Scholarly Paper

Discerning the Disparity between Stipulated Contractual Payment Procedures and Payment Practices among Contractors

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Abstract: Smooth cash flow is critical to foster a robust, professional, and competitive construction sector, ensuring efficient project delivery. However, persistent payment issues have been a recurrent concern, adversely affecting contractors within the construction industry. This research delves into the payment procedures as stipulated in three (3) prevalent standard form of contract, specifically focusing on the dynamics between clients and contractors in the Malaysian construction industry. The study aims to identify any disparity between the stipulated payment conditions and the actual of payment practices. A form study through literature review is used to study the stipulated contractual payment procedures while primary data of actual practices were sourced from 162 contractor's responses through structured questionnaire surveys. Employing a blend of analytical tools encompassing frequency distribution, Likert Scale with the Cronbach's alpha analysis, and relative importance index computations, the collected data were analyzed. The findings emphasized the severity of payment concerns within the construction industry. Payment issues, namely late payment, underpayment, and even nonpayment occurs at a high frequency. Persistent payment issues reflect a glaring disparity between stipulated procedures and the actual payment practices employed. The results from the survey also revealed that in these instances, the majority of contractors would opt for a tactful approach, relying on persistent notifications directed toward the client rather than pursuing legal actions to address the issue. The study underscored the urgent need for improvements through better defined payment terms, established escalation procedures, and penalties for late payments in construction contracts. Furthermore, it is also necessary for contractor to be educated regarding legal options and the meticulous maintenance of work-related documentation concerning payments in order to foster a balanced and equitable ecosystem in the construction sector that will propel the construction industry's advancement and the nation's progress. **DOI: 10.1061/JLADAH.LADR-1151.** © *2024 American Society of Civil Engineers.*

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Introduction

The entity, individuals or organizations, which own and fund the project are referred to as client. Clients are the ones who initiate the construction projects. They are internal stakeholders with overall managerial accountability and can function as a consortium that can assign management responsibility (Doloi 2012). Every project has a client who has business needs that will be fulfilled if the project can be completed successfully. The major responsibilities of the client in a project are to approve project proposals, request changes, highlighting issues and risks, approving milestone, make payments to the contractor and consultants, and accept or decline the project's final deliverables.

A contractor is hired by the client, to carry out the scope of the construction work. The contractor's primary responsibility is to build what is specified in the construction drawings that has been design by the consultants, but they must also plan, manage, and supervise all work on site to ensure the project's success. Part of their job includes dealing with materials, equipment, as well as any other services required for the project's smooth progress (Brunjes 2020). The influence of contractors on project performance is sizable as a prequalified and chosen contractor will deliver projects of the appropriate standard of quality within the allocated budget and time (Rashid et al. 2018). The selection and qualification's process of a contractor is an enormously complex decision-making exercise. Delays of the project, substantial lost costs, and serious damage to project quality might arise when an unqualified contractor is elected to execute the works (Attar et al. 2012).

The relationship between clients and contractors is tied with an agreement known as the construction contract. Both parties work together to draw up a contract and agree on the terms of completion and the reimbursement for the work done. An engineering construction contract is a written agreement between contracting parties that binds them and defines their relationships and responsibilities in a specific project (Abdullah 2019). The document typically comprises of agreements, terms and conditions, standard form of contract, bill of quantities, drawings and any other project information (Chuah 2020). In the construction sector in Malaysia, it is customary for stakeholders to embrace standardize contract forms to regulate their contractual obligations throughout the contract administration process (Yih Chong et al. 2011). These standardize contract forms, often

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colloquially termed standard forms, manifest typically in printed formats, published under the imprimatur of a reputable industry entity acknowledged by both governmental authorities and participants within the construction domain (Ting and Whyte 2009). Importantly, terms and conditions are considered consensually accepted and are not open to subsequent negotiation or alteration (Singh 2011) and this is typically applied as the general conditions of contract.

