

**PRE-AWARD INTEREST
IN
CONSTRUCTION ARBITRATION**

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ABSTRACT

When a person is deprived of the use of money or fund to which he is legitimated entitled, he has a right to be compensated for the deprivation and the lost of the use of his money for the time he should have received it. The Arbitration Act 2005 via section 33(6) as well as section 21 of Arbitration Act 1952 (now repealed) provide legal rights for post-award interest only. It would seem that an arbitral tribunal has no power to grant pre-award interest, interest effective from a date earlier than the award date. The question now is what is the basis for awarding pre-award interest since the 2005 Act is silent on this particular provision? The objective of the research is to identify the basis for awarding pre-award interest in arbitration proceedings in Malaysia Construction Industry. In conclusion it is evidently clear that the arbitral tribunal has the power and jurisdiction to award pre-award interest when it awards monetary award. Section 11 of Malaysian Civil Law Act 1956 (Act 67) provides the Court and arbitrators with discretionary power to award interest including pre-award interest for the recovery of any debt or damages. The principles applied by the Malaysian Courts in respect of the pre-award interest can be applied in Construction Industry although the cases were originated from other industries. Pre-award interest is awarded as compensation to the suffering party, not to punish the wrong doers. The basis for awarding pre-award interest, *inter alia*, the rate of interest, commencement of interest and type of interest to be awarded, was analyzed and the findings as reported. It is hoped that this research can be of useful to the industry stakeholders when dealing with the recovery of pre-award interest.

ABSTRAK

Apabila seseorang dinafikan dana yang sah milik dari sisi undang-undang, dia berhak menuntut bayaran pampasan. Seksyen 33(6) Akta Timbangtara 2005 dan seksyen 21 Akta Timbangtara 1952 (dimansuhkan) memperuntukkan hak-hak yang sah bagi faedah "post-award" sahaja. Seolah-olah tribuna timbangtara tiada bidang kuasa untuk mengaward faedah "pre-award". Persoalannya ialah apakah asas bagi pemberian faedah "pre-award" memandangkan peruntukan ini tidak termaktub dalam Akta 2005? Objektif kajian ini adalah untuk mengenalpasti asas bagi mengaward faedah "pre-award" dalam prosiding timbangtara di dalam Industri Pembinaan Malaysia. Rumusannya disokong dengan bukti-bukti bahawa tribuna timbangtara atau penimbangtara mempunyai bidang kuasa dan kata putus terhadap pemberian faedah "pre-award" dalam bentuk wang. Mengikut seksyen 11 Akta Undang-Undang Sivil Malaysia 1956 (Akta 67), mahkamah dan penimbangtara diperuntukkan kuasa mutlak dan "discretionary power" dalam hal pengawardan faedah termasuk faedah "pre-award" bagi bayaran balik hutang mahupun bayaran pampasan. Prinsip-prinsip yang diikuti oleh mahkamah Malaysia dalam hal faedah "pre-award" dalam industri lain juga boleh diaplikasikan dalam Industri Pembinaan Malaysia. Faedah "pre-award" diberi sebagai pampasan kepada pihak penuntut tetapi bukan untuk mendenda pihak yang mungkir kontrak. Asas bagi pengawardan "pre-award" antara lain, kadar faedah, tarikh faedah mula bertunggak dan jenis faedah telah dianalisa dan hasil kajian adalah terlapor dalam tesis. Adalah diharapkan hasil kajian ini berguna kepada pihak-pihak terbabit apabila menangani hal berkenaan dengan faedah "pre-award".