

**ISSUES IN IMPLEMENTING ELECTRONIC TENDERING IN  
INDONESIAN'S CONSTRUCTION INDUSTRY**

**RATIH KUSUMAWATI**

**UNIVERSITI TEKNOLOGI MALAYSIA**

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PETITION FOR WINDING UP  
UNDER SECTION 218 OF COMPANIES ACT 1965

TIEW SYEN YOUNGS


A project report submitted in partial fulfilment of the  
requirements for the award of the degree of  
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## **DEDICATION**

To my beloved mother, father, brother and sister.

## **ACKNOWLEDGEMENT**

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## ABSTRACT

In resolving the problem of non-payment, contractor may take court action as provided in Section 218 of Companies Act 1965, provided that if an employer does not pay the sum of exceeding RM 500.00 which is certified within three weeks after it receives the contractor's claim, the unpaid contractor may petition for the employer's company to be wound up. An examination to related law cases showed that the courts were very strict in granting the petition, which caused most of the contractors lost in their winding up petitions. By observing the law cases, it seemed that compliance with requirements those are set out in Section 218 of Companies Act 1965 is not sufficient for High Court in completely making a company to be wound up in final. Most of judges also tended to put extra requirements to the contractors in issuing a winding up petition. Therefore, this research was done to identify the strategies which are required to be prepared by contractors to wind up their employers. In this research, law cases were studied to understand in detail on the reasons which had been given by the learned judges in accepting and rejecting the contractors' petition of winding up against their employers. The research result showed that a contractor will be able to wind up an employer when the employer is insolvent; the employer is not successful to establish a bona fide dispute between it and the contractor; the remedy of winding up is applied as the last resort; and the objective to wind up a company is to settle the debts by selling its assets. This research finding hopefully may enlighten or at least give contractors a guide in preparing their strategies before petitioning for winding up against their employers.



## ABSTRAK

Dalam menyelesaikan masalah ketidakbayaran, kontraktor berhak mengambil tindakan mahkamah dengan memfailkan petisyen untuk menggulungkan syarikat majikan di bawah Seksyen 218, Akta Syarikat 1965 jika majikan gagal membayar hutang melebihi nilai RM 500.00 yang telah disahkan dan diperakui selepas tempoh tiga minggu dituntut oleh kontraktor. Kajian terhadap kes-kes mahkamah yang berkaitan menunjukkan mahkamah amat tegas dalam membenarkan petisyen tersebut dan menyebabkan banyak kontraktor tewas dalam petisyen pengulungan. Dalam pengamatan kes-kes tersebut, pematuhan Seksyen 218, Akta Syarikat 1965 kelihatan tidak memadai untuk Mahkamah Tinggi menjatuhkan perintah penggulungan terhadap syarikat majikan secara muktamad. Mahkamah juga cenderung meletak syarat-syarat tambahan terhadap kontraktor dalam petisyen tersebut. Oleh itu, kajian ini dilaksanakan untuk mengenalpasti strategi-strategi yang diperlukan para kontraktor untuk menggulungkan syarikat majikan mereka. Dalam kajian ini, kes-kes mahkamah diamati untuk memahami alasan penghakiman yang diberi oleh para hakim yang bijaksana dalam menerima dan menolak petisyen penggulungan yang difailkan oleh pihak kontraktor. Hasil kajian menunjukkan bahawa kontraktor berjaya menggulungkan majikan apabila:- majikan adalah solven; majikan gagal membuktikan ada pertikaian bona fide di antara majikan dan kontraktor; petisyen penggulungan diambil sebagai jalan terakhir; dan objektif penggulungan syarikat majikan adalah untuk melangsaikan hutang dengan menjual aset-aset syarikat tersebut. Hasil kajian ini diharap dapat memberi panduan kepada kontraktor sebagai persediaan asas dalam memfailkan petisyen penggulungan terhadap syarikat majikan.