

THE PRINCIPLES IN ASSESSING THE QUANTUM OF
ACCELERATION CLAIM FOR INTERNATIONAL PROJECTS

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I declare that this project report entitled "*The Principles in Assessing the Quantum of Acceleration Claim for International Projects*" is the result of my own research except as cited in the references. The project report has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.

Signature : 
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Date : 8 AUGUST 2012

Praise for Yahweh Almighty in the name of Yeshua Ha Masiakh
Dedicated to my parents Abraham Ruskan and Naomi Nikem,
To my wife Iin Desi Pradiaty,
And my precious daughter Denise Jessica Arthur

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ABSTRACT

This study is concerning on additional costs claims due to accelerative actions undergone to overcome time-related issues occurred during construction process. The study is pertinent to international projects which appoints case study on East-West Motorway Project of Algeria in scope of contracting relationship between *Consortium Japonais L'Autoroute Algerienne (COJAAL)* and PT. Wijaya Karya (Persero) Tbk. (WIKA). By many times, claims may generate disputes in its quantum assessment, which the claims quantum requested by the Claimant could be not fully ascertained or simply reduced by the Defendant as occurred in the aforementioned project. The study is aimed to determine the principle in assessing the quantum of acceleration costs claims whether it will be tested by way of litigation. Furthermore, the study is substantially important in presenting possible scenarios or treatment in which disputing parties may settle acceleration costs claims most probably based on the law of the country that the project located. In order to reach the goal, this study is generally organized its research methodology into stages, i.e.; defining research problem, reviewing theories, designing research, collecting data, analysing data, interpreting and reporting the result. Specifically, this study is generated by method of law case analysis using LexisNexis[®], an online law report searching tool. Acquired law cases are sorted and filtered to obtain the most adequate and relevant case for the study analysis. Law case analysis consists of elements for defining the case, i.e.; facts, proceedings, applicable law, issues, ambiguity, reasons, and decision. Eventually, the results of law case analysis present whether quantum assessment issues of acceleration costs claims may arise from such valuation method specified in contracts such as on provision of 'Variation', misinterpretation upon such formula exercised by the quantum experts, valuation on whole-time-lost basis, matter of entitlement of constructive acceleration, the credibility of the evidence and facts supporting the claims, utilization of *quantum meruit* principle, acceleration quantum

valuation which incorporated to delay and disruption claim, and guesstimate valuation by the Claimant. Among those analysis results, the significance of the quantum assessment issue for acceleration claims is concluded that '*terms of contract*' are to be the primary basis in solving the issue.

ABSTRAK

Kajian ini adalah berkenaan kos tambahan yang didakwa akibat tindakan akselerasi yang dijalankan untuk mengatasi isu-isu berkaitan dengan masa pada proses pembinaan. Kajian ini adalah penting kepada projek-projek antarabangsa yang merujuk pada kajian kes Projek *East West Motorway Algeria* dalam skop kontrak hubungan antara *Consortium Japonais L'Autoroute Algerienne (COJAAL)* dan PT. Wijaya Karya (Persero) Tbk. (WIKA). Dalam banyak kali, klaim boleh menciptakan konflik dalam hal penilaian kuantum, yang mana klaim yang diminta oleh Penuntut mungkin tidak sepenuhnya dipenuhi atau hanya dikurangkan oleh Defendan seperti yang berlaku dalam projek tersebut. Kajian ini bertujuan untuk menentukan prinsip dalam menilai kuantum kos akselerasi apabila hal itu akan diuji melalui proses litigasi. Kajian ini sangat penting dalam menyampaikan *scenario* atau perlakuan yang dapat diputuskan di mana pihak yang bertikai menyelesaikan klaim kos akselerasi yang mungkin berdasarkan undang-undang sesuatu negara dimana projek terletak. Dalam usaha untuk mencapai matlamat itu, kajian ini secara umumnya diatur dalam kaedah penyelidikan yang berperingkat-peringkat, iaitu; penyelidikan masalah, pengkajian teori, reka bentuk penyelidikan, pengumpulan data, analisis data, tafsir dan laporan hasilnya. Secara khusus, kajian ini dihasilkan dengan menggunakan kaedah analisis kes dengan LexisNexis[®], sesuatu alat pencarian laporan kes. Kes-kes yang diperolehi disusun dan ditapis untuk mendapatkan kes yang mencukupi dan relevan untuk analisis kajian. Analisis kes terdiri daripada unsur-unsur, iaitu; fakta, prosiding, undang-undang yang terpakai, isu-isu, kecaburan, sebab, dan keputusan. Akhirnya, kesimpulan daripada analisis kes iaitu isu-isu penilaian kuantum klaim kos akselerasi mungkin timbul daripada kaedah penilaian seperti yang dinyatakan dalam kontrak misalnya pada *clause 'Variation'*, salah tafsir formula yang dijalankan oleh pakar-pakar kuantum, penilaian pada perkara kelayakan akselerasi dengan asas seluruh-masa-hilang, kredibiliti bukti dan

fakta yang menyokong klaim, penggunaan prinsip *quantum merit*, penilaian kuantum akselerasi yang termasuk dalam klaim *delay and disruption*, dan penilaian yang kira-kira oleh Penuntut. Di antara semuanya itu, kepada isu penilaian kuantum klaim akselerasi disimpulkan bahawa 'terma kontrak' adalah asas utama dalam menyelesaikan isu ini.