

THE IMPARTIALITY OF CONTRACT ADMINISTRATOR'S DUTIES

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ABSTRACT

The Contract Administrator (CA) is responsible for day-to-day administration of the contracts, authorised performance of a project and to fulfill project requirements. The first role of a CA is to act as the employer's agent by carrying out their instructions, while the second role is to be a decision maker on issues involving the contractors and employers due to opposing interests. They shall execute their duties with impartiality and by not being bias to any party involved such as in approving payments, issuing certificate, and evaluating claims between employers and contractors. This research offers an idea of Contract Administrator's impartiality upon performing their duties. Therefore, the objective of this is to identify the circumstances under which the issues of CA's impartiality have been debated during performing their duties. In order to achieve this objective, this research is conducted by analysing relevant court cases from Malaysia and other countries. The impartiality of CA can be challenged when the CA allows their judgement to be influenced; the CA acts in the interests of any parties; the CA lacks sufficient firmness in order to determine the decision; and lastly when the CA's judgement and conduct are controlled by the principal. As a conclusion, throughout the construction process which involves all those duties, the Contract Administrator must always being impartial in performing it.

ABSTRAK

Pentadbir Kontrak (CA) merupakan individu yang berkuasa dan bertanggung jawab dalam pentadbiran kontrak dari hari ke hari, bertujuan memenuhi keperluan projek. Perana pertama CA adalah bertindak sebagai agen kepada majikan dengan melaksanakan arahan-arahnya, sementara peranan kedua adalah sebagai pembuat keputusan pada isu-isu yang melibatkan kontraktor dan majikan berdasarkan kepentingan isu yang bertentangan. CA harus melaksanakan tugas mereka dengan adil terhadap pihak-pihak yang terlibat seperti dalam meluluskan pembayaran, mengeluarkan sijil, dan menilai tuntutan antara majikan dan kontraktor. Kajian ini memberikan gambaran umum tentang kesaksamaan Pentadbir Kontrak dalam melaksanakan tugasnya. Oleh itu, matlamat kajian ini adalah untuk mengenalpasti keadaan Pentadbir Kontrak dalam melaksanakan tugas-tugas mereka di mana isu kesaksamaan berbangkit. Bagi mencapai matlamat kajian, ia dilakukan dengan menganalisis kes-kes mahkamah yang berkaitan dengan isu kajian, kes-kes dari Malaysia dan negara-negara lain. Daripada analisis, kesaksamaan CA boleh dipersoalkan apabila, CA membenarkan pengadilan mereka dipengaruhi, sikap CA dalam menjaga kepentingan pihak-pihak tertentu, CA kurang ketegasan dalam menentukan keputusan dan akhir sekali apabila pengadilan dan kelakuan CA dikawal oleh majikannya. Kesimpulannya, Pentadbir Kontrak mesti senantiasa berlaku adil dalam melaksanakan tugas-tugasnya sepanjang proses pembinaan.