melalui analisis mahkamah, didapati tiada satu pun kes yang menerangkan secara jelas maksud adil dan munasabah dalam membuat penilaian untuk lanjutan masa, bagaimanapun melalui kes Mahkamah Inggeris, *John Barker Construction Ltd v London Portman Hotel Ltd (1996) 83 BLR 31* ada menjelaskan garis panduan untuk berlaku adil dan munasabah dalam membuat penilaian lanjutan masa terhadap kontraktor.