

**PROFILE OF SET-OFF CASES IN MALAYSIAN CONSTRUCTION
INDUSTRY**

LOO SHIH NIE @ NANCY LOO

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Universiti Teknologi Malaysia**

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DECLARATION

I declare that this project report entitled “*Profile of Set-off Cases in Malaysian Construction Industry*” 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 :

Name : LOO SHIH NIE @ NANCY LOO

Date :

DEDICATION

To my beloved family for giving me such a good start

Thanks for support, guidance and everything.

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ABSTRACT

The problem of non-payment has long been lamented by the construction industry players. Payment default, as many in the industry know, poses potential undesirable consequences such as stifling the cash flow of industry participants, resulting in their insolvency, and affecting the entire project delivery chain. One of the reasons for non-payment is due to set-off. Set-off relates to the situation where an employer raises a counterclaim against the main contractor or where a main contractor raises a counterclaim against a sub-contractor's claim. This kind of action had caused the main contractor or sub-contractor to bring action against the employer in reclaiming the money due to them. This study focus on developing the profile of set-off cases in Malaysian construction industry and has been done based on the year, types of parties involved, types of construction project, nature of set-off, amount of money involved and court judgment. This study mainly carried out through documentary analysis of court cases using the online e-database via Lexis Malaysia website. This study covers the set-off cases in construction industry reported by Malayan Law Journal (MLJ) between years of 1961 to 2010 and related to building contract only while the methodology of this study is on the secondary data analysis. Research finding identified that the period between years of 1991 – 2000 had the most set-off cases and the most party involved in construction set-off is between the employer and the main contractor. The analysis also identified that the most types of construction project is private project. Besides that, this study also found that most of the set-off is due to defective works and late completion with the most amount of money involved is between RM100,001 – RM1 million. It also found that 16 out of 22 cases were held as wrongful set-off by the judge. These have proved that in reality, the industry players still lack of understanding on their right of set-off. By developing this profile, hopefully it will provide the relevant parties a better understanding on the set-off and helps to prevent or minimize the disputes in the construction industry.

ABSTRAK

Masalah ketidakbayaran telah lama menghantui pihak industri pembinaan. Kemungkinan pembayaran, sepertimana kebanyakan pihak industri tahu, menimbulkan potensi akibat yang tidak diinginkan seperti menjejaskan aliran tunai, menyebabkan kemuflihan dan mempengaruhi keseluruhan rantaian projek. Salah satu faktor ketidakbayaran adalah disebabkan penolakan bayaran. Tolakan berkaitan dengan situasi di mana majikan menuntut balas terhadap tuntutan kontraktor utama atau di mana kontraktor utama menuntut balas terhadap tuntutan sub-kontraktor. Tindakan ini telah menyebabkan kontraktor utama atau sub-kontraktor mengambil tindakan terhadap majikan untuk menuntut kembali wang yang sepatutnya dibayar kepada mereka. Kajian ini tertumpu kepada pembangunan profil tolakan kes dalam industri pembinaan di Malaysia dan telah dilakukan berdasarkan tahun, jenis pihak yang terlibat, jenis projek pembinaan, punca penolakan, jumlah wang yang terlibat dan keputusan penghakiman. Kajian ini dijalankan terutamanya melalui analisis dokumentari kes-kes mahkamah menggunakan e-pangkalan data melalui laman web Lexis Malaysia. Kajian ini merangkumi tolakan kes dalam industri pembinaan yang dilaporkan oleh *Malayan Law Journal (MLJ)* antara 1961 - 2010 dan yang berkaitan dengan kontrak pembinaan sahaja manakala metodologi kajian ini adalah berdasarkan kepada analisis data sekunder. Hasil kajian mendapati tempoh antara tahun 1991 - 2000 mempunyai tolakan kes yang tertinggi dan pihak yang paling banyak terlibat dalam tolakan adalah di antara majikan dan kontraktor utama. Analisis ini juga mengenal pasti bahawa kebanyakan jenis projek pembinaan adalah projek swasta. Selain itu, kajian ini juga mendapati bahawa punca tolakan berlaku adalah disebabkan oleh kecacatan dalam hasil kerja dan kegagalan menyempurnakan kerja di mana jumlah wang yang terlibat adalah di antara RM100, 001 - RM1 juta. Ia juga mendapati bahawa 16 daripada 22 kes yang telah berlaku telah dihakim sebagai salah tolakan. Ini telah membuktikan bahawa dalam realiti, pihak industri masih kekurangan pengertian mengenai hak tolakan. Dengan membangunkan profil ini, mudah-mudahan ia akan memberi pihak-pihak berkenaan pemahaman yang lebih baik mengenai tolakan dan membantu untuk mencegah atau meminimumkan pertikaian dalam industri pembinaan.