The three (3) most prevalent standard forms used in both the public/government and private sectors are public works department (PWD) and Pertubuhan Arkitek Malaysia (PAM) forms. PWD forms include the JKR Sarawak Form of Contract 2006 (used specifically for State of Sarawak Government projects) and PWD 203A (Rev. 2010) (used in all Federal Government projects) where Bills of Quantities Form Part of the Contract. PAM forms are standard forms of contract published by Malaysian Institute of Architects (Pertubuhan Arkitek Malaysia—PAM). PAM form of building contract is often used for private projects, especially building projects (Yunus et al. 2018; Ting and Whyte 2009). The standard forms are generally selected depending on the type of project, the nature of the project, and the financing involved. The standard form of contract chosen is essential to the success of the project because it contains a basic legal framework that identifies the parties' rights, obligations, and responsibilities, as well as establishing the scope of the contract administrator's powers and duties (Raja Berema et al. 2023). Although the structure and approach of these standard forms of contract differ from one another, they do share many similar provisions on issues covering but not limited to scheduling and delays, payment to contractors, variation and instructions and have slightly different terminologies (Zakaria et al. 2013). The following section delves into the literature review that include prevailing contractual provisions outlined in the aforementioned standard contract forms and the prevalent issues and challenges associated with current payment practices. It also identifies the research gap in this domain and underscores the broader significance of this research within the regional context and its potential implications abroad.

Literature Review

Generally, progress payments are being made to the contractor at agreed intervals and occurred throughout the contract construction period. According to Abdullah (2019), the general scheme of payment procedures based on standard form of contracts in Malaysia is summarized as follows:

1. Contractor applies for payment certificate together with particulars. The forms may require him to first comply with requirements of the contract, such as to deposit the insurance policies, performance security, or supporting progress report.
2. The contract administrator (CA) namely the superintending officer (SO) appointed under the contract will visit the site to carry out a valuation (a visual estimate) of the partially completed works, but responsibility for the correctness of the sum of the certificate remains with the CA.
3. The payments are determined by valuation of the work carried out during the period. The forms may stipulate that the value of the valuation must exceed a certain amount before the issuance of any payment certificate. A minimum amount of these certificates is specified in the appendix of the standard form of contracts.
4. Interim payment certificates are to be issued at agreed intervals or stage. It states the amount due to the contractor from the client.
5. CA to issue certificates as a condition precedent to payments.
6. The Client has a specified period in which to pay from the date of the certificate (period of honoring certificates).

The CA is to certify payments within the stipulated time after receiving contractor's application for each valuation date. The contract forms usually require the CA to issue interim certificates to the Client and the Contractor. The issue of the CA's certificate is a condition precedent to the contractor's entitlement to any payment. If the certificate is late or not been issued, the contractor may refer the matter to the Client first and later activate dispute procedure like arbitration or adjudication if problems persist. The Client should pay the Contractor the certified amount within the stipulated period of honoring certificate (Judi et al. 2017).

According to Ismail (2008), Public Works Department (PWD) 203A, Clause 28.2 highlighted the superintending officer (SO) must issue an interim certificate within 14 days of receiving the contractor's application, provided that the total value in each monthly valuation exceeds the sum referred in the appending (for the first and subsequent interim value). Within the same 14-day period, the SO is to inspect, verify and make a valuation of the works. A provision for issuance of the certificate is that the contractor has complied with the terms and conditions of the contract, such as submission of certain prescribed documents.

As reported by Rustam (2011) in his study, Pertubuhan Arkitek Malaysia (PAM) standard form, Clause 30.1 mentioned that the Architect must issue an interim certificate within 21 days of the receipt of the contractor's application. There is no provision for a minimum certificate amount. Period of honoring certificate refers to amount of time for the client to discharge the required payment to the contractor. It is usually a specified period from the date of the issuance of the certificate, and varies according to each standard forms of contract. By default, the final date for payment of each interim certificate based on the following standard forms of contract (Mohamad et al. 2018):

1. PWD Clause 28.5 is 30 days of the issue of the certificate
2. PAM Clause 30.1 is 21 days from the date of the certificate

The difference between interim payments procedures in standard form of contracts are summarized as shown in Table 1. Overall, the interim claim interval for every standard form of contracts is on a monthly basis. Referring to PWD standard form, the final date for issuance of payment certificate is 14 days upon receiving the application, meanwhile 21 days was given based on PAM standard form, along with certain conditions. The period of honoring the

Table 1. Interim payment procedures in standard form of contract

Payment term	PWD	PAM
Interim claim interval	Monthly	Monthly
Final date for issuance of payment certificate	14 days of receipt of the application, provided the contractor has complied with the terms and conditions of the contract, and the total value is not less than the sum specified	21 days of receipt of application and after receiving the QS's payment valuation within the same period
Period of honoring certificate	30 days from date of certificate	21 days from date of certificate
If payment is overdue	Not specified	The payment is subject to interest

Source: Data from Abdullah (2019).