

# **NOTICE OF LOSS AND/OR EXPENSE CLAIM**

**IN PAM 2006**

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## ABSTRACT

Notice is defined as the legal concept describing a requirement that a party be aware of legal process affecting their rights, obligations or duties. In construction contracts, the contractor is frequently required to notify the owner other in writing of differing site conditions, changes in the scope of work, unforeseen delays and breaches by the other party. These notice provisions is often a condition precedent and always contain a deadline for the notice to be given to the other party. If the contractor fails to provide notice within the deadline, the contract states that the claim against the owner is waived .Generally most standard form of contract including PAM 2006 required contractor to strictly comply with this provision in construction contract. However in common law, claimant may still be entitled to claim even if he fails to abide by notice provision. This study is carried out to determine the legal impact of notice provision for loss and expense claim in PAM 2006 and the circumstance where making notice provision as a condition precedent to contractor right making claim is waived. This study was carried out mainly through documentary analysis of law journals. It was found that although notice should be given but failure of the contractor to give notice should not bared him from making loss and expense claims having in mind that he has suffered some loss and making notice a condition precedent will allow owner to benefit from his which against the common law.

## ABSTRAK

Notis merupakan konsep perundangan yang menjelaskan supaya satu pihak sedar akan proses perundangan yang akan memberi kesan terhadap hak, obligasi atau tanggungjawab. Dalam kontrak pembinaan, kontraktor selalunya perlu mengemukakan notis kepada majikan secara bertulis tentang perbezaan keadaan tapak, perubahan dalam skop kerja, pertundaan yang tidak disangka, dan kemungkinan kontrak oleh pihak lain. Klausula tentang notis ini merupakan syarat penting dan selalunya mengandungi tarikh tutup supaya notis ini boleh dihantar untuk pihak lain. Sekiranya kontraktor gagal mengemukakan notis dalam masa yang ditetapkan, kontraktor akan kehilangan hak untuk menuntut terhadap majikan. Kebanyakan borang kontrak termasuk PAM 2006 memerlukan kontraktor mematuhi klausula yang terkandung dalam kontrak pembinaan. Walau bagaimanapun, berdasarkan *common law*, pihak yang menuntut walaupun dia gagal mematuhi klausula dalam kontrak pembinaan. Maka, penyelidikan ini dijalankan untuk mengenal pasti kesan perundangan terhadap klausula-klausula dalam PAM 2006 tentang notis untuk menuntut kerugian dan perbelanjaan, dan situasi yang menghalang tuntutan kontraktor berdasarkan klausula dalam kontrak pembinaan bahawa notis merupakan syarat untuk sebarang tuntutan. Penyelidikan ini dijalankan berdasarkan analisis jurnal perundangan. Hasil analisis menunjukkan bahawa walaupun notis seharusnya dikemukakan, namun kegagalan kontraktor untuk mengemukakan notis tidak harus dianggap sebagai halangan untuk menuntut kerugian dan perbelanjaan kerana beliau sememangnya sudah mengalami kerugian. Sekiranya notis tuntutan dijadikan syarat utama, majikan akan menikmati kelebihan. Hal ini telah melanggar *common law*.