THE PROFILE OF CONSTRUCTION CONTRACT TERMINATION CASES

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ABSTRACT

A contract creates a legal obligation upon the contracting parties. Generally, a contract may be terminated before completion at common law or by the exercise of express rights set out in the contract itself. Contracts can be brought to an end in a variety ways, either by performance, agreement, frustration or by breach. There are provisions in all the common forms of contract that allow either party to terminate the contract. There are several types of standard forms of building contracts available to use in construction contracts in Malaysia, such as PWD 203A, PAM, CIDB, IEM etc. Generally, standard form of building contract provides circumstances which allow the party to terminate the contract. It also provides the procedure to terminate a contract and the consequences for both parties upon the termination of contract. The big risk with any form of termination is that the termination could be wrongful or it is not done correctly. Therefore, this study focused on developing the profile of construction contract termination cases in terms of their status and the reasons for wrongful or right termination. This study is done through analyzing the legal cases based on previous court cases collected from Lexis-Nexis Legal Database via UTM library electronic database. 15 cases are selected in this study. As a result, it is found that 8 out of 15 cases were held as a wrongful termination by the judge. From this result, we can conclude that in many cases associated with termination of contract which are reported at court, it still show that more than a half of the cases were considered as wrongful termination by the judge. These have proved that in reality, many parties in construction industry still lack the understanding on the procedure of terminating a contract, especially in issuing the notice for termination.

ABSTRAK

Kontrak membentuk satu hubungan yang sah di antara pihak-pihak yang berkontrak di sisi undang-undang. Penamatan kontrak menyebabkan mereka "dilepaskan" daripada melaksanakan obligasi yang dijanjikan Secara amnya, kontrak boleh ditamatkan sebelum kontrak dilaksanakan atau selepas pelaksanaannya. Sesuatu kontrak boleh ditamatkan melalui pelbagai cara termasuklah pelaksanaan, perjanjian, kekecewaan dan kemungkiran. Terdapat peruntukan bagi mebolehkan suatu penamatan kerja itu berlaku sebagaimana yang terkandung di dalam borang kontrak setara. Di Malaysia, terdapat beberapa borang kontrak setara yang boleh digunakan seperti PWD 203A, PAM, CIDB, IEM dan sebagainya. Kebiasaannya, di dalam borang kontrak setara ini ada dinyatakan beberapa jenis kemungkiran yang menyebabkan boleh berlakunya penamatan melalui kemungkiran. Ia juga ada memperuntukkan prosedur-prosedur yang perlu dituruti untuk penamatan kontrak serta kesan-kesan penamatan kontrak terhadap pihak-pihak yang berkontrak, temasuklah tugas dan tanggungjawab mereka apabila kontrak ditamatkan. Penamatan kontrak bukanlah sesuatu yang mudah, kerana ia berisiko tinggi dimana penamatan yang tidak dilakukan dengan betul boleh berubah menjadi suatu penamatan yang tidak sah. Oleh itu, kajian ini dilakukan untuk mengkaji profil kes-kes penamatan kontrak pembinaan, samada penamatannya sah atau tidak di sisi undang-undang, dan alasan-alasan bagi penamatan yang diputuskan sah atau tidak sah oleh hakim di mahkamah. Data-data bagi kajian ini diperolehi dari Lexis-Nexis adalah laporan kes-kes lepas yang telah dibawa ke mahkamah. Hasil kajian mendapati 8 daripada sejumlah 15 kes yang dipilih adalah diputuskan oleh mahkamah sebagai penamatan yang tidak sah di sisi undang-undang. Ini membuktikan bahawa pihak-pihak di dalam industri pembinaan masih kurang arif tentang prosedur sebenar untuk menamatkan kontrak, terutamanya tentang pengeluaran notis penamatan kontrak.