

**VALIDITY OF LATE DECISION UNDER CONSTRUCTION INDUSTRY
PAYMET AND ADJUDICATION (CIPAA) 2012**

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DECLARATION

I declare that this thesis entitled "*Validity of Late Decision under Construction Industry Payment and Adjudication Act (CIPAA) 2012*" is the result of my own research except as cited in the references. The thesis has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.



Signature :

Name : LEONG SIEW CHENG
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Date : 10/9/2012
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DEDICATION

Specially dedicated to...

My beloved Father, Leong Chin Ngian,
My beloved Mother, Chin Muk Kiau
My Elder Sisters, Siaw Tsiung and Siaw Chan
&
My Friends

Thanks for all the love and support!

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ABSTRACT

In 1996, the Housing Grants, Construction and Regeneration Act (HGCRA) Act in the UK was the first Act to introduce statutory adjudication to resolve disputes arising under construction contracts. In order to resolve the poor payment attitude in construction industry, Malaysia also started the same effort to enact the Construction Industry Payment and Adjudication Act (CIPAA) in year 2003. The CIPAA had been proposed by Construction Industry Development Board (CIDB) collaboration with construction industry. The statutory adjudication was first introduced in UK; however, there is a debate on the late decision of adjudicator since the implementation of HGCRA. The decision of adjudicator is whether valid or even enforced if the delivery of decision is not within the time limits as agreed by the parties. It is also the debate on effect of communication of the decision to the parties. Therefore, the objective of this research is to determine the validity of late decision under CIPAA 2012. This research was conducted by literature review and analysis of case law journals. The results of this research may give the awareness to the parties who intend to apply the adjudication as their dispute resolution mechanism. The findings of this research is that there are five reasons of judgment allow the decision of adjudicator been enforced, and three reasons given by the judge to nullify the decision of adjudicator. The issue of late decision of adjudicator was anticipated would not to occur under CIPAA in Malaysia. However, the effect of the communication to the parties also silence in CIPAA. The improvement in the CIPAA is needed in order to minimize the disputes and to make the statutory adjudication as a dispute resolution mechanism become more efficient.

ABSTRAK

Pada tahun 1996, *Housing Grants, Construction and Regeneration Act (HGCRA)* di United Kingdom merupakan Akta pertama yang memperkenalkan statutori adjudikasi untuk menyelesaikan pertikaian yang timbul pada kontrak pembinaan. Dengan usaha yang menyelesaikan masalah sikap pembayaran dalam pembinaan, Malaysia juga melangkah ke arah untuk menggubalkan *Construction Industry Payment and Adjudication Act (CIPAA)* pada tahun 2003. CIPAA dicadangkan oleh Lembaga Pembangunan Industri Pembinaan (CIDB) yang berkerjasama dengan industri pembinaan. Statutori adjudikasi telah mula diperkenalkan di UK; bagaimanapun, terdapat perbincangan tentang keputusan adjudikator yang lewat semenjak pelaksanaan HGCRA. Keputusan yang dibuat oleh adjudikator sama ada sah ataupun dikuatkuasa sekiranya penyampaian keputusan tidak menepati masa had yang dipersetujui oleh pihak. Ia juga perbincangan terhadap kesan komunikasi keputusan kepada pihak. Oleh itu, objektif kajian ini adalah untuk menentukan kesahihan pada keputusan yang lewat di bawah CIPAA 2012. Kajian ini telah dijalankan oleh kajian literatur dan analisis jurnal kes undang-undang. Hasil kajian ini boleh memberi kesedaran kepada pihak yang berniat untuk menggunakan adjudikasi sebagai alat penyelesaian pertikaian. Keputusan penyelidikan ini adalah terdapat lima sebab menyebabkan Hakim membenarkan keputusan yang dibuat oleh adjudikator dikuatkuasakan, dan terdapat tiga sebab yang diberi oleh Hakim untuk membatalkan keputusan yang dibuat oleh adjudikator. Isu terhadap keputusan adjudikator yang lewat dijangka tidak akan berlaku di bawah CIPAA di Malaysia. Walau bagaimanapun, kesan komunikasi kepada pihak juga tidak menentukan dalam CIPAA. Peningkatan dalam CIPAA adalah diperlukan untuk mengurangkan pertikaian dan untuk menjadikan adjudikasi sebagai alat penyelesaian pertikaian yang lebih efisien.